

1c: case analysis



1c: Case Analysis The case under study is mainly related to post death attestation specifically in terms of the CA statute. There are different issues that can be considered pertinent in the discussion of the case.

1. In relation to the post death attestation, which is one of the issues in the case under study, the CA statute can be considered as ambiguous based on the fact that the language in section 6110 which is the main basis of the ruling contain no clear inclusion regarding an additional witness. Basically, the said section presented a basic description of the needed requirements for probate in term of a testator's will. The question on the case is related to the fact that it lacks the second witness which is a requirement for the verification and authentication of the will, a condition which is basic to the said section. It is even clearly stated that the witnesses be present and that the will be signed in the presence of the testator (16 Cal. Law Revision Com. Rep., supra, p. 2320). The vagueness lies in the absence of the ruling related to a witness that can be classified witness to sign even after the death of the testator. Due to the fact that such situation was not presented in the said section of the law, the decision denied the request for probate.

We find nothing in the language of section 6110, or in its inspiration, Uniform

Probate Code section 2-502, to preclude an otherwise qualified witness from signing a

will after the death of the testator. Nevertheless, there is a split of authority in California

as to the validity of an after-death signature. In *Crook v. Contreras* (2002) 95

Cal. App. 4th 1194, the court considered whether two documents complied

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with the

witnessing requirements of section 6110 and therefore qualified as codicils.

It was

undisputed that both witnesses saw the testator sign the documents, but only one witness

signed the documents at or about the time of their execution. Two years after the first

document was executed, a year and a half after the second document was executed, and a

month after the death of the testator, both witnesses signed witness attestations.

2-3. The court believed that if witnesses were permitted to sign a will after the death of the testator the validity of the said will can be considered in question. Allowing the said action can be considered as putting the testators will in jeopardy, thus, the court viewed that there is no need to change any ruling regarding the permission for post death attestation.

The court even believed that if a law that can consent post death attestation be used, there is a great risk for fraud and the will of the testator will not be protected. In the case, the presentation in 6110 viewed that two witnesses are required and that no witnesses can be permitted to sign after the death of the testator. These can be considered as the main basis of the first ruling of the court.

Although this is the case, the said ruling will be reviewed since after the decision had been presented, the limitation of the section 6110 had been reviewed. Thus, the said case and the ruling can be reversed on the basis of the new rules.

Reference:

136 P. 3rd 201 (C), Estate of Estate of Saueressig v. Goff.

Crook v. Contreras (2002) 95 Cal. App. 4th 1194, 1199, 1201, 1203