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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Estate of NORMINEL REESE, SR.,
Deceased.

MICHELLE REESE,

Petitioner and Respondent,

v.

DONALD REESE,

Objector and Appellant.

D060749

(Super. Ct. No. 37-2010-00151161-
PR-PW-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Jay M. Bloom, Judge. Affirmed.

In this probate matter Donald Reese appeals, in propria persona, from a judgment admitting his father's—Norminel Reese's—will into probate, upon the petition of his sister, Michelle Reese.

On appeal, Donald¹ contends that (1) the court erred by relying on the case *Estate of Stoker* (2011) 193 Cal.App.4th 236 (*Stoker*) in admitting the will to probate; (2) there is not substantial evidence to meet the clear and convincing standard required for defective wills under Probate Code² section 6110, subdivision (c)(2); and (3) "the court erred in not giving credibility to the witnesses who testified on [behalf of Donald]." We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Will*

Norminel died on December 12, 2009. He was survived by three children, Michelle, Norminel Reese, Jr., and Donald. He had a high school diploma and was not sophisticated in legal matters. For many years Norminel owned a successful trophy business that he operated out of his home.

Donald was imprisoned for seven or eight years after a felony conviction. During Donald's incarceration, Norminel supported Donald and his family. At the time of Norminel's death, Norminel Jr. was serving a life sentence in prison.

Between 2005 and 2007, Norminel wrote handwritten instructions to his attorney, James Malowney, to assist with the preparation of his will. One of the handwritten instructions read as follows:

¹ In the interests of clarity we refer to members of the Reese family by their first names. We intend no disrespect.

² All further undesignated statutory references are to the Probate Code.

"To My Lawyer [¶] I want my daughter to be my executor or my estate executive. [¶] No one is on my checking account and my saving account but me Norminel Reese Sr and my daughter Michelle Reese. To give my grandkids 4 of them Jaun Reese Jessica Reese Deonna Reese Olivia Reese \$1,000. thousand dollars. My son Donald W. Reese [five] [\$]5,000.00 My son Norminel Reese [ten] \$10,00.00 thousand D. and M Daughter pay for a house. I have spent on Donald & Norminel Jr lots of money. So I thank is enough. I help Donald - for 8 years paying rent an lots of other things. His daughter a car. And all his kids money." (Errors and underscoring in original.)

Norminel's former girlfriend, Veronica La Shore, observed him write out the instructions to his lawyer. Based on these instructions and subsequent verbal conversations, Malowney, Norminel's attorney, prepared a will The will left \$10,000 to Norminel Jr., \$5,000 to Donald, and \$1,000 each to Norminel's grandchildren—Juan Reese, Jessica Reese, Deonna and Olivia Reese. The residue of the estate was left to Michelle. Norminel signed the will on February 12, 2007. His signature was witnessed by La Shore. La Shore was not a beneficiary under the will. There was no second witness to the signing of the will.

Norminel thereafter called Michelle to advise her that he was sending her important documents and that she needed to be home to receive them. He told her to call him to confirm the receipt of the documents. Michelle received the package by overnight mail on or about May 5, 2008, and called Norminel to confirm receipt. During their conversation, Norminel told her to make copies and distribute them to all of the people

who were in the will. In the package, along with the will, there were the handwritten instructions to the attorney and handwritten letters to Michelle. One of the letters read as follows:

"I Norminel Reese Sr leave my daughter Michelle A. Reese in charge of all bills and the whole estates and give others what thank is paid. Because I have gave Donald & his family plente. Norminel Jr not as much because he was in the pen 25 years Donald was locked up for seven years but I helped his family on rent and others so you see every month for 7 years is quite a lump of money. I trust my daughter is true & trustworthey." (Errors in original.)

In a second letter, Norminel wrote that he had given Donald \$3,000 when he went to prison, \$4,000 when he came home, paid Donald's house note, paid for Donald's attorney, and sent Donald \$150 monthly while he was in prison. Norminel stated that he had spent at least \$80,000 on Donald's family and wrote, "[T]hat should be enough."

B. Probate of the Will

Michelle filed a petition for letters testamentary seeking to have Norminel's will probated pursuant to section 6110, subdivision (c)(2), which allows a will that is deficient in form (here, because it had only one witness) to be admitted to probate if the proponent of the will can establish by clear and convincing evidence that the will is consistent with the testator's intent.

Donald filed an objection to the petition for probate of will on the ground that it was not a final statement of Norminel's intent. Donald alleged that there was no final will and all property should pass by intestate succession to Norminel's children with each receiving an equal share of the estate.

C. The Trial

At the court trial in this matter, testimony was taken on June 22, 2011, and June 23, 2011. Norminel's will, his handwritten instructions to his attorney, and his handwritten letters to Michelle were admitted into evidence without any objection by Donald's counsel. In addition, the parties stipulated to the authenticity of those documents.

The parties called nine witnesses at trial. The witnesses testified as follows:

1. Michelle

Michelle testified that she is the daughter of Norminel, who died on December 12, 2009. Norminel also has two sons, Donald and Norminel Jr. Donald had been incarcerated for seven or eight years after a felony conviction. At the time of the decedent's death and the trial, Norminel Jr. was serving a life sentence in a Texas prison.

Michelle testified that Norminel had a high school diploma and was not sophisticated in legal matters. He operated a trophy business.

While Michelle lived in Texas and Norminel lived in San Diego, they spoke often by telephone and visited each other. He would go to Texas annually and Michelle also visited him in San Diego. In 2006 Norminel gave Michelle \$4,000 for the purchase of a car, and in 2008 he gave her \$10,000 to assist with the purchase of her home. Michelle testified that she has been continuously employed since she was 16. Michelle is educated with an undergraduate degree in business from the University of North Texas and a Masters in Business Administration from Amberton University. Michelle is currently employed as an account executive by Citigroup.

Michelle testified that Norminel owned the trophy business, a home in San Diego, and had three bank accounts at Union Bank. Michele was a joint account holder on Norminel's personal checking and savings account. Norminel was the sole account holder on the business account.

Michelle came into possession of the original will on or about May 5, 2008, after her father called her and told her that he was sending her important documents. He instructed her to call him once she received the documents. She received the package by overnight mail which included the will and handwritten letters. She thereafter called her father to confirm that she had received the package. Norminel asked her to make copies of the will and to distribute it to all of the persons named therein. When she called him after she received the documents, she never discussed the contents of the documents with him.

When questioned about Norminel's handwritten letters, Michelle testified that Norminel Jr. was serving a life sentence in Texas. Michele testified further that Norminel often mentioned to her that he helped Donald when he was also in jail for seven years. Specifically, he paid the family rent and bills. He bought Donald's daughter a car and helped her with her college tuition. Michelle stated that Norminel basically supported Donald's family.

2. Fred Reese

Michelle also called as a witness Fred Reese, Norminel's brother. Fred testified that he and Norminel were very close. He visited his brother in San Diego, they traveled together to visit family in Texas, and they talked on the phone often. He testified

Norminel told him that he supported Donald and his family while Donald was in prison. He paid Donald's legal expenses related to his conviction, his mortgage, his daughter's college expenses, and sent money to Donald while he was in prison. Fred testified that when he and Norminel went to Texas to attend their mother's funeral, he heard Norminel tell their younger brother that he was leaving some cash to his sons, but the bulk of his estate would go to Michelle.

3. *James Malowney*

Michelle called as a witness James Malowney, the attorney who prepared Norminel's will. Malowney testified that in addition to receiving general written instructions for the will from Norminel, he and Norminel had further verbal discussions about his wishes. While there was a delay between the preparation of the will and the signing, Malowney was emphatic that Norminel wanted to gift the majority of his estate to Michelle as stated in the will. Malowney testified that Norminel consistently indicated his intent to give the bulk of his estate to Michelle.

4. *Veronica La Shore*

Michelle also called as a witness Veronica La Shore, Norminel's former girlfriend. While they ended their relationship before he died, they continued to be friends. She had known Norminel for about 12 years. She testified that she saw Norminel write the handwritten instructions to his lawyer. She was also present when he signed the will. She was initially unsure about the date the will was signed when she gave her deposition testimony, but she corrected her testimony at trial stating that she really did not remember

when it was signed. However, in looking at the will it refreshed her memory that it was signed in 2007.

La Shore recognized the will and identified it as the document she witnessed. She testified that Norminel told her he was leaving the bulk of his estate to Michelle because he had already given Donald "a substantial amount of money while he was incarcerated." La Shore stated further that "he just felt that he wanted Michelle to have her share." To her knowledge, he made no other will before he passed away and he intended the will dated February 12, 2007, to be his will.

5. Robert Matthews

Donald called as a witness Robert Matthews, formerly the president of San Diego Continuing Education for the Community College District. He met Norminel as a customer of Norm & Don's Trophy Shop. Over time, they became friends. The last time he had contact with Norminel was in 2009 when Norminel helped with the Martin Luther King, Jr., Parade.

Matthews testified that Norminel told him that he wanted Donald to operate his business after he retired or died. However, Matthews did not meet Donald until after the decedent died. Additionally, Norminel did not tell Matthews that he was supporting Donald and his family, that Donald had been incarcerated, and that Donald was operating a competing trophy business. Matthews testified that he never saw Norminel's will, nor did Norminel ever tell him that he had a will.

6. Catherine Brandon Grzeskowiak

Donald also called as a witness Catherine Brandon Grzeskowiak, who testified that she owns a trophy shop in Spring Valley, California. She testified that she knew Norminel since she was a child as he worked with her mother for a time. She also did engraving for his business for about 20 years. She disputed La Shore's testimony regarding the details of Norminel's business. However, she admitted that Norminel never talked to her about the contents of his will.

7. Donald

Donald testified that he was incarcerated in 1998 for eight years for nonconsensual sex with a prostitute. He worked with his father as a child in his trophy shop. He testified that his father considered him to be his partner in the business. He admitted that Norminel "gave" him money for working and that he did not always agree with what he was given. He testified that while his father gave him the impression that the estate would be given equally to all his children, he never found another will. He also testified that he did not believe that it was his father's handwriting on the will and the handwritten letters, even though he had stipulated that the signature on page 2 of the will and the handwritten letters, were genuine.

Donald claimed that he and his father were business partners. However, he conceded there was no partnership agreement, no joint venture agreement, and the fictitious business statement filed with the County of San Diego stated that Norminel was doing business as an individual. Additionally, he admitted that his father handled all of the business paperwork and that his father paid him "under the table." He claimed at trial

that his father told him that he was a signatory on the business account, but was impeached by his deposition testimony wherein he stated that he was never a signatory on the bank accounts and that he never signed any business checks. He testified further at his deposition that his father was the only signor.

With regard to Norminel's estate plan, Donald admitted at trial that he never discussed his father's estate plan with him and that he has found no other will.

Donald testified that Norminel did not spend over \$80,000 on him and his family as stated in one of the decedent's letters. However, he was impeached by his deposition testimony wherein he stated that he had no idea how much his father spent on him.

8. *Sheila Rene Roberts*

Donald called as a witness Sheila Rene Roberts, who testified that she was a friend of Norminel's for over 20 years and that she had an on-and-off dating relationship with him. She claimed that Norminel told her that he wanted to leave his entire estate to Donald and Donald's daughter, Jessica. However, she admitted that she last spoke with Norminel in 2004 or 2005, two years before the will was signed. Furthermore, she was unaware that Donald had been incarcerated and that Norminel had been supporting Donald's family.

9. *Anthony Kelly*

Donald also called as a witness Anthony Kelley, who testified that he had been a close friend of Donald's since shortly after high school. He also periodically helped Norminel with his trophy business while he was in college. He testified that he relocated

to North Carolina in 1996. He claimed that he spoke with Norminel in 2008 and Norminel told him that he wanted Donald to carry on his business.

However, he admitted he never saw the will. He also testified that Donald paid his travel expenses to come from North Carolina to testify at trial and that he was staying with Donald during the trial.

D. The Court's Ruling

On June 27, 2011, the court issued its tentative statement of decision. The tentative statement of decision granted judgment in favor of Michelle and against Donald. The court cited the unbiased testimony of Malowney, La Shore, and Fred, all who testified that Norminel wanted to leave the bulk of his estate to Michelle Reese. The court also relied on Norminel's bank records, and the fact Michelle's name was on two bank accounts. The court also noted that Norminel's handwritten letters were consistent with the witness testimony offered by Michelle as they showed "decendent did not intend to give Donald money as he had already spent a lot of money on Donald and his family."

The court rejected the testimony of Donald's witnesses as the two witnesses that testified that the decedent wanted Donald to run the business admitted they had no knowledge of the will. The court found the testimony inconsistent with Michelle's testimony that "Donald was neither responsible nor interested in the business." The court found that Robert's testimony was not compelling as she last spoke with the decedent in 2005, two years before the will was signed, and it would be illogical for the decedent to leave the bulk of his estate to one grandchild and not the others. The court discounted Kelly's testimony as biased. The court also noted Kelly admitted he never saw the will.

Finally, the court found that it was logical that Norminel would nominate Michelle as executor and leave the bulk of his estate to Michelle, who had made a success of her life while his two sons both served prison terms.

The court found the fact that the will was poorly drafted did not invalidate the will as Norminel signed it, had it witnessed, called Michelle to tell her he had sent it, followed up with her to make sure she received it, and told her to make copies for distribution. The court found the will was more than just a draft.

As to Donald's testimony the court commented: "Donald's testimony was not helpful to his position. Donald was evasive in his testimony and gave testimony that conflicted with his prior deposition testimony. He even refused to admit the handwriting was his father's after a formal stipulation had been entered into. He also was caught in inconsistencies as to whether he was on various bank accounts and whether the business was in his name or not. He testified his name was on bank accounts when this was not the case. He also suggested he was a partner in this business, but Exhibit 9 showed the business was only in his father's name. Furthermore, he testified that decedent did not spend over \$80,000 on him as stated in Exhibit 4, but at the deposition he had no idea how much his father spent on him."

The court concluded: "Therefore, all the evidence taken together clearly shows there is clear and convincing evidence the will proposed by petitioner in Exhibit 1 is decedent's will and reflects his intent and estate plan. Thus, judgment is granted to petitioner and against both respondents [Norminel Jr. also opposed Michelle's petition, but did not appear at trial]. Accordingly, the will is to be admitted into probate and the

objections of Donald and Norminel, Jr. are overruled. [*Stoker, supra*, 193 Cal.App.4th 236.]"

On July 11, 2011, Donald filed an opposition to the tentative statement of decision. On July 14, 2011, the court, rejecting Donald's objections, filed the statement of decision, which mirrored the tentative statement of decision, detailed, *ante*. On August 3, 2011, the court entered judgment in favor of Michelle and against Norminel Jr. and Donald, and admitted the will dated February 12, 2007, to probate.

DISCUSSION

I. *STANDARD OF REVIEW*

"When the trial court has resolved a disputed factual issue, the appellate courts review the ruling according to the substantial evidence rule. If the trial court's resolution of the factual issue is supported by substantial evidence, it must be affirmed." (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.) The substantial evidence standard of review involves two steps. "First, one must resolve all explicit conflicts in the evidence in favor of the respondent and presume in favor of the judgment all *reasonable* inferences. [Citation.] Second, one must determine whether the evidence thus marshaled is substantial. While it is commonly stated that our 'power' begins and ends with a determination that there is substantial evidence [citation], this does not mean we must blindly seize any evidence in support of the respondent in order to affirm the judgment. . . . '[I]f the word "substantial" [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable . . . , credible, and of

solid value' [Citation.] The ultimate determination is whether a *reasonable* trier of fact could have found for the respondent based on the *whole* record." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632-1633, fns. omitted.)

"[T]he power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. *If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.*" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.)

II. ANALYSIS

Donald asserts that (1) the court erred by relying on the case *Stoker, supra*, 193 Cal.App.4th 236 in admitting the case to probate; (2) there is not substantial evidence to meet the clear and convincing standard required for defective wills under section 6110, subdivision (c)(2); and (3) "the court erred in not giving credibility to the witnesses who testified on [behalf of Donald]." These contentions are unavailing.

Section 6110 provides as follows:

"(a) Except as provided in this part, a will shall be in writing and satisfy the requirements of this section. [¶] (b) The will shall be signed by one of the following: [¶] (1) By the testator. [¶] (2) In the testator's name by some other person in the testator's presence and by the testator's direction. [¶] (3) By a conservator pursuant to a court order to make a will under Section 2580. [¶] (c) [¶] (1) *Except as provided in paragraph (2), the will shall be witnessed by being*

signed, during the testator's lifetime, by at least two persons each of whom (A) being present at the same time, witnessed either the signing of the will or the testator's acknowledgment of the signature or of the will and (B) understand that the instrument they sign is the testator's will. [¶] (2) If a will was not executed in compliance with paragraph (1), the will shall be treated as if it was executed in compliance with that paragraph if the proponent of the will establishes by clear and convincing evidence that, at the time the testator signed the will, the testator intended the will to constitute the testator's will." (Italics added.)

Here, it is undisputed that Norminel's will was not in compliance with section 6110, subdivision (c)(1) because it had only one witness signature. However, the will is admissible in probate under section 6110, subdivision (c)(2) if the trier of fact finds by clear and convincing evidence that the testator intended the will to constitute his will. In *Stoker, supra*, 193 Cal.App.4th 236, the court relied upon this exception in upholding a defective will, noting that "the broad and remedial goal of this provision is to give preference to the testator's intent instead of invalidating wills because of procedural deficiencies or mistakes." (*Id.* at p. 242.)

In upholding the validity of the will in question in that case, the court stated, "The 2005 will expressly and unequivocally provides that the 1997 trust was revoked. The statement in the will that his children were to receive all his property was an express revocation of the earlier 1997 will, which purported to give this property to others. In addition, Gretchen Landry, a friend of decedent's, testified that in 2001 decedent took his original copy of the 1997 will, urinated on it and then burned it. We hesitate to speculate how he accomplished the second act after the first. In any event, decedent's actions lead to the compelling conclusion he intended to revoke the 1997 will. Landry said decedent

did not agree with the 'contents' of the 1997 will. Appellants claim this trial testimony was not credible. But we do not decide the credibility of the witnesses; that is a matter for the trial court." (*Stoker, supra*, 193 Cal.App.4th at p. 245.)

Likewise, in this case there is substantial evidence to support the court's finding under section 6110, subdivision (c)(2) and *Stoker* that clear and convincing evidence showed Norminel's will was valid and expressed his testamentary intent. He contacted his attorney to draft his will, he wrote hand written instructions to his attorney with regard to the distribution, he wrote letters which were consistent with the provisions of the will, he signed the will and had it witnessed by La Shore, he contacted Michelle to inform her he had mailed important documents to her, he followed up with Michelle to make sure she received the documents, he instructed her to make copies of the will for all of the people who were named in it, he told La Shore, his attorney and his younger brother that he was leaving the bulk of his estate to Michelle, and he placed Michelle as a co-owner of his bank accounts.

Moreover, the witnesses presented by Donald had no knowledge of Norminel's will. Donald stipulated to the authenticity of the will and the handwritten letters, the court found his testimony evasive, and his deposition testimony was inconsistent with his testimony at trial.

The court's decision is thus supported by substantial credible evidence, i.e., the estate planning documents, the credible testimony of Michelle's witnesses, and Donald's own deposition testimony. With regard to Donald's claim that more credibility should have been given to his witnesses, as we have stated, *ante*, it is not our role to reweigh the

evidence or reevaluate issues of credibility that were resolved by the lower court.

(*Bowers v. Bernards, supra*, 150 Cal.App.3d at pp. 873-874.)

DISPOSITION

The judgment is affirmed. Michelle shall recover her costs on appeal.

NARES, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.