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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Estate of URSULA PATRICIA FOY,
Deceased.

MICHAEL FOY et al.,

Contestants and Appellants,

v.

DECLAN FOY, Individually and as
Executor, etc.,

Claimant and Respondent.

G044837

(Super. Ct. No. 30-2009-00251112)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Mary Fingal Schulte, Judge. Affirmed.

Law Firm of David Dunlap Jones and David D. Jones for Contestants and Appellants.

Ultimo Law Firm and Paul J. Ultimo for Claimant and Respondent.

* * *

Contestants and appellants Michael and Patrick Foy appeal from a judgment rejecting their challenges to a document the trial court admitted to probate as a holographic codicil to the will of their aunt, decedent Ursula Patricia Foy.¹ The trial court found the document revoked Ursula’s earlier bequest leaving the bulk of her estate to Michael and Patrick and amended her will to leave all her assets to her siblings.

Michael and Patrick contend the trial court erred by admitting extrinsic evidence to determine whether Ursula had the required testamentary intent when she made the codicil because the document’s plain language — “I will change my will to leave my assets equalie [*sic*] to my siblings” — unambiguously showed Ursula merely contemplated changing her will in the future. They further contend, to the extent extrinsic evidence was properly admitted, substantial evidence supports the conclusion Ursula may have had second thoughts about her will, but never actually changed it.

As explained below, we affirm the trial court’s judgment because extrinsic evidence regarding the circumstances surrounding the execution of a document offered for probate is always admissible and substantial evidence supports the trial court’s finding that Ursula “intended . . . to make a present change to her existing will” when she made the codicil.

I

FACTS AND PROCEDURAL HISTORY

Ursula was one of 11 children. In 1970, she and one of her brothers, Gregory Foy, immigrated to the United States from Ireland when she was 18 years old. Ursula never married and had no children of her own, but she remained close to Gregory

¹ We refer to Michael, Patrick, Ursula, and all other Foy family members by their first names to avoid any confusion. No disrespect is intended. (*Martin v. PacifiCare of California* (2011) 198 Cal.App.4th 1390, 1393, fn. 1 (*Martin*).)

and took a special interest in his two sons, Michael and Patrick. She often spent holidays with Gregory's family and also traveled with them.

Tragically, Gregory died from cancer in 1998 when Michael and Patrick were 7 and 11 years old. Before Gregory died, Ursula promised him she would take care of Michael and Patrick. Ursula regularly spoke with the boys on the phone and sent them cards and gifts for their birthdays and Christmas. The first summer after Gregory's death, Ursula flew to the boys' home on the East Coast and spent several weeks with them. Between 2000 and 2002, Ursula paid to fly Michael and Patrick to California to spend most of the summer with her. She enrolled the boys in day camps while she was at work, but took them to Disneyland, the beach, and other places to entertain them in the evenings and on weekends. She also bought Michael and Patrick clothes and other supplies they needed for school.

To further provide for Michael and Patrick, Ursula hired an attorney to draft a will that she executed in June 2000. With the exception of personal property items Ursula left to her surviving siblings, the will bequeathed the bulk of Ursula's estate to Michael and Patrick. The will also nominated one of her surviving brothers, claimant and respondent Declan Foy, as executor.

In 2001, Michael and Patrick's mother remarried. Ursula continued to regularly speak with the boys on the phone and send them cards and gifts. After 2002, however, Michael and Patrick no longer visited Ursula during the summer. She last saw Michael and Patrick in 2003 when she traveled to Maine with them to attend a cousin's wedding, but Ursula continued to speak with Michael and Patrick on the phone.

Starting in the mid-2000's, Ursula experienced a series of health problems. In 2006, she suffered a heart attack and had surgery to insert arterial stents. Her doctors later admitted her to the hospital on several occasions for pneumonia and Ursula suffered a second heart attack in late 2007 or early 2008. By the end of 2008, Ursula lost her job and began receiving early Social Security benefits because of her health problems.

In July 2008, Ursula handwrote the following on the cover page of the will she executed in June 2000: “I will change my will to leave my assets equalie [*sic*] to my siblings.” Ursula also signed and dated this notation in her own handwriting. Michael and Patrick were 16 and 18 in July 2008 and their mother had been remarried for seven years.

Ursula died six months later from a cerebral hemorrhage. She was 57 years old. After her death, the Orange County Public Administrator found Ursula’s June 2000 will, with the July 2008 handwritten notation on its cover, in her nightstand.

In March 2009, Declan, as the executor of Ursula’s estate, filed a petition to probate Ursula’s June 2000 will and her July 2008 writing as a codicil to that will. The trial court admitted the will and codicil to probate in April 2009. In February 2010, Michael and Patrick filed a will contest and petition to revoke the probate of the handwritten codicil. They alleged the codicil was invalid because Ursula lacked present testamentary intent when she wrote the words on the will’s cover. According to Michael and Patrick, the statement “I will change my will” showed Ursula intended to possibly change her will in the future, but did not make a present change in her will. Michael and Patrick therefore claimed the court should distribute Ursula’s estate as described in her original will.

The trial court conducted a two-day bench trial on Michael and Patrick’s challenge to the codicil. At trial, the court allowed extrinsic evidence regarding the circumstances surrounding the codicil, including Ursula’s statements to her family and friends regarding the codicil and her will in general.

Dorothy Winters, Ursula’s neighbor and friend, testified Ursula told her multiple times during late 2007 and early 2008 that she wanted to change her will to leave everything to her surviving brothers and sisters instead of Michael and Patrick. Ursula told Winters that Michael and Patrick were growing up and that their mother had remarried. She believed Michael and Patrick were in a stable environment and no longer

needed her help. According to Winters, Ursula's priorities changed and she grew concerned for her brothers and sisters because some of them were getting advanced in years and had significant health problems. Although she still loved Michael and Patrick and felt no bitterness toward them, Ursula told Winters that she felt "hurt" they no longer visited her.

Declan testified he had a phone conversation with Ursula in July 2008 during which she explained she "was changing her will." She explained she was upset with Michael and Patrick because they did not show her "sufficient support" during her health problems and she felt they had "grown apart from her." Ursula did not tell Declan how she was changing her will, only that she was changing it. Declan also testified that Ursula sent him a copy of her original will shortly after she executed it because she wanted him to be her executor, but she never sent him a copy of the codicil. Declan never saw the codicil until after Ursula's death. Finally, Declan testified Ursula told him Michael and Patrick were "financially secure" after their mother remarried because their stepfather appeared to be "financially well off."

Thomas Smith, another of Ursula's nephews, testified he lived approximately 10 miles from her and saw her several times each year. In December 2008, less than one month before Ursula's death, Smith attended both a Christmas and New Year party Ursula hosted at her home. At both parties, Ursula told Smith she did not talk as frequently to Michael and Patrick, and when she did, it was not the same. Smith testified Ursula appeared "a little agitated" when talking about Michael and Patrick, stating she had not heard from them when Smith asked how they were doing. Ursula volunteered she changed her will to disinherit Michael and Patrick because "[t]hey don't need old Aunt Ursula anymore. They can get on on their own." Because Ursula appeared upset, Smith did not inquire any further about Ursula's will or Michael and Patrick.

Larry Patrick, Ursula's former neighbor and best friend, testified he flew to California in December 2008 to spend Christmas with Ursula.² During his visit, Larry inquired how Michael and Patrick were doing and Ursula responded she "hadn't talked to the boys in some time." Larry testified Ursula did not appear angry with Michael and Patrick, but was disappointed they did not speak to her as much as they once did. Ursula volunteered she changed her will to leave everything to her brothers and sisters instead of Michael and Patrick. She explained she had grown apart from the boys and they no longer needed her help. Instead, she was concerned about her older brothers and sisters because some of them were in poor health and faced financial problems. She believed her money could be better spent on her brothers and sisters because they needed her financial assistance. Finally, Ursula told Larry she left her will in her nightstand.

Michael and Patrick testified they continued to regularly speak with Ursula on the phone until the time of her death. Patrick testified he spoke with Ursula every three months and Michael testified he spoke with her every month or two. They also testified Ursula continued sending them birthday cards every year, including their birthdays in November 2008 and January 2009. In their view, their conversations and relationship with Ursula did not change.

A few days after the trial ended, the court issued its statement of decision rejecting Michael's and Patrick's challenge to the codicil and approving the final distribution of Ursula's estate to her surviving brothers and sisters. The court identified the central issue as whether Ursula executed the codicil with present testamentary intent or merely as a reminder to take future action. The court found "the weight of the testimony supports the conclusion that [Ursula] intended, by her July 2008 writing, to make a present change to her existing will."

² We refer to Larry Patrick by his first name for clarity and to avoid any confusion with Patrick Foy. No disrespect is intended. (*Martin, supra*, 198 Cal.App.4th at p. 1393, fn. 1.)

The trial court thereafter entered judgment against Michael and Patrick on their petition challenging the probate of Ursula’s handwritten codicil. Michael and Patrick timely appealed from that judgment.³

II DISCUSSION

Michael and Patrick challenge the trial court’s judgment on three grounds. First, they contend the court erred by admitting extrinsic evidence to determine whether Ursula made the codicil with present testamentary intent. Second, to the extent the court properly admitted extrinsic evidence, Michael and Patrick assert we should reverse the judgment because substantial evidence supports the conclusion Ursula merely had second thoughts about her will, but did not intend to actually change it. Finally, Michael and Patrick argue the codicil’s language failed to adequately revoke the original will.

A. *Governing Legal Principles and Standard of Review*

Probate Code section 6110 provides a formal will or codicil must be witnessed by at least two persons.⁴ Section 6111, however, provides “[a] will [or codicil] that does not comply with Section 6110 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.”⁵ “‘Holographic’ means simply a document wholly written by the hand of its author. [Citation.]” (*Estate of Brenner* (1999) 76 Cal.App.4th 1298, 1301 (*Brenner*).

³ The court also entered a separate order approving the distribution of Ursula’s estate pursuant to the codicil’s terms and Michael and Patrick filed a separate notice of appeal challenging that order. The appeal from the order was assigned the same case number as the appeal from the judgment and Michael and Patrick do not state any separate challenge regarding the order.

⁴ All statutory references are to the Probate Code unless otherwise stated.

⁵ For the Probate Code’s purposes, section 88 defines the term “[w]ill” to include codicil.

In addition to satisfying section 6110's or section 6111's requirements, a will or codicil's proponent must establish the testator executed the document with testamentary intent: "Before an instrument may be admitted to probate as a will [or codicil], it must appear from its terms, viewed in the light of the surrounding circumstances, that it was executed with testamentary intent. [Citations.]" (*Estate of Williams* (2007) 155 Cal.App.4th 197, 211 (*Williams*), quoting *Estate of Geffene* (1969) 1 Cal.App.3d 506, 512 (*Geffene*); see also *Estate of Sargavak* (1950) 35 Cal.2d 93, 95 (*Sargavak*).

"The basic test of testamentary intent is not the testator's realization that he was making a will, but whether he intended by the particular instrument offered for probate to create a revocable disposition of his property to take effect only upon his death. [Citations.] No particular words are necessary to show testamentary intent but it must satisfactorily appear from the proffered document that the decedent intended by the very paper itself to make a disposition of his property after his death. [Citations.]" (*Geffene, supra*, 1 Cal.App.3d at p. 512; see also *Sargavak, supra*, 35 Cal.2d at p. 95; *Williams, supra*, 155 Cal.App.4th at pp. 211-212; *Estate of Wong* (1995) 40 Cal.App.4th 1198, 1205 (*Wong*)). In other words, the testator must intend the document to be a will or codicil at the time he or she wrote it — that is, the document must be written with "present testamentary intent." (*Estate of Southworth* (1996) 51 Cal.App.4th 564, 571-572 (*Southworth*)).

Extrinsic evidence regarding the circumstances surrounding the testator's execution of the document, including statements by the testator, is admissible to establish or negate testamentary intent. (*Sargavak, supra*, 35 Cal.2d at pp. 96-97 [statements by the testator, "whether made at, before, or after the execution of the instrument are admissible, if offered for the purpose of ascertaining the intent with which the instrument was executed"]; *Williams, supra*, 155 Cal.App.4th at p. 215 ["Declarations of the testator are admissible to demonstrate a testamentary intent"]; *Brenner, supra*, 76 Cal.App.4th at

p. 1302 [“The court can look at extrinsic evidence to confirm the testator’s intent”].) Indeed, section 6111.5 specifically provides “[e]xtrinsic evidence is admissible to determine whether a document constitutes a will pursuant to Section 6110 or 6111” (See also *Brenner*, at p. 1302.)

When, as here, the parties offer conflicting extrinsic evidence regarding the testator’s intent, appellate courts review a trial court’s testamentary intent determination under the substantial evidence standard.⁶ (*Williams, supra*, 155 Cal.App.4th at p. 211; *Wong, supra*, 40 Cal.App.4th at p. 1204 [“If the document can constitute a will, the finding that it expresses testamentary intent is subject to a substantial evidence review”].)

B. *The Trial Court Properly Admitted Extrinsic Evidence to Determine Whether Ursula Made the Codicil with Present Testamentary Intent*

Michael and Patrick contend the trial court erred by admitting extrinsic evidence to determine whether Ursula wrote and signed the codicil with present testamentary intent. According to Michael and Patrick, “[e]xtrinsic evidence is only admissible if there is an ambiguity on the face of the testamentary instrument.” They contend the words “I will change my will” unambiguously established Ursula had a future rather than present intent to amend her will and therefore the trial court erred by considering extrinsic evidence regarding Ursula’s intent. This contention fails because it conflates interpreting the codicil’s terms with determining Ursula’s intent in making the codicil.

Extrinsic evidence is admissible to determine whether the testator possessed the required testamentary intent regardless of whether an ambiguity exists in

⁶ Appellate courts independently review a trial court’s testamentary intent determination when either the parties offer no extrinsic evidence regarding the testator’s intent or no conflict exists in the extrinsic evidence the parties offer. (*Williams, supra*, 155 Cal.App.4th at pp. 205-206; *Geffene, supra*, 1 Cal.App.3d at pp. 511-512.) Here, the parties offered conflicting evidence regarding Ursula’s intent and therefore the substantial evidence standard applies. Indeed, Michael and Patrick concede the substantial evidence standard applies if the trial court properly considered extrinsic evidence.

the instrument's language. (See *Estate of Torregano* (1960) 54 Cal.2d 234, 246 [“Extrinsic evidence is always admissible for the purpose of proving the circumstances under which a will was executed”].)

For example, extrinsic evidence is admissible to show the testator did not intend a document to be effective as a will or codicil “[r]egardless of the language of the allegedly testamentary instrument” (*Sargavak, supra*, 35 Cal.2d at p. 96; see also *Estate of Smith* (1998) 61 Cal.App.4th 259, 266 (*Smith*); *Estate of MacLeod* (1988) 206 Cal.App.3d 1235, 1241 (*MacLeod*).) “Thus, an instrument that clearly appears testamentary may nevertheless be shown by extrinsic evidence to have been executed in jest [citations], or as a threat to induce action by an interested party [citation], or under the misapprehension that the instrument was a mortgage [citation], or to induce the “legatee” to engage in illicit relations with the testator [citation], or to relieve the maker from annoyance by a would-be legatee. [Citations.]” (*Smith*, at p. 266, quoting *Sargavak*, at p. 96.)

Similarly, extrinsic evidence is admissible to establish a testator intended a document to be effective as a will or codicil regardless of the document's language. (See *Brenner, supra*, 76 Cal.App.4th at p. 1302 [“The court can look at extrinsic evidence to confirm the testator's intent”]; *Wong, supra*, 40 Cal.App.4th at p. 1205 [“if it is not completely clear that the document evidences testamentary intent, it is possible to resort to extrinsic evidence of the surrounding circumstances in order to provide it”]; *Geffene, supra*, 1 Cal.App.3d at p. 512 [“If the prerequisite testamentary intent does not appear from the face of the instrument itself, reference may be made to the circumstances of its execution, and the language will be construed in the light of those circumstances”].)

In determining the admissibility of extrinsic evidence it is important to distinguish between extrinsic evidence offered to help interpret the document's terms and extrinsic evidence offered to establish or negate testamentary intent. (*Sargavak, supra*, 35 Cal.2d at p. 96 [“It bears emphasis that we are here concerned not with the meaning of

the instrument, but with the intent with which it was executed”]; see also *Williams, supra*, 155 Cal.App.4th at p. 215 [extrinsic evidence ““admissible when the attempt is not to explain an ambiguity but to show the testamentary character of a [document]””].) Indeed, without any qualification or limitation, section 6111.5 provides that “[e]xtrinsic evidence is admissible to determine whether a document constitutes a will pursuant to Section 6110 or 6111” That same section, however, limits the admissibility of extrinsic evidence “to determine the meaning of a will or a portion of a will” to cases in which “the meaning is unclear.” Accordingly, Michael and Patrick’s contention that an ambiguity must exist for extrinsic evidence to be admissible is incorrect.

Michael and Patrick further contend *Southworth* is factually analogous to this case and shows the trial court erred by admitting extrinsic evidence. In their view, *Southworth* instructs that extrinsic evidence is inadmissible if the language of the document offered for probate plainly establishes the testator intended to make a will in the future and therefore lacked present testamentary intent when executing the document. Michael and Patrick misread *Southworth*.

The testator in *Southworth* filled out and signed a preprinted donor card for a local animal shelter expressing her desire to make a gift to the shelter. She circled the preprinted option on the card stating, “I am not taking action now, but my intention is,” and then wrote in the blank following that language, “My entire estate is to be left to North Shore Animal League.” (*Southworth, supra*, 51 Cal.App.4th at p. 567.) The trial court admitted the donor card to probate as a holographic will, finding the preprinted language meant the testator did not want to immediately transfer funds to the animal shelter, but intended to bequeath her estate to the shelter upon her death. (*Id.* at p. 569.) In reaching that conclusion, the trial court considered extrinsic evidence regarding various communications between the testator and the animal shelter. (*Id.* at pp. 567-568.)

The Court of Appeal reversed, finding the donor card did not comply with the Probate Code requirements for a holographic will and the preprinted language on the

card established a future intent to make a will, not a present testamentary intent. (*Southworth, supra*, 51 Cal.App.4th at p. 572.) Regarding the extrinsic evidence the trial court admitted, the *Southworth* court stated, “Although courts may consider statements made before and after a holographic will is made and the surrounding circumstances, *evidence of present testamentary intent provided by the instrument at issue is paramount.*” (*Ibid.*, original italics.)

Southworth does not support Michael and Patrick’s argument because the Court of Appeal did not hold the trial court erred by admitting extrinsic evidence. To the contrary, the *Southworth* court acknowledged the propriety of admitting extrinsic evidence to determine whether the testator had present testamentary intent. (*Southworth, supra*, 51 Cal.App.4th at p. 572.) The *Southworth* court merely found that “evidence of present testamentary intent provided by the instrument at issue is paramount” and the extrinsic evidence offered failed to overcome the clear statement in the document that the testator did not intend to take any action by filling out and signing the donor card. (*Ibid.*, italics omitted.)

Accordingly, we reject Michael and Patrick’s contention that the trial court erred by admitting extrinsic evidence regarding Ursula’s testamentary intent. We must therefore consider whether the evidence presented supports the trial court’s finding that Ursula drafted and signed the codicil with present testamentary intent.

C. *Substantial Evidence Supports the Trial Court’s Finding Ursula Executed the Codicil with Present Testamentary Intent*

Michael and Patrick concede the substantial evidence standard governs our review of the trial court’s testamentary intent determination. Based on that standard, they argue we should reverse the judgment because substantial evidence supports the conclusion Ursula had second thoughts about her will, but did not intend to actually change it when she wrote the codicil on its cover in July 2008. This argument fails because it relies on a fundamental misunderstanding of the substantial evidence standard

of review and the record adequately supports the trial court's testamentary intent determination.

Under the substantial evidence standard, the appellate court's power begins and ends with a determination whether there is any substantial evidence, contradicted or uncontradicted, that supports the trial court's findings. (*Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201 (*Consolidated Irrigation*); *Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1188.) In applying the standard, the appellate court reviews the entire record in the light most favorable to the trial court's findings, resolving all evidentiary conflicts and drawing all reasonable inferences to support those findings. (*People v. Jason K.* (2010) 188 Cal.App.4th 1545, 1553; *Wilson*, at p. 1188.) "If "there is 'substantial evidence,' the appellate court must affirm . . . even if the reviewing justices personally would have ruled differently had they presided over the proceedings below, and even if other substantial evidence would have supported a different result." [Citation.]" (*Jason K.*, at p. 1553, original italics, underscoring added; see also *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1208.)

Here, the trial court found the weight of the evidence "supports the conclusion that [Ursula] intended, by her July 2008 writing, to make a present change to her existing will." Accordingly, the question presented is whether substantial evidence supports that conclusion. It is irrelevant whether substantial evidence also supports a different conclusion. To succeed, Michael and Patrick must show a lack of substantial evidence to support the conclusion the trial court reached. (*Horn v. Oh* (1983) 147 Cal.App.3d 1094, 1098 [appellant "must show that there is no substantial evidence whatsoever to support the findings of the trier of fact"].)

We conclude substantial evidence supports the trial court's finding that Ursula intended to change her will when she wrote and signed the codicil. Winters, Declan, Smith, and Larry each testified to conversations they had with Ursula close in time to her making the codicil in July 2008. They each testified Ursula told them

(1) Michael and Patrick had grown up; (2) her relationship with Michael and Patrick had changed; (3) their mother had remarried several years earlier; (4) they were in a secure environment; and (5) they did not need her help any longer. Ursula told Winters and Larry she was more concerned about her aging brothers and sisters because Michael and Patrick could now take care of themselves.

Most important, Smith and Larry testified that Ursula told them in December 2008 that she had changed her will. Smith testified Ursula told him she changed her will to disinherit Michael and Patrick, and Larry testified she told him she changed her will to leave everything to her brothers and sisters instead of Michael and Patrick. Declan testified Ursula told him in July 2008 that she was changing her will and Winters testified that Ursula told her a few times during late 2007 and earlier 2008 that she wanted to change her will to leave everything to her brothers and sisters instead of Michael and Patrick. Finally, Larry testified Ursula told him in December 2008 that her will was in her nightstand in case anything happened to her. Less than a month later, Ursula died and the public administrator found her will in her nightstand with the codicil on its cover changing the will to leave everything to her brothers and sisters.

Not only are “[d]eclarations of the testator admissible to demonstrate a testamentary intent” (*Williams, supra*, 155 Cal.App.4th at p. 215), but they also are “extremely probative” on the issue (*Wong, supra*, 40 Cal.App.4th at p. 1208). Indeed, all of the foregoing testimony regarding comments Ursula made either shortly before or after she made the codicil is extremely probative of her intent and supports the trial court’s finding Ursula intended to change her will when she made the codicil.

Michael and Patrick provide no explanation how the record lacks substantial evidence to show Ursula’s codicil demonstrated her present intent to change her will. Instead, they argue substantial evidence supports other conclusions the trial court rejected, including that Ursula only contemplated changing her will, but never actually did. They focus on the codicil’s language that “I *will* change my will to leave

my assets equalie [*sic*] to my siblings,” arguing it establishes a future rather than present testamentary intent. (Italics added.) At most, that language creates an ambiguity regarding Ursula’s intent and the trial court resolved that ambiguity against Michael and Patrick based on the extrinsic evidence described above. We find no error in that determination. (See *MacLoud, supra*, 206 Cal.App.3d at p. 1241 [finding document to be holographic will despite fact testator intended the document to be formalized at some future time]; *Geffene, supra*, 1 Cal.App.3d at p. 513 [finding document to be holographic will despite fact it included request that testator’s attorney draw up formal will including the bequests described in the document].)

Michael and Patrick also argue we should disregard Smith’s and Larry’s testimony as biased and contradictory, but the trial court clearly credited their testimony and Michael and Patrick fail to point to any ground upon which we may reverse or ignore the trial court’s reliance on that testimony. “[A] trial court’s credibility findings cannot be reversed on appeal unless that testimony is incredible on its face or inherently improbable. [Citations.] One practice guide has described the test for inherent improbability by stating that ‘reviewing courts have uniformly demanded more than mere improbability to warrant reversal: The evidence must be physically impossible or obviously false without resorting to inference or deduction.’ [Citation.]” (*Consolidated Irrigation, supra*, 204 Cal.App.4th at p. 201.) Michael and Patrick make no effort to meet that high standard. Moreover, even if they could, Winters’s and Declan’s testimony alone is sufficient to constitute substantial evidence supporting the trial court’s testamentary intent determination. (*Id.* [“Evidence is ‘substantial’ for purposes of this standard of review if it is of ponderable legal significance, reasonable in nature, credible, and of solid value. [Citation.] The testimony of a single witness, even if that witness is a party to the case, may constitute substantial evidence”].)

Finally, Michael and Patrick again point to the *Southworth* case as support for their position, but it again fails to apply to the facts of this case. The testamentary

document at issue in *Southworth* included the testator's statement, "I am not taking action now, but my intention is . . . My entire estate is to be left to North Shore Animal League." (*Southworth, supra*, 51 Cal.App.4th at p. 567.) That is an unambiguous statement the testator did not intend the document to be a will and therefore established a lack of present testamentary intent. Here, as explained above, the language of Ursula's codicil at most creates an ambiguity regarding her intent and the extrinsic evidence showed she had present testamentary intent.

D. *The Codicil Adequately Revoked the Will's Bequest to Michael and Patrick*

Michael and Patrick contend the codicil fails to properly revoke Ursula's original will and therefore the original will continues to govern her estate's disposition. They argue a holographic codicil must unambiguously state the testator's intent to revoke or change an existing will and the codicil fails to meet that standard because it expressed nothing more than Ursula's intent to possibly change her will in the future. This argument fails because it misstates the law and ignores the substantial evidence supporting the trial court's finding that Ursula intended to make a present change in her will by drafting and signing the codicil.

A will or any part thereof may be revoked by a later will or codicil that "revokes the prior will or part expressly or by inconsistency." (§ 6120, subd. (a); *Estate of Stoker* (2011) 193 Cal.App.4th 236, 245 ["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"].) "A revocation may be accomplished without the formalities of a formal will" and no particular language is required. (*Stoker*, at p. 243.)

Here, the codicil's dispositional terms, which left all of Ursula's assets to her brothers and sisters, are inconsistent with the original will's dispositional terms, which left only personal property items to Ursula's brother and sisters and the bulk of her

estate to Michael and Patrick. Accordingly, the only question is whether Ursula intended the codicil to revoke the original will's bequests to Michael and Patrick. As explained above, substantial evidence supports the trial court's finding that Ursula intended the codicil to change her will and therefore we reject Michael and Patrick's contention that the codicil failed to adequately revoke the original will's bequest to them.

III

DISPOSITION

The judgment is affirmed. Declan shall recover his costs on appeal.

ARONSON, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.