

NOTICE  
Decision filed 10/18/24. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2024 IL App (5th) 240452-U  
NO. 5-24-0452  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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<i>In re</i> ESTATE OF DAY LYNN JONES, Deceased	)	Appeal from the
	)	Circuit Court of
(Giuseppe Napoleone,	)	Wayne County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 23-PR-37
	)	
Lisa J. Motsch,	)	Honorable
	)	Denton W. Aud,
Respondent-Appellant).	)	Judge, presiding.

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JUSTICE MOORE delivered the judgment of the court.  
Justices Welch and McHaney concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court’s order of February 26, 2024, is affirmed because the will meets the requirements of sections 7-1 and 7-3. The circuit court’s findings are supported by the record on appeal and are not against the manifest weight of the evidence.

¶ 2 I. BACKGROUND

¶ 3 The decedent, Day Lynn Jones, was born in Fairfield, Illinois, on July 25, 1954. On May 8, 2022, the decedent died at his place of residence in Milan, Italy. The decedent’s sister, the respondent-appellant in this matter, Lisa Motsch, filed a petition to admit Jones’s estate to probate with independent administration on September 1, 2023. Said petition alleged that Jones left “a holographic will, which is invalid in Illinois.” The petition also claimed that Jones’s only heirs were his sister, Motsch, and a niece, Adrienne Jones Adamczyk. Motsch requested to be appointed

the independent administrator of Jones's estate. On September 7, 2023, Motsch was appointed as the independent administrator.

¶ 4 On September 26, 2023, Guisepe Napoleone, a resident of Milan, Italy, through Illinois counsel, filed a certified copy of the holographic will, authored by Jones, dated June 25, 2019 (2019 Will). Napoleone was a legatee under the 2019 Will. The 2019 Will was published in Italy in May of 2022, and was certified by an Italian Notary.

¶ 5 On December 28, 2023, Napoleone filed a petition which sought to (1) admit the foreign 2019 Will, (2) convert intestate estate to ancillary testate estate, (3) probate the will, (4) convert the letters of administration to letters of administration with will annexed, and (5) remove the independent administrator or to convert to supervised administration. The petition alleged that the 2019 Will was valid and executed in accordance with Italian law and should therefore be admitted to probate pursuant to the Illinois Probate Act of 1975 (Illinois Probate Act) (755 ILCS 5/1-1 *et seq.* (West 2022)). Motsch's petition to admit estate to probate-independent administration acknowledged the existence of the 2019 Will but alleged that the 2019 Will was invalid under Illinois law.

¶ 6 On January 25, 2024, Motsch filed a motion to strike and dismiss Napoleone's petition. In her motion, Motsch stated that the "alleged will of Decedent is a holographic will allegedly signed by Decedent without any witness signatures." The motion also set forth that, "[a]ccording to Napoleone's attorney, Napoleone was present when Decedent signed the holographs will," and that after Jones's death, Napoleone took the "alleged will" to a notary public, attested to her that it was Jones's will, and the notary then published the "alleged will."

¶ 7 Motsch's motion cited to sections 7-4(d) and 4-6(a) of the Illinois Probate Act (*id.* §§ 7-4(d), 4-6(a)). Motsch argued that, pursuant to the foregoing sections of the Illinois Probate Act,

Napoleone's interest under the "alleged will" was void, and that Napoleone's presence at the time Jones allegedly signed the "alleged will" is *prima facie* evidence of undue influence. Additionally, Motsch argued that the 2019 Will did not conform to international will requirements as set forth in the Uniform International Will Act. For all of these reasons, Motsch urged the circuit court to dismiss Napoleone's petition because the will was invalid, thus Napoleone's interest was void, and Jones died intestate.

¶ 8 Napoleone filed a written response to Motsch's motion to strike and dismiss his petition. Napoleone contested the factual allegation that he was present when Jones wrote and signed the 2019 Will. Napoleone argued that Motsch presented no evidence to establish his presence at the time Jones wrote and signed the will. Further, Napoleone argued that Motsch failed to present any evidence to sustain her burden of proving fraud or forgery. Next, Napoleone's response set forth that he complied with Italian law following Jones's death, and as Jones's will was valid under Italian law the will is valid under Illinois law. As Jones's 2019 Will complied with the foregoing, he argued that the will should be admitted to probate pursuant to section 7-4 of the Illinois Probate Act.

¶ 9 In addition, Napoleone argued that section 7-3 of the Illinois Probate Act (*id.* § 7-3) provides for the introduction of a copy of a foreign will into probate by introducing in evidence an authenticated copy of the 2019 Will. He asserted that the 2019 Will satisfied the requirements of proof under section 7-3 of the Illinois Probate Act and was properly admitted.

¶ 10 On February 21, 2024, the circuit court conducted a hearing,<sup>1</sup> via Zoom, on Napoleone's petition and Motsch's motion to strike and dismiss the petition. The same day, the circuit court

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<sup>1</sup>The circuit court's docket entry indicated that a hearing took place and that arguments were presented by counsel; however, the record on appeal does not contain a transcript of this hearing, a bystander's report pursuant to Illinois Supreme Court Rule 323(c) (eff. July 1, 2017), or an agreed statement of facts pursuant to Illinois Supreme Court Rule 323(d) (eff. July 1, 2017).

entered an order via docket entry which found, *inter alia*, as follows:

“Motion to Strike and Dismiss is denied. Petition to Admit Foreign Will, to Convert Intestate Estate to Ancillary Testate Estate, To Probate Will, To Convert Letters of Administration to Letters of Administration with Will Annexed, and to Remove Independent Administrator granted in part and denied in part. Court grants request to admit foreign will, to convert intestate estate to ancillary testate estate, to probate will, to convert letters of administration to letters of administration with will annexed. Court denies request to remove independent administrator as not being properly before Court. Court grants, by agreement, the request to convert estate to supervised administration. Atty Bruggeman to submit written order.”

¶ 11 On February 26, 2024, the circuit court entered a written order admitting the 2019 Will to probate. On March 12, 2024, Motsch filed a timely notice of appeal which sought review of the February 26, 2024, order admitting the 2019 Will to probate. Additional facts, if necessary, will be provided in the analysis.

¶ 12 II. ANALYSIS

¶ 13 On appeal, Motsch is challenging the admission of Jones’s holographic will to probate. The law favors admission of a will to probate. *In re Estate of Schafroth*, 233 Ill. App. 3d 185, 187 (1992). Further, the circuit court “is required to admit a will to probate upon proof that the statutory requirements have been met.” *In re Estate of Huang*, 2022 IL App (2d) 210269, ¶ 6. The circuit court can refuse to admit a will to probate “only on the failure to make proper proof of the statutory requirements or because of proof of fraud, forgery, compulsion, or other improper conduct deemed sufficient to invalidate the will.” *Id.*

¶ 14 On review, we examine whether the findings of the circuit court in determining a will

should be admitted to probate were against the manifest weight of the evidence. *In re Estate of Salzman*, 17 Ill. App. 3d 304, 309 (1974). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). When establishing the validity of a proffered will, the burden of proof is on the proponent of the will. *In re Estate of Salzman*, 17 Ill. App. 3d at 306. However, the proponent need not show the will is valid in all respects. *Id.* Rather, the proponent's only duty is to prove the essential elements provided by statute. *Id.*

¶ 15 Section 7-1 of the Illinois Probate Act governs the admissions of a foreign will to probate. In order to allow the admittance of a foreign will to probate, section 7-1 of the Act provides, a foreign will may be admitted to probate in Illinois where “(a) the will has been admitted to probate outside of this State or (b) the will was executed outside of this State in accordance with the law of this State, of the place where executed, or of the testator’s domicile at the time of its execution.” 755 ILCS 5/7-1 (West 2022). Therefore, we turn to the Italian Civil Code for its statutory requirements for a holographic will.

¶ 16 The Italian Civil Code indicates that the validity of a holographic will is dependent upon three elements: holography, date, and undersign. Il Codice Civile [Civil Code] art. 602. Pursuant to the Italian Civil Code, a holographic will is not published, or registered, until a finding of its validity is made in the appropriate jurisdiction. Il Codice Civile [Civil Code] art. 620. Article 456 of the Italian Civil Code establishes such jurisdiction as the place of the deceased’s last place of residence at the time of death. Il Codice Civile [Civil Code] art. 456. As indicated by the record, the 2019 Will was registered on or about June 1, 2022, in Milan, Italy.

¶ 17 Further, it has been established in Illinois that “[a] foreign will may be admitted to probate in Illinois when the [foreign] will was executed outside Illinois in accordance with Illinois law.”

*In re Estate of Huang*, 2022 IL App (2d) 210269, ¶ 10. Section 7-3 of the Illinois Probate Act provides for proof of a foreign will by copy, by the following:

“(a) A written will admitted to probate outside of this State is sufficiently proved to admit to probate in this State by introducing in evidence an authenticated copy of the will and the probate thereof.

(b) A written will from any state or country whose laws do not require a will to be probated is sufficiently proved to admit it to probate in this State by introducing in evidence an authenticated \*\*\* copy is a true copy and that the will has become operative by the laws of that state or country.” 755 ILCS 5/7-3(a), (b) (West 2022).

¶ 18 On appeal, Motsch did not set forth any argument that the 2019 Will is invalid because it did not comply with the requirements of the Italian Civil Code. Nor did Motsch question the credibility or reliability of the certified copy and translation of the 2019 Will filed on or about September 22, 2023. See *Estate of Tassarar v. Michas*, 404 Ill. App. 3d 825, 828-29 (2010).

¶ 19 Rather, Motsch argues in her brief that she proved fraud because the 2019 Will was not witnessed and through an email sent from Jones to Ginger Bertini on April 26, 2021. The email stated, “B and I want to put our house in order. Several years ago we wrote Wills. I think you signed them as a witness.” Motsch argues that the statement that Jones wrote a will “several years ago” is inconsistent because the 2019 Will was dated June 25, 2019. Without explicitly saying so, Motsch seems to argue that the interpretation of the word “several” in the email establishes fraud because not quite two years had elapsed since June 25, 2019.

¶ 20 As set forth above, a circuit court should admit a will to probate if it satisfies the statutory requirements and when there is no proof of fraud, forgery, compulsion, or other improper conduct.

*In re Estate of Huang*, 2022 IL App (2d) 210269, ¶ 6. Motsch’s position is that the 2019 Will

should not have been admitted to probate because she established fraud. In order to determine if the circuit court's findings on fraud and ultimately admission of the 2019 Will to probate were against the manifest weight of the evidence, we must be provided with the evidence on review. Where it is alleged that the evidence presented was insufficient to support the court's finding, the burden of preserving said evidence rests with Motsch. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 394 (1984). By extension, for Motsch to properly support a claim of error, Motsch must provide a complete record of the circuit court proceedings. *Id.* at 391-92. Absent such, it will be assumed that the circuit court's order is based on sufficient facts and adheres to the law. *Id.*

¶ 21 Specifically, in describing the report of proceedings, Illinois Supreme Court Rule 323(a) states that it “may include evidence, oral rulings of the trial judge, a brief statement of the trial judge of the reasons for his decision, and any other proceedings that the party submitting it desires to have incorporated in the record on appeal.” (Internal quotation marks omitted.) *Id.* at 392.

¶ 22 Motsch did not file a report of proceedings. Additionally, a bystander's report authorized by Illinois Supreme Court Rule 323(c) was not included in the submitted record. Furthermore, there was no agreed statement of facts filed by Motsch as allowed by Illinois Supreme Court Rule 323(d). Rather, the record provided by Motsch consists only of the common law record. The common law record, filed by Motsch, consists of the following documents: (1) Motsch's petition to admit estate to probate; (2) email correspondence between the Motsch and Napoleone; (3) a certified copy of the 2019 Will; (4) Motsch's motion to dismiss and strike; (5) Napoleone's reply to Motsch's motion to dismiss and strike; and (6) the circuit court's order admitting the 2019 Will to convert intestate estate. No record of the evidence heard on February 21, 2024, regarding Motsch's motion to strike and dismiss was presented to this court by Motsch. For these reasons, it must be assumed that the evidence is not against its manifest weight because the evidence

submitted on appeal fully supports the circuit courts findings. Accordingly, we affirm the circuit court's order of February 26, 2024.

¶ 23

### III. CONCLUSION

¶ 24 Based on the foregoing, the circuit court's order of February 26, 2024, is affirmed.

¶ 25 Affirmed.