

AW

**R.E.S.P.E.C.T. MY LAST WISHES**

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When the Queen of Soul, Aretha Franklin, passed away in Michigan in 2018, no one was anticipating a five year long legal battle over which of her handwritten – known as holographic – wills would be found valid. Franklin, a notoriously private person, did not hire an estate planning attorney to advise her on her massive \$80 million dollar estate.

Instead, she prepared two wills in her own handwriting, one in 2010 and one in 2014, and left both in her home for her family to find. The 2010 will, which divided her estate equally between her four sons (as long as they obtained a certificate or degree in business), was found in a locked cabinet. The 2014 will, consisting of two crumpled notes, was found under her couch cushions. That 2014 will benefitted one of her sons and Franklin's grandchildren more, however, as she left those beneficiaries her primary residence in Bloomfield Hills, Michigan. The business degree requirement was also absent in the 2014 version.

In July 2023, after a two-day trial, a Michigan jury determined that the 2014 holographic will was a valid will under Michigan law. In Michigan, a holographic will is valid if it is dated and signed by the testator, and the material portions of the will are in the testator's own handwriting. One of Franklin's sons, who was advocating for the 2010 will to be admitted to probate, argued that the 2014 will was not valid because it was a draft, complete with interlineations and crossed out provisions. However, the jury found that Franklin's 2014 will met the criteria for a valid will in the State of Michigan, as it was entirely in her handwriting and signed "A. Franklin" (with a smiley face, no less).

What would have happened had Franklin been a resident of the State of Florida at her death? The 2014 will would have been thrown out as invalid, because it was not signed by two witnesses and a notary. Under Florida Statutes Section 732.502(2), a will that is handwritten can be considered valid if it is signed by two witnesses and a notary – under these circumstances, the will "shall not be considered a holographic will." Many a Florida court has ruled on this issue, including two in 2023 alone. In *Morrow v. Morrow*, 354 So. 3d 642 (Fla. 3d DCA 2023), the Florida Third District Court of Appeal reversed the trial court's decision to throw out a handwritten will as violative

of the Florida Probate Code on its face. The Court held that because the handwritten will was signed by two witnesses and a notary, an evidentiary hearing was necessary to determine if it was executed in accordance with Florida Statutes (i.e. the witnesses and notary signed in the presence of the testator and each other). If so, the handwritten will would control the disposition of the decedent's assets. In *Caveglia v. Heinen*, 359 So. 3d 745 (Fla. 4th DCA 20023), the Fourth District Court of Appeal affirmed the trial court's decision that a handwritten will, executed by the testator in Louisiana before he was a resident of Florida, was holographic and invalid under Florida law because it was not witnessed or notarized. The Court held that even though the will may have been valid in Louisiana at the time it was executed, "[w]ills are ambulatory..." and Florida law does not require its courts "...to breathe life into instruments that Florida Statutes do not recognize as valid." See also *Zaidman v. Zaidman*, 305 So. 3d 330 (Fla. 3d DCA 2020) (a revocation clause in a holographic will not executed in strict compliance with Florida law was invalid in Florida to revoke an earlier will); *Lee v. Payne*, 148 So. 3d 776 (Fla. 2d DCA 2013) (Florida was not required to give full faith and credit to a Colorado holographic will in an ancillary estate administration in Florida; the Florida real property would pass intestate to the decedent's minor daughter, rather than to decedent's fiancé per the will).

Franklin's first mistake, in my humble opinion, was not hiring an estate planning attorney. I am not an estate planning attorney, nor would I pretend to be one by handwriting my own last will. Best practice tip #1; hire an attorney to prepare your will and evaluate your estate planning needs based upon your assets. Best practice tip #2; do not leave your last will, handwritten or otherwise, under the cushions of your couch along with spare change, crumbs and leftover cheerios. Best practice tip #3; if you are a Florida resident, do not handwrite your will, sign it and file it away next to your tax returns. You must make sure you have two witnesses and a notary following proper Florida execution requirements for the will to be respected at your death. And goodness knows, in life and in death, it's all about R.E.S.P.E.C.T.

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