

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-00759 COA**

THE LAST WILL AND TESTAMENT OF BEULAH MAE WARREN, DECEASED: ERLAICE GRESHAM **APPELLANT**

v.

BONNIE MAE WARREN **APPELLEE**

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	06/26/95
TRIAL JUDGE:	HON. TIMOTHY E. ERVIN
COURT FROM WHICH APPEALED:	TISHOMINGO COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	JOSEPH C. LANGSTON CHRISTI R. MCCOY
ATTORNEY FOR APPELLEE:	MARK T. SEGARS
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS AND ESTATES
TRIAL COURT DISPOSITION:	THE TRIAL COURT FOUND THAT THE PROONENT HAD NOT PROVEN THAT THE HOLOGRAPHIC DOCUMENT WAS THE TRUE LAST WILL AND TESTAMENT OF BEULAH WARREN
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE BRIDGES, C.J., PAYNE, AND SOUTHWICK, JJ.

PER CURIAM:

On the 26th day of June 1995, the chancellor of the First Judicial District of Tishomingo County, Mississippi heard a petition filed by Bonnie Mae Warren, contesting the probate of a handwritten document alleged to be the last will and testament of Beulah Warren and proffered by Erlaice

Gresham. After hearing the evidence, the chancery court found that the proponent had not proved that the handwritten document was the true last will and testament of Beulah Warren. The court then revoked the previously issued letters testamentary and ordered an accounting of Erlaice Gresham. From that decision, Erlaice Gresham has filed this appeal.

The photocopy of the will proffered at trial revealed that the will was fully and completely handwritten. Mississippi has long recognized the validity of handwritten wills if it can be shown that the will is completely written and subscribed by the testator. *Lane v. Woodland Hills Baptist Church*, 285 So. 2d 901 (Miss. 1973). If the holographic will is probated in common form, then the proponent of the will must provide affidavits from individuals familiar with the decedent's handwriting attesting that the probated document is indeed wholly in the handwriting of the testator. Miss. Code Ann. § 91-7-10 (Rev. 1994). If the proper affidavits are submitted and the proponent causes to have issued an order admitting the will to probate and letters testamentary, then the proponent has proved her prima facie case and deprived the contestant of the opportunity to show lack of testamentary capacity of the decedent and lack of undue execution of the will. Miss. Code Ann. § 91-7-27 (Rev. 1994). A proponent of a holographic will may demonstrate to the court that the handwriting on the document in question is that of the decedent by producing non-expert witnesses familiar with the decedent's handwriting at trial to testify to the similarity of the writing to that of the deceased. *Weems, Wills and Administration of Estates in Mississippi* § 8-13 (1988). Erlaice Gresham attempted, but failed, to prove by a preponderance of the evidence that each word contained within the proffered will was that of Beulah Warren.

The issue in any will contest is *devisavit vel non* ("will or no will"). Miss. Code Ann. § 91-7-21 (Rev. 1994). To establish a prima facie case for due execution of a holographic will, the proponent must be able to identify all of the handwriting and the signature of the purported will as being that of the decedent, and as noted by the chancellor in his opinion, the proponent failed so to do. Having read the arguments and the record, we find that the decision of the chancellor was correct and that the correct law was applied.

THE JUDGMENT OF THE CHANCERY COURT OF TISHOMINGO COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.J.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.