

IN THE SUPREME COURT OF APPEALS  
OF THE STATE OF WEST VIRGINIA

ALBERT E. RUBLE,  
Administrator C.T.A. of the Estate  
of MARY ALVERTA GREEN,

APPELLEE (PLAINTIFF BELOW),

vs.

ALBERT E. RUBLE, BETTY RUBLE, JACOB  
MULLETT, JEREMY POTTER, MARK CAPPILLINI,  
BRENDA CAPPILLINI, STEVE BRANNON,  
CHRISTINE BRANNON, ROBERT DeCLERICO,  
PHILIP RICHEL C/O HEROD FUNERAL HOME,  
MAUDE COPELAND, DONALD COPELAND,  
KATHRYN EVANS, BETTY LOU GREEN,  
JAMES GREEN MARY M. BISHOP, RAYMOND  
ABERNATHY, MARY MARGARET SULLIVAN,  
MARTHA LANCASTER, INEZ DEELEY, and All  
Unknown Heirs of the ESTATE of MARY ALVERTA GREEN,

APPELLANTS (DEFENDANTS BELOW).

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FROM THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA  
CIVIL ACTION NO: 00-C-528

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BRIEF OF APPELLANTS MAUDE COPELAND  
and DONALD COPELAND

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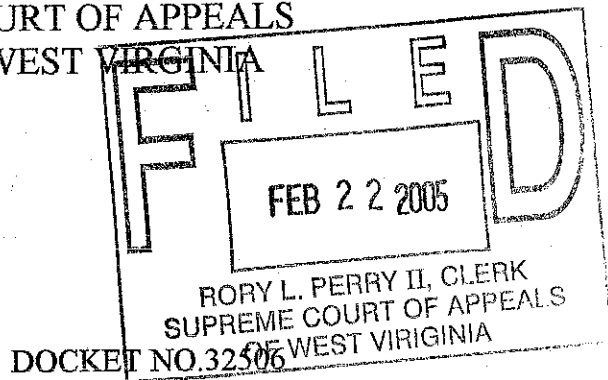


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ALBERT E. RUBLE,  
Administrator C.T.A. of the Estate of  
MARY ALVERTA GREEN,

APPELLEE (PLAINTIFF BELOW),

vs.

DOCET NO. 32506

ALBERT E. RUBLE, BETTY RUBLE,  
Et als.,

APPELLANTS (DEFENDANTS BELOW).

FROM THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA,  
BRIEF OF THE APPELLANTS MAUDE COPELAND AND DONALD COPELAND  
TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Comes Now your Appellants, Donald Copeland and Maude Copeland, by and through their attorney, James W. Courier, Jr., to respectfully pray that this Honorable Court grant relief from an adverse decision from the Honorable Judge Robert B. Stone in the above-referenced case from the Circuit Court of Monongalia County. This Appeal is presented as a matter within the jurisdiction of the Court as provided by the Constitution of the State of West Virginia, and the West Virginia Rules of Appellate Procedure.

KIND OF PROCEEDING AND NATURE OF RULING BELOW

This matter comes to the Court following a Petition for Declaratory Judgment filed on behalf of Albert E. Ruble, Administrator C.T.A. of the Estate of Mary Alverta Green in the Circuit Court of Monongalia County on November 16, 2000, and an Amended Petition for Declaratory Judgment filed on February 2, 2001. The Petitions sought the Court's interpretation of the holographic will of Mary Alverta Green to determine the proper distribution of the property under said will. The Appellants herein, Maude Copeland and Donald Copeland, who

are cousins and heirs at law of the aforesaid Mary Alverta Green, seek to reverse the decision of the lower Court that denied the distribution of any estate assets to the listed heirs at law based on the Court's interpretation of the will's residuary clause.

#### STATEMENT OF THE FACTS

Mary Alverta Green died in Monongalia County, West Virginia on September 15, 1999. On October 18, 1999, Albert E. Ruble was appointed Administrator C.T.A. of the Estate of Mary Alverta Green by the Clerk of the County Commission of Monongalia County, and on the same date presented to said Clerk a writing purported to be the holographic will of Mary Alverta Green. The purported holographic will of Mary Alverta Green was dated September 24, 1994, and contained an additional date of revision of January 19, 1995. This will was accepted by the Clerk's Office and filed in Will Book 98, page 480. (Attachment "A").

The will clearly lists Jacob Mullett, Jeremy Potter, Mark Cappillini, Brenda Cappillini, Steve Brannon, Christine Brannon, Robert DeClerico, and Philip Richel c/o Herod Funeral Home as beneficiaries. Jacob Mullett was given \$5,000.00 "for personal services during illness." Jeremy Potter was granted \$500.00. The will specified \$500.00 each was to be given to the decedent's "caring neighbors," who were listed as Mark and Brenda Cappellini, Steve and Christine Brannon, and Robert DeClerico. Philip Richel, on behalf of the Herod Funeral Home in Pt. Marion, Pennsylvania, was to receive \$5,000.00, presumably for Mrs. Green's anticipated funeral expenses. Albert E. Ruble and Betty Ruble are not mentioned in the text of the will, but their names are added below the final paragraph with an arrow from the start of Albert's name to the word "heirs" at the end of the next to last sentence of the will. The applicable sentence reads as follows: "I appoint the Huntington (sic) Bank as my administrator to hold monies not designated in a trust fund to pay all bills at 527 Martin for the heirs." The Rubles are not related

to Mary Alverta Green, and are not heirs according to West Virginia's statute on descent and distribution (West Virginia Code 42-1-1 et seq.).

The decedent, Mary Alverta Green, was a widow; died without issue; had no surviving siblings or issue of any siblings. Ms. Green did have a surviving paternal aunt and several cousins, two of which are Maude Copeland and Donald Copeland of Mineral County, West Virginia. Despite contentions of the Administrator C.T.A., Ms. Green was not estranged from all of her family, as Maude Copeland still maintained a correspondence with her.

On February 2, 2001, Circuit Judge Robert B. Stone issued an Order in which he declared that the specific bequests in the holographic will of Mary Alverta Green (\$5,000.00 to Jacob Mullett; \$500.00 to each of the following: Jeremy Potter, Mark Cappillini, Brenda Cappillini, Steve Brannon, Christine Brannon, and Robert DeClerico) were valid and should be paid. In addition, the \$5,000.00 bequest to Philip Richel c/o Herod Funeral Home was in the form of a certificate of deposit and was previously delivered to the Herod Funeral Home upon Ms. Green's death. The Court further ordered that the Administrator C.T.A. serve a copy of the various process in the case, including a Notice of Hearing, upon all ascertainable descendants of Mary Alverta Green, who may possibly be heirs to the Estate of Mary Alverta Green.

The Administrator C.T.A., through counsel Raymond G. Frere of Morgantown, then filed an Amended Petition for Declaratory Judgment seeking a determination of the following issues: "a) Is the Holographic Will of Mary Alverta Green a valid Will?; b) If the Holographic Will of Mary Alverta Green is determined to be valid in whole or in part, what is the Court's interpretation of said Will as it pertains to the named beneficiaries?; c) If the Holographic Will of Mary Alverta Green, or any part thereof, is determined to be invalid, what is the proper distribution of the estate?"

A hearing was held in this matter before Judge Robert B. Stone on March 8, 2001, with the Petitioners herein, Maude Copeland and Donald Copeland, appearing through counsel James W. Courier, Jr. The Petitioners had previously filed an Answer to the Amended Petition for Declaratory Judgment, in which they asserted their belief that the Rubles were not properly beneficiaries under the will and that portions of the will were forged or improperly executed. After the hearing, on or about March 14, 2001, the Petitioners also filed with the Court a Motion for Handwriting Analysis. The Court made its rulings on the entire case on May 7, 2004. Within this Order (Attachment "B"), the Court found the residue clause to be valid as to Albert and Betty Ruble, and thus ordered the residue of the Estate to be distributed to the Rubles. The Court further denied the Motion for Handwriting Analysis filed by the Copelands because the will was found to be valid and completely in the handwriting of the decedent.

#### ASSIGNMENTS OF ERROR

I. WHETHER THE CIRCUIT COURT ERRED IN CONCLUDING THAT THE RESIDUE OF MARY ALVERTA GREEN'S HOLOGRAPHIC WILL SHOULD BE DISTRIBUTED TO ALBERT AND BETTY RUBLE.

II. WHETHER THE CIRCUIT COURT ERRED IN DENYING THE MOTION FOR HANDWRITING ANALYSIS FILED BY MAUDE AND DONALD COPELAND.

III. WHETHER THE CIRCUIT COURT ERRED IN FAILING TO GIVE PROPER LEGAL SIGNIFICANCE TO THE TERM "HEIRS" AS USED BY MARY ALVERTA GREEN IN HER HOLOGRAPHIC WILL.

## ARGUMENT

1. THE CIRCUIT COURT ABUSED ITS DISCRETION IN CONCLUDING THAT THE RESIDUE OF MARY ALVERTA GREEN'S HOLOGRAPHIC WILL SHOULD BE DISTRIBUTED TO ALBERT AND BETTY RUBLE.

The Appellants do not dispute that holographic wills are permitted under West Virginia law if created in compliance with the requirements of West Virginia Code 41-1-3 and cases in the tradition of In Re Estate of Briggs, 148 W.Va. 294, 134 S.E. 2d 737 (1964); nor do Appellants dispute that new portions added to a holographic will done in the handwriting of the decedent may be valid and create a whole new reading of the will (LaRue v. Lee, 63 W.Va. 388, 60 S.E. 388 (1908)). However, the Appellants do dispute that the requirements of establishing a holographic will were met in full in this present case and that the altered portion of the will of Mary Alverta Green was in her own handwriting.

First, one requirement cited in West Virginia Code 41-1-3 and in relevant case law is that the holographic will be wholly in the handwriting of the testator. The burden of establishing that a will is written wholly in the handwriting of the testator rests on the proponents of such will. Canterberry v. Canterberry, 120 W.Va. 310, 197 S.E. 809 (1938). In this case, the proponents of the will would be those attempting to establish that Albert and Betty Ruble are the proper distributees under the will's residue clause. No one supporting such position has presented any evidence that the portion added to the will of Mary Alverta Green, this being an arrow going from the word "heirs" in the will's last paragraph to the added words "Albert + Betty Ruble, 617 Elmira St. Morgantown," was in the handwriting of Mary Alverta Green. Because no such evidence was presented, the Court erred in declaring on its own that the will was wholly in the handwriting of the decedent.

Secondly, it is clear that Mary Alverta Green intended to change portions of her will by scratching through nine lines that were presumably in her original text. However, it is significant that when she did so, she demonstrated her understanding that such changes may be questioned at a later time, and thus included after such revision "corrected by M. Green 1/19/95." It is equally significant, then, that the added words "Albert + Betty Ruble, 617 Elmira St. Morgantown," along with an arrow going to the word heirs, contain no such notation of correction, a date, or Mary Alverta Green's signature or initials. This conspicuous absence of such language in the face of the use of such in the other correction supports the position that someone else other than Mary Alverta Green added the reference to Albert and Betty Ruble.

Finally, it is important to note that the names Albert and Betty Ruble are mentioned nowhere else in the will. The Rubles are also not heirs at law of Mary Alverta Green. It would seem likely that if Mary Alverta Green intended to leave the balance of her estate to someone other than her natural heirs, she would have specified such as she did with the eight specifically named beneficiaries whose bequests were previously ordered to be paid by the Court.

For these reasons, the lower Court erred in declaring that the residue of the estate of Mary Alverta Green should be paid to Albert and Betty Ruble.

## II. THE COURT ERRED IN DENYING THE MOTION FOR HANDWRITING ANALYSIS FILED BY MAUDE AND DONALD COPELAND.

Because there was not satisfactory evidence before the Court to prove that the additions to the holographic will of Mary Alverta Green were wholly in her handwriting, Maude and Donald Copeland moved the Court to provide for a proper handwriting analysis of the disputed portion. This motion was denied with no further explanation other than the Court's cursory conclusion that such analysis was not necessary because "the handwriting is wholly that of the

deceased.” Circuit Court Order, page 7. This conclusion by the Court obviously begs the question, in that it denies a reasonable request to provide evidence of the issue in dispute by simply stating that the issue has already been decided, despite the lack of any evidence on the subject.

Previous cases by this Honorable Court illustrate the need to illicit testimonial evidence concerning questions in will disputes which cannot clearly be resolved by a reading of the face of the will itself. The Court in these cases recognizes the complications in ascertaining the validity of a will, and moreover that of a holographic will. Maxwell v. Ford, 103 W. Va. 124, 136 S.E. 777 (1927); Papenhaus v. Combs, 170 W. Va. 211 (1982). In Papenhaus, the Court noted that the exclusion of relevant evidence regarding the interpretation of a holographic will, even when the nature of such evidence was not properly offered by the proponent, was reversible error. Here, the Appellants, Maude and Donald Copeland, properly indicated to the Court the disputed provisions of the will and their desire to have an expert examine the portions at issue to allow the Court to make a full and informed ruling on the matter.

Therefore, based on the above considerations, the ruling of the Court denying the Motion for Handwriting Analysis, and the exclusion of such evidence from the Court’s determination, is reversible error here.

**.III. THE COURT ERRED IN FAILING TO GIVE PROPER LEGAL SIGNIFICANCE TO THE TERM “HEIRS” AS USED BY MARY ALVERTA GREEN IN HER HOLOGRAPHIC WILL.**

It is clear from West Virginia law that, when examining the meaning of wills, technical words or phrases should be interpreted in accordance with their technical, legal meaning. Weiss

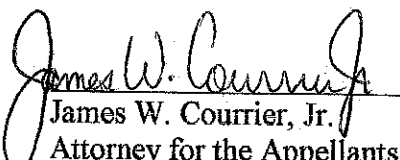
v. Soto, 142 W.Va. 783, 98 S.E.2d 727 (1957). The presumption is that the decedent understood the words she used and that she intended them to have their usual, legal meaning.

In the present case, the decedent used the term "heirs" in the final paragraph of her holographic will. In the case of Giles v. Von Cain, 93 W.Va. 632, 117 S.E. 488 (1923), this Court held that the word "heirs" will be interpreted to mean "distributees", and thus the property would pass according to the State's statute of distribution. Likewise, in the present case, the word "heirs" should be given their technical, legal reading. In so doing, Maude and Donald Copeland, along with several other heirs at law, would be construed as the proper distributees of the residue of Mary Alverta Green's estate and take in accordance with the State's distribution statute.

#### CONCLUSION

The lower Court erred in its interpretation of this holographic will. The Court failed to properly recognize the significance of the failure of the added portion at issue to be signed and dated, as was the other correction made by the decedent. The Court also erred in failing to order a handwriting analysis of the disputed will to provide full evidence for the Court to consider. Finally, the Court erred in failing to assign the legal and technical meaning to the term "heirs," thus excluding the proper legal heirs from taking under this will. Therefore, the Appellants respectfully request that this Honorable Court reverse the decision of the lower Court or, in the alternative, remand the matter for further action by the lower Court.

MAUDE COPELAND and DONALD COPELAND  
By Counsel

  
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ATTACHMENT "B"

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA  
DIVISION NO. 1

ALBERT E. RUBLE,  
Administrator C.T.A of the Estate of  
MARY ALVERTA GREEN,

Petitioner,

v.

Civil Action No. 00-C-528  
Honorable Robert B. Stone

ALBERT E. RUBLE, BETTY RUBLE, JACOB  
MULLETT, JEREMY POTTER, MARK CAPPILLINI,  
BRENDA CAPPILLINI, STEVE BRANNON,  
CHRISTINE BRANNON, ROBERT DeCLERICO,  
and PHILIP RICHEL C/O HEROD FUNERAL  
HOME, MAUDE COPELAND, DONALD COPELAND,  
KATHRYN EVANS, BETTY LOU GREEN,  
JAMES GREEN, MARY M. BISHOP,  
RAYMOND ABERNATHY, MARY MARGARET  
SULLIVAN, MARTHA LANCASTER, INEZ  
DEELEY, and all Unknown Heirs of the ESTATE  
of MARY ALVERTA GREEN,

Respondents.

ORDER

On November 16, 2000, petitioner filed a Petition for Declaratory Judgment asking the Court to answer several questions regarding the validity and interpretation of a holographic will. A hearing was held on January 19, 2001, and the Court entered an Order on February 2, 2001, determining the specific bequests set forth in the holographic will of Mary Alverta Green to be valid and immediately payable. The Court also ordered counsel for the petitioner to serve all ascertainable descendants of Ms. Green, thereby giving them notice of the pending action and giving them an opportunity to take part in a hearing to determine the validity of the residuary clause of Ms. Green's holographic will. An Amended Petition for Declaratory Judgment was filed on February 2, 2001, which incorporated the Court's ruling entered on the same day and

which was served by certified mail upon all ascertainable heirs. Several heirs filed answers, or letters that this Court construes as answers, to the Amended Petition. A hearing was held March 8, 2001, to address the remaining issue of the validity of the residuary clause in Ms. Green's holographic will.

This Court has reviewed the court file, the relevant case law, and the arguments made by the parties. For the reasons set forth in the following Order, the Court finds the residue clause of the holographic will to be valid and accordingly, the residue of Ms. Green's estate shall be distributed to the Albert and Betty Ruble in accordance with the terms of the holographic will.

#### Discussion

Mary Alverta Green died in Monongalia County, West Virginia, on September 15, 1999. On October 18, 1999, Albert E. Ruble was appointed Administrator C. T. A. of the Estate of Mary Alverta Green. On that same date Albert E. Ruble presented and offered for probate the holographic Last Will and Testament of Mary Alverta Green, dated September 24, 1994. The Clerk of the County Commission of Monongalia County, West Virginia, received the affidavits of two (2) witnesses, Jerri S. Walls and Susan M. Johnson, verifying that they were acquainted with Mary Alverta Green during her lifetime and were familiar with her handwriting and signature, and that they believed the handwriting and signature signed to the holographic will offered for probate were her genuine handwriting and signature. This holographic will was then accepted and admitted for probate and ordered to be recorded as the last will and testament of Mary Alverta Green.

There appears to be no dispute that the original holographic will of Mary Alverta Green was written in her own handwriting and signed by her. The issues raised by this declaratory

action involve certain portions of the will which have been clearly crossed out and the addition of a handwritten portion indicating that Albert and Betty Ruble were the intended heirs of what amounts to the residuary clause of the will. This Court's order of February 2, 2001, effectively recognized the will as valid as all of the clearly designated monetary bequests were ordered by the Court to be disbursed by the Administrator of the Estate. The remaining issues are whether the will effectively bequeaths the residue of the estate, and, if so, who are the beneficiaries.

The will as initially written "bequeathed" (sic) real estate at 527 Martin Street to several individuals and appeared to account for the distribution of furnishings and personal effects. That portion of the will was subsequently clearly deleted by repeated, heavy strike overs. At the end of the deleted portion there is written "corrected by M. Green 1/19/95."

The last paragraph of the holographic will as originally written by Mary Alverta Green reads as follows:

I appoint the Huntington Bank as my administrator to hold monies not designated in a trust fund to pay all bills at 527 Martin for the heirs. Also in case of dire need they be allotted (sic) withdrawals as deemed nec. by the Adm.

Additionally, written under this paragraph, with an arrow clearly connected to the word "heirs" in the above-quoted paragraph, is the following designation: "Albert & Betty Ruble, 617 Elmina St. Morgantown." The critical issues, then, as noted above, appear to be whether the above-quoted paragraph is sufficient to dispose of the residue of the estate and, if so, who is to receive the residue.

A review of some of the legal principles governing the validity and interpretation of holographic wills is helpful to the Court in resolving these issues. Holographic wills are valid in West Virginia if they are wholly in the testator's handwriting and signed. The third and final

requirement for a valid holographic will is that the handwriting must evidence a testamentary intent. Charleston National Bank v. Thru the Bible Radio Network, 507 S.E.2d 708 (W.Va. 1998); citing Syl. Pt. 1 In Re: Estate of Teubert, 171 W.Va. 226, 298 S.E.2d 456 (1982); W.Va. Code § 41-1-3. Technical words are not necessary in making testamentary disposition of property; any language which clearly indicated the testator's intention to dispose of his property to certain persons, either named or ascertainable, is sufficient. Siefert v. Sanders, 358 S.E.2d 775 (W.Va. 1987); citing Syl. Pt. 1 Runyon v. Mills, 86 W.Va. 388, 103 S.E.2d 112 (1920); Syl. Pt. 3 Taubert, *supra*. There is judicial support for holographic wills based on the rule that the law favors testacy over intestacy. W.Va. Code § 41-1-3; In Re: Teubert's Estate, *supra*

The paramount rule in construing a will is that the intention of the testator controls and must be given effect, unless that intention violates some positive rule of law or public policy. Syl. Pt. 4, Weiss v. Soto, 142 W.Va. 783, 98 S.E.2d 727 (1957). From the pleadings, including the various *pro se* answers filed in this case, and from the oral testimony presented to this Court, the decedent, Mary Alverta Green, was widowed, had no children, and had no surviving brothers and sisters, all of whom predeceased her without children. She was survived by extended family, including an aunt and cousins, who are now named as parties in this amended complaint. They are potential heirs of Mary Alverta Green if the holographic will is found ineffective to dispose of her residual estate. It is also apparent that at the time of her death, Mary Alverta Green, although not estranged from all of this extended family, was not close to them, in part because of not living close to them, making travel and personal contact practically impossible.

On the other hand, it is equally clear that Mary Alverta Green had a close, warm relationship with her neighbors and friends, Albert and Betty Ruble. It is undisputed that the

Rubles provided care and companionship for Mary Alverta Green in her later years. The portion of the holographic will devising the real property at 527 Martin was stricken and beneath that deleted portion of the will are the words "corrected by M. Green 1/19/95." This is consistent with the subsequent action taken by Mary Alverta Green on October 2, 1995, in deeding the property at 527 Martin to the Rubles.

The intent of Mary Alverta Green becomes clear to the Court. She wanted the Rubles to have the real property at 527 Martin. She decided to take care of this while she was still alive. Thus, the initial paragraph in her holographic will disposing of this property to others has been crossed out and what appear to be earlier strike overs and interlineations are also crossed out. The intent of Mary Alverta Green to eliminate this devise of her real estate from her will is clear and is culminated by her actually deeding the property to the Rubles.

The last paragraph of the will (quoted above) is the disputed paragraph. Is it sufficient to serve as a disposition of her residuary estate? This Court thinks that it is for the reason that it appears rather clear to the Court that it was the intent of Mary Alverta Green for that paragraph to serve as such. As first written, the paragraph would have designated the administrator of the estate to hold the residue of the estate in a "trust fund" to pay the bills at 527 Martin for the heirs.

The subsequent actions of Mary Alverta Green have effectively eliminated this paragraph. She conveyed the property to the Rubles and struck out the paragraph that would have designated the "heirs" of 527 Martin. There are no "bills" of the heirs of 527 Martin to be paid. Thus, it was most understandable and sensible for Mary Alverta Green to also designate Albert and Betty Ruble, by the addition to her will, with the connecting arrow to the word "heirs," as the new heirs. The original intent of Mary Alverta Green was to benefit the heirs she initially named as

the devisees of 527 Martin. By replacing those "heirs" with the Rubles, her intent to benefit the owners of 527 Martin remains—the owners just changed, presumably because that was the desire of Mary Alverta Green. The intention of Mary Alverta Green controls. This Court finds that Mary Alverta Green did designate Albert and Betty Ruble as the individuals that she desired to receive the rest of her property.

Furthermore, any attempt to set up a trust fails, as the purpose of the trust, paying of bills for 527 Martin, has been eliminated by the transfer of that property during the life of Mary Alverta Green. In other words, there could be no intent to set up a trust to pay bills for the heirs 527 Martin. There are no bills, no property remaining in the estate and no heirs of the property at 527 Martin named.

The designation of the Rubles as heirs was intended as something. The law favors testacy over intestacy. In Re: Estate of Teubert, *supra*. If the intent of Mary Alverta Green can be determined, it should be carried out. It was the intent of Mary Alverta Green to name the Rubles as heirs of something. The only part of the estate that is left is the residue, to which Mary Alverta Green inartfully referred in her holographic will as "monies not designated." The Court concludes that by adding the names of Albert and Betty Ruble to the end of the last paragraph of her will, and clearly indicating her intent that they were heirs of her estate, that Mary Alverta Green did effectively leave the residue of her estate to them.

The signature requirement is satisfied as Ms. Green signed the will at the bottom and also added her signature beneath the stricken portion which states "corrected by M.. Green 1/19/95." The signature requirement in and of itself is not an issue in this case. However, there is some dispute over the handwriting, particularly the additional portion leaving the residue of the

estate to Albert and Betty Ruble. The Court has thoroughly read and studied the holographic will and the responses of the heirs, listened to arguments in Court, and carefully examined and compared the handwriting. From its review, the Court does not find it necessary to authorize any form of handwriting analysis. All of the handwriting is that of Mary Alverta Green.

The Court construes the additional designations in the will of Albert and Betty Ruble as the heirs to be part of the testamentary document. Additionally, the language crossed out by the testator is not to be construed as part of the will.

Erasures by the hand of testator in a holographic will is legal revocation of such portions as are so erased, since it is in the manner required for a will of that character to be executed; and, for the same reason, new portions written into such will by hand of testator, his name remaining in such manner as to make it manifest that it is intended as a signature, may make the whole as changed a complete and valid new holographic will of such testator.

LaRue v. Lee, 60 S.E. 388, 63 W.Va. 388 (1908); 129 Am. St. Rep. 978. Therefore, the Court finds the document to be wholly in the testator's handwriting, disregards the stricken portion, and reads the additional added language as part of holographic will.

The Court finds the holographic will written by Mary Alverta Green to be valid and accordingly, it should be given its full, intended effect. Because this Court finds the will written by Ms. Green to be valid and enforceable, all possible claims by any heirs are rendered null and void. The only remaining provision to be construed is the written portion dealing with the residue of Ms. Green's estate. According to the face of the document from which Ms. Green's intent is gleaned, the residue is to be given to Albert and Betty Ruble. Therefore, the Court ORDERS all of the remaining funds to be distributed to the Albert and Betty Ruble.

Finally, there is an outstanding Motion for Handwriting Analysis which was brought by counsel for respondents, Maude and Donald Copeland. Based on the above ruling that the will is valid and the handwriting is wholly that of the deceased, this motion is DENIED.

The Circuit Clerk shall send copies of this Order to all counsel of record. Counsel for petitioner shall provide a copy of this Order to all additional respondents.

Entered

May 7, 2004

Robert B. Stone

The Honorable Robert B. Stone, Judge


STATE OF WEST VIRGINIA SS:

I, Jean Friend, Clerk of the Circuit Court and Family Court of Monongalia County State aforesaid do hereby certify that the attached Order is a true copy of the original Order made and entered by said Court.

Jean Friend Circuit Clerk  
JF

CERTIFICATE OF SERVICE

I, James W. Courier, Jr., Attorney for the Appellants herein, do hereby certify that a true copy of the foregoing Brief of Appellants was duly served by mailing a true copy thereof, by United States mail, first class, to counsel for the Appellees herein, Raymond G. Frere, at his office address of 180 Chancery Row, Morgantown, West Virginia 26505 on this the 19<sup>th</sup> day of February, 2005.

  
James W. Courier, Jr.  
Attorney for the Appellants