

No. 32506

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

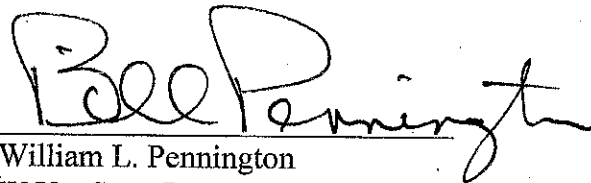
APPELLEE,

vs.

MAUDE COPELAND and DONALD COPELAND,

APPELLANTS.

APPELLEE'S BRIEF



William L. Pennington
W. Va. State Bar No. 7768
PO Box 891
Morgantown, WV 26507-0891
(304) 296-5695

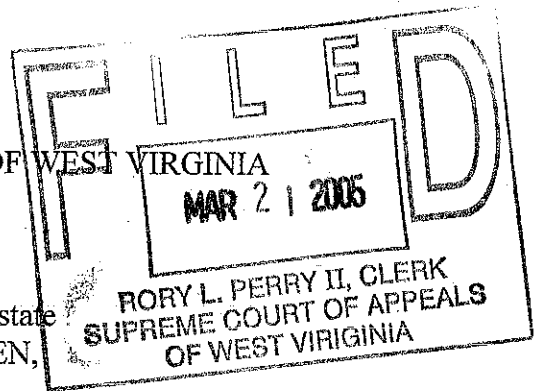


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I. APPELLEE'S STATEMENT OF THE CASE

Mary Alverta Green died in Morgantown, Monongalia County, West Virginia, on September 15, 1999, at the age of 82. Ms. Green had moved from Chicago, Illinois, to Morgantown, West Virginia, following the death of her husband and resided in Morgantown for approximately the last 14 years of her life. Ms. Green had no children and died widowed, without issue, and without any surviving parents, siblings or issue of any siblings. Her closest surviving relative was a paternal aunt, Maude Copeland. Ms. Green was also survived by several first cousins including the Appellant, Donald Copeland. Ms. Green was reportedly secretive about her family history and about her life and her marriage to Mr. Gus Corsiglia. The reason for her relocation to Morgantown, West Virginia, where she apparently had no family ties is also unknown. It is known that she married Mr. Corsiglia sometime after he served in World War II and that she resumed use of her maiden name following Mr. Corsiglia's death.

During the late years of her life, Mary Alverta Green resided alone in a single family residence located at 527 Martin St. in the Suncrest neighborhood of Morgantown. Although it was thought that Ms. Green had moved back to West Virginia with the idea of being closer to some of her family after the death of her husband, her acquaintances advise that she had little or no contact with any of her surviving relatives during her late years. In her last years, Ms. Green enjoyed the company, care and assistance of neighbors, acquaintances and friends. Ms. Green became acquainted with Albert and Betty Ruble through Betty Ruble's employment with a local agency called Visiting Homemaker Services providing in-home care and assistance to the elderly and handicapped. During her visits to Ms. Green's home to provide assistance in her capacity as an in-home caregiver for Visiting Homemaker Services, Betty Ruble developed a friendship with

Ms. Green. During her last years, Ms. Green became particularly fond of Betty Ruble and on occasion Ms. Green told Betty Ruble that she wanted to adopt her.

Ms. Green recognized many of the individuals who provided care and company to her during her late years by making certain monetary specific bequests in a handwritten Last Will and Testament bearing the date of Sept. 24, 1994. (See copy of handwritten Last Will and Testament attached as Exhibit 1). The purported holographic will includes nine lines marked out with the note "corrected by M. Green 1/19/95" written below the marked-out lines. Also written in at the very bottom of the will connected by a handwritten arrow to the word "heirs" in what appears to be a residuary clause are the words "Albert + Betty Ruble, 617 Elmina St., Morgantown."

Ms. Green conveyed her house and property at 527 Martin St. to Albert E. Ruble and Betty L. Ruble by deed dated October 2, 1995, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1116 at page 234. The Rubles paid fifty thousand dollars (\$50,000.00) to Ms. Green and subsequently sold their house at 617 Elmina St. and moved into the house at 527 Martin St. where they continue to reside today. On October 13, 1995, Mary Alverta Green moved into a care facility in Morgantown called Madison House and then died at Morgan Manor nursing home in September, 1999.

The nine-line portion of the holographic will marked out with the note "corrected by M. Green 1/19/95" is still partly legible. The first three to four marked-out lines appear to make a specific bequest of Ms. Green's real property at 527 Martin St. to a number of individuals in fractional shares. Although the marked-out names are difficult to read, they appear to include the names of Ms. Green's cousin, James Green, in Winchester, Virginia; Jacob Mullett of

Morgantown, West Virginia; and Albert Ruble all in proximity to the deleted lines bequeathing her real property. The fourth and fifth marked-out lines appear to designate another fractional share of the real property to an unknown person. The remaining four marked-out lines appear to read as follows, "The furnishings and personal items are to be shared with the Green family in Elk Garden, WV and the [unreadable] family in Keyser - that James and [unreadable]'s family cannot use." During October, 1995, Ms. Green communicated with Morgantown Attorney Wendy Gail Alke about preparing a new will for her. (See copy of October 6, 1995, letter from Attorney Wendy Gail Alke to Mary A. Green attached as Exhibit 2.) It is probable that Ms. Green had marked-up her handwritten will to be used as a model for a new will to be professionally drafted by Ms. Alke, but never followed through with getting her new will done.

Following Ms. Green's death in September, 1999, Albert E. Ruble was appointed as Administrator C.T.A. of the Estate of Mary Alverta Green on October 18, 1999. Also on that date, Mr. Ruble recorded the Sept. 24, 1999, holographic Last Will and Testament of Mary Alverta Green. The Affidavit of Heirs and Distributees was filed by Mr. Ruble on October 18, 1999. The Appraisal of the Estate of Mary Alverta Green filed by Mr. Ruble on March 17, 2000, listed a total of \$120,332.25 in non-probate assets including two checking accounts and a savings account held jointly in the names of Mary Alverta Green and Betty Ruble. (See copy of Appraisal of the Estate of Mary Alverta Green attached as Exhibit 3). The checking accounts contained the amounts of \$26,239.48 and \$25,308.75 and the joint savings account held the amount of \$32,068.88 at the time of Ms. Green's death. The Appraisal of the Estate also reported probate assets totaling \$126,440.18 consisting of various securities and deposit

accounts. Mr. Ruble, as Administrator C.T.A., was uncertain how to distribute the probate assets of the Estate of Mary Alverta Green in accordance with her holographic will.

On November 16, 2000, Mr. Ruble filed a Petition for Declaratory Judgment in his capacity as Administrator C.T.A., by counsel, Mr. Raymond Frere of Morgantown, West Virginia. A hearing was held on January 19, 2001, in the Circuit Court of Monongalia County, West Virginia, Division I. The Circuit Court's Order of February 2, 2001, determined the validity of the specific bequests set forth in the holographic will of Mary Alverta Green and those amounts were subsequently paid from estate funds held by Mr. Ruble. With respect to the remaining issues of interpretation of the holographic will, including the apparent residuary clause, the Court ordered counsel for the estate to serve notice upon all ascertainable descendants of Mary Alverta Green. An Amended Petition for Declaratory Judgment was filed by counsel on February 2, 2001, containing the Court's rulings on the original Petition for Declaratory Judgment. The Amended Petition was served upon all ascertainable heirs at law of Mary Alverta Green. A second hearing was held by the Circuit Court on March 8, 2001, at which the Copelands appeared by counsel and advocated for an interpretation of the holographic will to their benefit. On May 7, 2004, the Circuit Court issued an eight-page Order (See copy attached as Exhibit 4) incorporating a discussion of its reasoning and findings leading to the conclusion that the residue of the estate of Mary Alverta Green should be given to Albert and Betty Ruble. Unhappy with the Court's decision, the Copelands pursued this appeal.

II. APPELLEE'S RESPONSES TO APPELLANT'S ASSIGNMENTS OF ERROR

1. The Circuit Court's interpretation of Mary Alverta Green's Holographic Will is without error.
2. The Circuit Court made no error in declining to allow handwriting analysis.
3. The Circuit Court made no error relative to the legal significance of the term "heirs" as used in the Holographic Will of Mary Alverta Green.

III. POINTS AND AUTHORITIES RELIED UPON

In Re: Teubert's Estate, 171 W.Va. 226, 298 S.E.2d 456 (1982)

Mundy v. Arcuri, 165 W.Va. 128, 267 S.E.2d 454 (1980)

West Virginia Code § 57-2-1 Handwriting Analysis

Young v. Wheby, 126 W.Va. 741, 30 S.E.2d 6 (1944)

H.C. Lind, Annotation, Propriety of jury, or court sitting as trier of facts, making a comparison of a disputed writing with a standard produced in court, without the aid of an expert witness, 80 ALR2d 272.

Weiss v. Soto, 142 W.Va. 783, 98 S.E.2d 727 (1957)

IV. DISCUSSION OF LAW

1. The Circuit Court's interpretation of Mary Alverta Green's Holographic Will is without error.

The Copelands' first contention on appeal is that the Rubles have failed to establish that the holographic will of Mary Alverta Green was in the handwriting of the decedent. This argument is completely out of context. The action in the Circuit Court of Monongalia County was not a will contest but was rather a declaratory judgment action requested by Attorney Raymond Frere as counsel for Albert E. Ruble in his capacity as executor of Ms. Green's estate. Mr. Ruble remained neutral in that action in respect to his role as Administrator C.T.A. and did not advocate for any particular interpretation of the holographic will. The Copelands did, however, participate in the Circuit Court proceedings by and through counsel and advocated the position that the holographic will should be interpreted to their benefit. Until the Circuit Court's May 7, 2004, Order was appealed by the Copelands and this response was made by the Rubles, the Rubles have not been "proponents" of any particular interpretation of the will of Mary Alverta Green. Despite there being no evidence presented or argument made in opposition to their position, the Circuit Court still ruled against the Copelands. The Rubles took no "position" upon which to present evidence in the Circuit Court action and, therefore, the fact that the Rubles failed to present any evidence supporting their position is neither a valid assignment of error nor a basis upon which to find that the Circuit Court committed an abuse of discretion.

Nevertheless, the Rubles answer the Copelands' contentions and assert that the Circuit Court's interpretation of the holographic will of Mary Alverta Green is without error.

The underlying Petition for Declaratory Judgment and the Amended Petition in this matter posed three questions:

- 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?

In this case, the Copelands do not challenge the Court's determination that the holographic will is valid and that it makes certain monetary specific bequests to eight different named individuals. Rather, the Copelands contend that the Court misinterpreted the residuary clause and ordered that the residue of Ms. Green's estate be distributed to the Rubles instead of Ms. Green's heirs at law.

The Rubles assert that high deference should be given to the decision of the Circuit Court in this matter. "The findings of fact of a trial court are entitled to peculiar weight upon appeal and will not be reversed unless they are plainly wrong." In Re: Teubert's Estate, 171 W.Va. 226, 298 S.E.2d 456 (1982); citing Syllabus Point 3, Mundy v. Arcuri, 165 W.Va. 128, 267 S.E.2d 454 (1980). This rule of law is stated perfectly in context for this case in In Re: Teubert's Estate, which affirms Circuit Court's interpretation of a holographic will.

The Court's eight-page Order reflects an exhaustive analysis of the holographic will including consideration of the legal principles governing the validity and interpretation of holographic wills in the State of West Virginia. Among the cases mentioned in the Circuit Court's discussion is In Re: Teubert's Estate, supra. The Rubles made no specific request for relief in the declaratory judgment action; Mr. Ruble just wanted to know what to do with the probate assets. On the other hand, the Copelands filed pleadings, appeared at the hearings in this matter and advocated for the Court to interpret the holographic will of Mary Alverta Green in

their favor. Nevertheless, the Circuit Court found that Mary Alverta Green intended to leave the residue of her estate to the Rubles.

The Circuit Court discusses the rationale for its interpretation of the residuary clause in the last paragraph appearing on page 5 and continuing onto the top of page 6 of the May 7, 2004, Order. Leading up to this point in the discussion is a thorough recitation of pertinent circumstances and the rules of law which the Circuit Court considered in its analysis of the holographic will. The Court comes to the conclusion that Ms. Green intended for her residuary estate to benefit the devisees of the property at 527 Martin St. The fact that Ms. Green had in 1995 conveyed her real property at 527 Martin St. to the Rubles provided the deciding persuasive evidence in support of the Court's reasoning.

In conclusion, the Circuit Court made a thoughtful and exhaustive analysis of the holographic will of Mary Alverta Green in full consideration of the pertinent facts and circumstances and the governing caselaw. The Circuit Court's decision is entitled to a high degree of deference. The Appellee requests this Honorable Court to affirm the May 7, 2004, Order of the Circuit Court of Monongalia County.

2. The Circuit Court made no error in declining to allow handwriting analysis.

The Rubles deny the Copelands' contention that the Circuit Court erred in denying their motion for handwriting analysis. In this case, the Copelands only appear to challenge the authenticity of the handwritten words which appear at the very bottom of the holographic will, "Albert + Betty Ruble, 617 Elmina St, Morgantown." The Copelands acknowledge that the remainder of the will is in the handwriting of Mary Alverta Green.

Statutory authority on admissibility of handwriting samples for purposes of comparison is found in West Virginia Code §57-2-1.

In any civil or criminal action or proceeding, any writing proved to the satisfaction of the judge of a court of record in an in-camera hearing to be in the handwriting of the person who is alleged to have written it, whether or not made in the ordinary course of business, may, if the court further finds that its probative value outweighs its prejudicial effect, be admitted into evidence for the purpose of making a comparison with a disputed writing on the issue of whether or not the disputed writing is genuine. The authenticity of each writing shall be finally determined by the trier of fact.

West Virginia Code §57-2-1.

The general rule applicable on the issue of handwriting authentication is that when a proved or admitted standard used for comparison with the disputed writing is already in evidence for other purposes, the trier of facts can make the determination of authenticity either with or without the aid of experts. Young v. Wheby, 126 W.Va. 741, 30 S.E.2d 6 (1944). *See also* H.C. Lind, 80 ALR2d 272.

In this case, a proved or admitted standard is available and admitted in the Circuit Court action in the form of the actual holographic will itself, except for the disputed bottom line. In this case, the Circuit Judge, sitting as the trier of fact, obviously looked at the disputed line of handwriting, made his own comparison, and in deference to W.Va. Code §57-2-1 made the final determination of fact himself. The last sentence of W.Va. Code §57-2-1 is very specific. "The authenticity of each writing *shall* be finally determined by the trier of fact" [emphasis added]. In this case, the Circuit Court Judge obviously felt there was sufficient evidence upon which to make a final determination of fact without the assistance of expert witnesses.

In conclusion, the Rubles assert that the Circuit Court's decision to forego handwriting

analysis and the Circuit Court's finding that "[a]ll of the handwriting is that of Mary Alverta Green" are not erroneous. The Appellee hereby requests this Honorable Court to affirm the May 7, 2004, Order of the Circuit Court of Monongalia County.

3. The Circuit Court made no error relative to the legal significance of the term "heirs" as used in the Holographic Will of Mary Alverta Green.

The Copelands' third assignment of error is that the Circuit Court failed to find that Mary Alverta Green intended to leave the residue of her estate to them based on her use of the word "heirs" in the holographic will.

In support of their position here, the Copelands cite Weiss v. Soto, 142 W.Va. 783, 98 S.E.2d 727 (1957), but only quote that portion of the rule of law which is helpful to them in saying that "when examining the meaning of wills, technical words or phrases should be interpreted in accordance with their technical, legal meaning." The correct rule of law from Weiss v. Soto, stated verbatim in its completeness is actually more supportive to the Rubles' contention that the Circuit Court ruled correctly:

In construing will, technical words are presumed to have been used in a technical sense and should ordinarily be given their strict meaning, but, if it appears from the context that another meaning was intended, such words will not be applied in their technical sense.

Weiss v. Soto, 98 S.E. 2d at 736.

Moreover, the Weiss case articulates several other rules of law which are actually more helpful to the Rubles on this particular point of contention:

"In ascertaining the intention of the testator, the entire will should be considered."

Weiss v. Soto, 98 S.E. 2d at 735. "The true inquiry in the construction of a will is not what the

testator meant to express but what the words he has used do express.” Weiss v. Soto, 98 S.E. 2d at 736.

In construing a will the intention must be ascertained from the words used by the testator, considered in the light of the language of the entire will and the circumstances surrounding the testator when he made his will.

Weiss v. Soto, 98 S.E. 2d at 736.

The Weiss Court also, in the context of latent ambiguities in the wording of a will says that

[e]xtrinsic evidence of any facts known to the testator which may reasonably be supposed to have influenced him in the disposition of his property, and of all the surrounding circumstances when he made the will, is admissible to place the court, as nearly as practicable, in the position of the testator when he made his will as an aid in ascertaining its true construction

Weiss v. Soto, 98 S.E. 2d at 734.

In the instant case, the Circuit Court - as evidenced by the painstaking explanation of its rationale included in the opinion text of the May 7, 2004, Order - obviously considered the meaning of each and every word and phrase contained in Ms. Green’s inartfully-written holographic will. In doing so, the Court obviously considered the context of the will, including the fact that nine lines had been marked-out; that Mary Alverta Green in 1995 had deeded the Martin St. property to the Rubles; and that Ms. Green had undertaken to draft her own will without the benefit of counsel and obviously had no appreciation whatsoever of the strict legal significance of the terms she employed in her writing. Moreover, the Circuit Court preceded its written analysis with a recitation of factual circumstances perceived by the Court relative to Ms. Green’s situation and actions prior to her death thus taking into account certain extrinsic evidence in ascertaining her state of mind at the time she initially drafted her will and later made

changes. In making its interpretation of the holographic will of Mary Alverta Green, the Circuit Court conformed to the rule of law from Weiss v. Soto and ascertained Ms. Green's testamentary intent from her words considered in the light of the language of the entire will and the circumstances surrounding the testatrix when she made her will.

The cases cited by the Copelands might be more persuasive for them if this was a contest over a professionally-drafted will. The exception articulated in Weiss would tend to suggest that the Court would certainly not expect these rules of law regarding strict interpretation of legal terms to apply to holographic wills written by untrained lay persons. Placed in its proper context, the Weiss case, in its entirety actually supports the Rubles' position on appeal. In Weiss, this Court actually ruled that Mr. Weiss meant to leave a life estate when he used the words "absolutely in fee simple." The language cited by the Copelands in support of their assignment of error appears in the Weiss case to distinguish a useful exception to the strict interpretation of legal terms under appropriate circumstances, considering the intention of the testator, entirety of the will, and the circumstances surrounding the testator when the will was made to discern the intent of the testator.

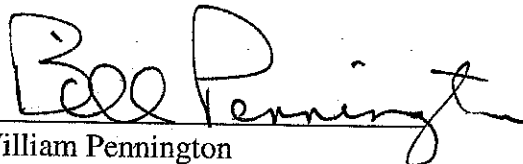
As the words "absolutely in fee simple" were interpreted to mean "life estate" in the Weiss case, the word "heir" in the holographic will of Mary Alverta Green is properly interpreted to mean "beneficiaries" which in this case are the Rubles.

In conclusion, the Rubles insist that the Circuit Court made a careful and thorough consideration of all the factors enumerated in Weiss v. Soto, supra., in making a correct interpretation of the holographic will of Mary Alverta Green. The Appellee requests this Honorable Court to affirm the May 7, 2004, Order of the Circuit Court of Monongalia County.

V. RELIEF PRAYED FOR

WHEREFORE, the Appellee, Albert E. Ruble, respectfully requests this Honorable Court to deny the relief requested by the Appellants in this matter, and to affirm the ruling of the Circuit Court of Monongalia County.

RESPECTFULLY SUBMITTED,
ALBERT E. RUBLE,
APPELLEE, BY COUNSEL.

A handwritten signature in black ink, appearing to read "Bill Pennington", written over a horizontal line.

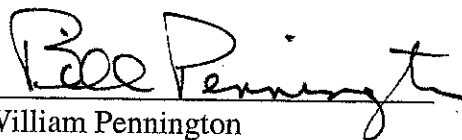
William Pennington
Counsel for the Appellee
WV State Bar No. 7768
PO Box 891
Morgantown, WV 26507-0891
(304) 296-5695

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2005, I served the foregoing APPELLEE'S BRIEF upon the following named persons by placing true copies thereof in the U.S. Mail, postage prepaid and addressed to:

James W. Courier, Jr., Esq.
PO Drawer 458
Keyser, WV 26726

Mr. Raymond Frere, Esq.
180 Chancery Row
Morgantown, WV 26505



William Pennington
Counsel for the Appellee
WV State Bar No. 7768
PO Box 891
Morgantown, WV 26507-0891
(304) 296-5695

Sept. 24, 1994

1994/5
Last Will and Testament

I, Mary Alverta Green, do hereby declare this document to be my will. This day Sat., Sept 24, 1994 being of sound mind,

I bequeath ~~my real estate at 527 Martin~~
~~Marytown, Ohio as follows: To share to~~
~~of ~~my~~ ~~and~~ ~~children~~ ~~to~~ ~~inherit~~~~
~~to. (~~my~~ ~~children~~) I ~~to~~ ~~share~~ ~~to~~ ~~share~~ ~~to~~~~
~~of ~~my~~ ~~children~~ ~~to~~ ~~inherit~~~~
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corrected by M. Green 11/9/95

Monetary not designated on CD's to be allotted as follows: \$5000.00 to Jacob Mullett 500 Martin st. City (for personal service during illness. \$500. to Jeremy Potter (Jacob stepson) \$500. ea to my caring neighbors, Mark + Brenda Cappellini, Steve + Christine Brannon, Robert De Clerica.

Funeral - 5000 IN ^{IN} ^{AD} to Philip Richel Goldenrod Funeral Home, Pt. Marion Pa

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 withdrawals as deemed nec. by the Adm.

Mary Alverta Green

Albert + Betty Ruble, 607 Elmira St, Marytown

EXHIBIT 2

Wendy Gail Alke
Attorney at Law
P.O. Box 1902
Morgantown, WV 26504-4302
(304) 599-0040

October 6, 1995

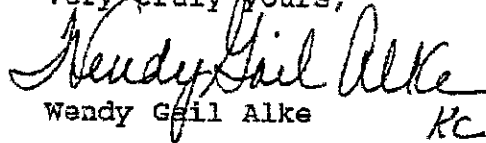
Mary A. Green
527 Martin Street
Morgantown, WV 26505

RE: Will Preparation

Dear Ms. Green:

I am in receipt of your letter wherein you requested information regarding preparation of a will. I would be happy to prepare a will for you and my fee is \$150.00. Please contact me at your convenience and we can make arrangements to meet and gather the necessary information. I will wait to hear from you.

Very truly yours,


Wendy Gail Alke KC

WGA/kc

527 Martin St
Morgantown Wv

Wendy G. Alke
City

Dear Wendy,

How much would you charge
me to make up a will and do
the nec recording?

I have a will in my
own hand writing, you might
want to change the wording.
Please ans by mail.
Thank you.

Sincerely,
Mary A Green

150.⁰⁰

ET 6.01
Rev. 6/95

APPRAISEMENT OF THE ESTATE

PART I: GENERAL INFORMATION QUESTIONNAIRE

TAX DIVISION USE ONLY

A. Decedent's Name Mary Alverta Green		B. Social Security Number 411-16-5672	C. Date of Death 09/15/99
D. Decedent's Residence at Death 445-Van Voorhis Road Morgantown		E. State West Virginia	F. County Monongalia
G. Marital Status at Death Single, Widow(er) or Divorced <input checked="" type="checkbox"/> Married <input type="checkbox"/>	Name of Surviving Spouse		H. West Virginia Counties Where Decedent Held Real Estate
I. Will this estate be required to file a Federal Estate Tax Return (see the instructions on page 3)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
J. Did the decedent leave a WILL? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
K. Fiduciary's Name and Mailing Address (include zip code) Albert E. Ruble 527 Martin Street Morgantown, WV 26505 (304) 599-3412 Fiduciary's Phone Number		L. Preparer's Name and Address Raymond G. Frere 180 Chancery Row Morgantown, WV 26505 (304) 292-6900 Preparer's Phone Number CPA <input type="checkbox"/> Attorney <input checked="" type="checkbox"/>	

PART 2: SUMMARY OF NONPROBATE ASSETS

Answer each of the following questions concerning the decedent's NONPROBATE assets.

If you answer "YES" to any question below, attach a statement to this form which shows:

- a. the type of transfer(s) with reference to the question number below;
- b. names of the person(s) to whom the property is transferred and/or co-owners of jointly held property;
- c. blood relationship (to the decedent) of ALL above named persons;
- d. market value at the date of death of any property transferred; and
- e. description and assessed value of any real estate transferred or jointly held.

			MARKET VALUE	
1.	Did the decedent possess any powers of appointment?.....	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	1	
2.	Did the decedent make transfers without adequate consideration within three years prior to date?.....	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	2	
3.	Did the decedent make any transfers at any time of property in which he retained the right of use and enjoyment?.....	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	3	
4.	Did the decedent own any stocks, bonds, bank accounts, certificates of deposit or other personal property as a joint tenant with the right of survivorship?.....	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	4	114,332.25
5.	Did the decedent own any real estate as a joint tenant with the right of survivorship?.....	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	5	
6.	Did the decedent own any annuities?.....	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	6	
7.	Did the decedent create any inter vivos trust arrangements?.....	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	7	
8.	Did the decedent own any property which was payable on death to others?.....	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	8	
9.	Show the total value of life insurance to named beneficiaries.....		9	6,000.00
TOTAL VALUE OF NONPROBATE ASSETS (add lines 1 through 9 above)				120,332.25

PART 3: SUMMARY OF PROBATE ASSETS

Complete PART 4 first. Enter the total from each schedule of PART 4 on the appropriate line below.

			MARKET VALUE	
1.	Schedule A: Real estate or any interest therein.....		1	
2.	Schedule B: Tangible personal property of every kind.....		2	
3.	Schedule C: Government bonds and securities of every kind.....		3	
4.	Schedule D: Shares of corporate stock of every kind.....		4	31,541.125
5.	Schedule E: Money, certificates of deposit, notes, accounts, etc.....		5	94,899.06
6.	Schedule F: All other assets not hereinbefore mentioned.....		6	
TOTAL VALUE OF PROBATE ASSETS (add lines 1 through 6 above)				126,440.18

**ADDENDUM TO
APPRAISEMENT OF THE ESTATE OF
MARY ALVERTA GREEN**

PART 2: SUMMARY OF NONPROBATE ASSETS

Item 4

Checking Account- Huntington Bank - Account Number: 02412059964

Held in the names of Mary Alverta Green and Betty Ruble

Value on Date of Death: \$26,239.48

Savings Account- Huntington Bank - Account Number 04410095627

Held in the names of Mary Alverta Green or Betty Ruble

Value on Date of Death: \$32,068.88

Checking Account-One Valley Bank - Account Number 3199819

Held in the names of Mary Alverta Green or Betty Brooks Ruble

Value on Date of Death: \$25,308.75

Certificate of Deposit-MBNA - Certificate # 400039941

Held in the name of Mary Alverta Green, payable on death to Lawrence Corsiglia.

Value on Date of Death: \$20,466.11

Certificate of Deposit-MBNA - Certificate #400162180

Held in the name of Mary Alverta Green fbo Nathken Church Maintenance Fund

Value on Date of Death: \$10,249.03

TOTAL

\$114,332.25

PART 4: INVENTORY OF PROBATE ASSETS - TRANSFERS BY WILL OR INTESTACY

After completing PART 4, enter the total from each schedule on the appropriate line in Part 3.

SCHEDULE A: Describe any real estate or any interest in real estate. Do not extend values of out of state property. See page 4 of the instructions.	ASSESSED VALUE	APPRAISED VALUE
NONE		
TOTAL (enter the total appraised value on PART 3, line 1)		

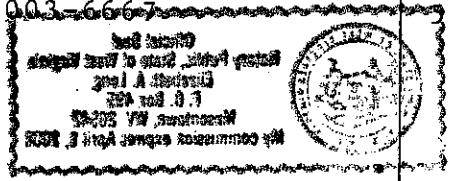
SCHEDULE B: Tangible personal property of every kind. See page 4 of the instructions.	APPRAISED VALUE
NONE	
TOTAL (enter the total appraised value on PART 3, line 2)	

SCHEDULE C: Bonds and securities of every kind. See page 4 of the instructions.	APPRAISED VALUE
NONE	
TOTAL (enter the total appraised value on PART 3, line 3)	

PART 4 (continued)

SCHEDULE D: Corporate Stock of any kind. See page 4 of the instructions.				
NAME OF THE COMPANY	CLOSELY HELD	NUMBER OF SHARES	MARKET VALUE PER SHARE	TOTAL MARKET VALUE
Dean Witter-Cert. # 240419		96	95.25	9,144.00
Dean Witter-Cert. # DWD5054467		96	95.25	9,144.00
Allstate Corporation Cert. # AC095052		229	23.625	5,410.125
Sears Roebuck & Co. Cert. # MG544524		120	31.625	3,795.00
Sears Roebuck & Co. Cert. # ZQP3-250347		128	31.625	4,048.00
TOTAL (enter the total market value on line 4 of PART 3).				31,541.125

SCHEDULE E: Money, bank accounts, certificates of deposits, notes, accounts receivable. Show dates of notes, etc. See page 4 of the instructions.		APPRAISED VALUE
Huntington Bank-CD # 07410039732		5,025.95
Huntington Bank-Money Market Account # 03418204275		38,872.39
United National Bank-Savings Account # 05003-6667		1,000.72
TOTAL (enter the appraised value on line 5 of PART 3).		94,899.06



SCHEDULE F: All other assets, not hereinbefore mentioned, including insurance payable to the estate. See page 4 of the instructions.	APPRAISED VALUE
NONE	
TOTAL (enter the appraised value on line 6 of PART 3).	

PART 5: BENEFICIARIES. List the names and relationships of all beneficiaries or heirs of the estate. Show the age of any life tenant after their name. See page 4 of the instructions.

BENEFICIARY OR HEIR	RELATIONSHIP	BENEFICIARY OR HEIR	RELATIONSHIP
Jacob Mullet		Robert DeClerico	
Jeremy Potter		Albert Ruble	
Mark Cappillini		Betty Ruble	
Brenda Cappillini			
Steve Brannon			
Christine Brannon			

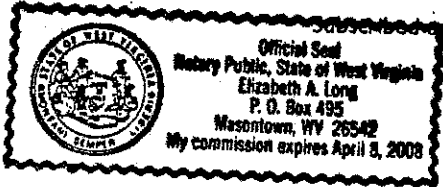
PART 6: OATH OF FIDUCIARY

County of Monongalia, To-wit:

I, Albert E. Ruble, fiduciary for the estate of Mary Alverta Green after diligent effort to ascertain the taxable property of this estate, I have made answers to each of the questions and have completed, in detail, the schedules for each category of property and believe each item thereof to be correct. I thereby believe the foregoing to be the true and lawful appraisal of ALL the assets of the estate of the above-named decedent.

Albert E. Ruble
Fiduciary

Subscribed and sworn to before me this 17th day of March, 192008



Elizabeth A. Long
Notary Public

My Commission expires April 8, 2008

PART 7: APPROVAL OF FIDUCIARY COMMISSIONER/FIDUCIARY SUPERVISOR

I, _____, Fiduciary Commissioner/Fiduciary Supervisor of _____ County, West Virginia, to whom the estate of the above named decedent was referred, do hereby approve the foregoing appraisal of such estate.

Given under my hand this _____ day of _____, 19____.

Fiduciary Commissioner/Fiduciary Supervisor

PART 8: CLERK OF THE COUNTY COMMISSION

STATE OF WEST VIRGINIA

COUNTY OF _____, To-wit:

In the Clerk's office of _____ County on the _____ day of _____, 19____, the foregoing appraisal of the above-named decedent was presented and upon motion admitted to record.

Attest _____, Clerk
By _____, Deputy

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 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

