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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
PROBATE PART
MONMOUTH COUNTY
DOCKET NO. MON-P-449-24

IN THE MATTER OF THE ESTATE

OF

PAUL SHWAHLA,

Deceased.

OPINION

Decided March 14, 2025.

Law Offices of G. Aaron James (G. Aaron James, Esq., appearing), attorneys for plaintiff Gary P. Shwahla.

Marzec Law Firm, P.C. (Darius A. Marzec, Esq., appearing), attorneys for defendant Laura Shwahla.

FISHER, P.J.A.D. (t/a, retired on recall).

After nearly ten years of proceeding on the assumption their father died intestate, and for the nearly five years they have since litigated the meaning and enforceability of an agreement settling a chancery case about their division of

their father's assets, plaintiff commenced this action seeking the probate of an alleged after-discovered Will. Because the current factual record leaves so many unanswered questions, the court will treat this matter as a contested case and allow for discovery.

I

Paul Shwahla died on November 23, 2014. Seven weeks later, his only two children and his only apparent heirs – plaintiff Gary P. Shwahla and defendant Laura Shwahla – jointly applied for letters of administration on their mutual assertion that their father died intestate; two weeks after that, on January 23, 2015, the Surrogate Court entered a judgment granting letters of administration to the parties. The parties, however, soon disagreed about the division of decedent's property in kind, causing Laura to file a General Equity suit in May 2019[1] claiming impropriety in Gary's disposition of certain assets; Gary filed a counterclaim asserting similar claims against Laura.

The parties mediated their disputes with a retired superior court judge and entered into a handwritten settlement agreement on March 10, 2020, but they have since disagreed about their agreement's meaning or about the manner in which it has – or hasn't – been carried out. Various motions before other judges didn't bring the matter to a conclusion and prompted this court's determination

[1] Laura Shwahla v. Gary Shwahla, Docket No. MON-C-56-19.

on February 22, 2024, that an evidentiary hearing was required to understand the parties' agreement, to resolve any ambiguities that might rightfully be claimed about its meaning, and to compel enforcement of whatever it was the parties agreed on. That hearing commenced on September 3, 2024, but was barely started when paused because, among other things, records from non-parties subpoenaed by Laura had either not been turned over by the start of the hearing or the parties had not had enough time to examine the materials turned over or consider their relevance.[2]

On November 22, 2024 – prior to the hearing's resumption scheduled for January 6, 2025 – Gary filed this action in the Probate Part, claiming that while preparing for the hearing he encountered a Will executed by decedent in 1978 that, in his view, ought to override the proceedings based on the letters of administration and the March 2020 settlement agreement. The order entered by the court on December 12, 2024, at the inception of this action, see R. 4:83-1, required Laura to show cause why this court should not set aside the January

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[2] The proceedings were also troubled by the confusing way in which exhibits were exchanged, identified, and provided to the court, prompting additional case management conferences and orders entered on October 4, 17, and 22, 2024, to bring structure to the anticipated resumption of the hearing.

2015 judgment issuing letters of administration and admit the 1978 Will to probate.[3] Laura opposes this relief and has cross-moved for dismissal.

II

While it is not uncommon for family members to proceed, like here, as if their loved one had died intestate only to later find a Will, prompting an application like the one at hand,[4] this matter is quite unusual because of the extraordinary length of time these parties have litigated about their father's estate before the Will's presentation; the verified complaint in this action was filed nearly five years since the parties executed their settlement agreement and one day short of the tenth anniversary of their father's death.

In opposing the relief Gary seeks and in cross-moving for dismissal, Laura argues Gary's complaint is barred by the doctrine of laches; she also claims the 1978 Will is not "valid[]" or "genuine[]." See L. Shwahla Certification, ¶s 16-21. Laura asserts as well that relief should be denied because Gary's complaint "does not explain how, where or when [he] found" the document, id., ¶ 8; that accusation has merit because Gary provided no details at all about the Will's discovery.

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[3] The original return date of January 24, 2025, was adjourned twice at the parties' request until scheduled for March 14, 2025.

[4] The situation is common enough that Rule 4:85-3 was adopted to provide the procedure to be followed.

In replying to that factual assertion, Gary filed only his attorney's certification; the attorney asserted that while preparing for the evidentiary hearing that was to resume on January 6, 2025,

> [p]laintiff and I spent significant number of hours revisiting documents of his father that were packed in boxes and in [p]laintiff's possession. The Will was 'discovered' at that time.
>
> [James Certification, ¶ 3.]

Even though the attorney certified that he and Gary were "revisiting" decedent's documents when the discovery was made, Gary has not provided his own certification. The court offered Laura an opportunity to respond – over Gary's vociferous objection[5] – but she only provided another brief that addressed the legal sufficiency and timeliness of plaintiff's claim that the 1978 Will should be probated; no new factual assertions were presented.

III

The parties' submissions raise more questions than they answer. As mentioned above, Laura argues that the 1978 Will is not "valid[]" and not

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[5] Gary objected to Laura's filing of a reply to his opposition to her cross-motion. To be sure, a cross-movant does not have a right to file a reply. See R. 1:6-3(a). But that general prohibition does not preclude such a filing with "leave of court" and the court, in fact, granted Laura leave in the interest of gaining as much of an explanation as possible about both Gary's claim to an after-discovered Will and Laura's claim that the 1978 Will is neither valid nor genuine. In objecting, Gary hasn't shown how the court abused its discretion in allowing for such a filing.

"genuine" but those are only conclusions; she has not stated why she maintains these beliefs. Does she think her father did not sign the document, does she believe his signature is authentic but the text of the Will was altered, or does she contend that the entire document is a recent fabrication? Or does she believe – considering the time that elapsed from 1978 to decedent's death in 2014 – that decedent likely revoked it or had, in the interim, executed another or other Wills? Laura has not explained what she means in asserting that the Will is not valid or genuine.

On the other hand, the Will's late alleged discovery – after so many years of litigation and a near decade from the date of death – raises its own questions. Where was it all this time? The certification of Gary's attorney, quoted above, states that it was found when "revisiting" other documents belonging to the decedent. Considering at face value the ordinary meaning of the word "revisiting" – to "come back to or visit again"[6] – the attorney's certification might suggest that Gary or his attorney had previous looked at the papers among which the 1978 Will was found and that it had been seen before. And this suggestion further dovetails with the certification's next sentence, in which Gary's attorney refers to the Will as having been discovered shortly before the

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[6] See www.merriam-webster.com/dictionary/revisit (last visited March 14, 2025).

January 2025 hearing, but that assertion puts the word in quote marks, suggesting that something other than a true "discovery" – the finding of something for the first time[7] – occurred.[8]

IV

These and other questions[9] swirling around the present matter all have relevance since the court has been asked to decide whether there is a legitimate

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[7] The word "discovery" in this context would suggest that the person finding the document "obtain[ed] sight or knowledge of [the document] for the first time." See www.merriam-webster.com/dictionary/discovery (last visited March 14, 2025) (emphasis added). The addition of quote marks around the word in the certification further fuels an argument that this was not a true discovery because it suggests it wasn't "the first time" the document was seen by Gary or his representatives. At least, the court should adopt this interpretation at this stage because it is favorable to Laura, who is the opponent of Gary's application for summary relief. See, e.g., Schor v. FMS Financial Corp., 357 N.J. Super. 185, 193-94 (App. Div. 2002).

[8] During oral argument, Gary's attorney attempted to embellish on the circumstances surrounding the "discovery" of the 1978 Will. But an attorney's argument is not evidence a court may consider in ruling on an application for summary relief – particularly when this new information is not presented under oath or in a certification or affidavit – and, so, the court disregards those explanations.

[9] The details about the alleged "discovery" – unrevealed by Gary's moving and reply papers – have importance because the place where the Will was discovered may illuminate decedent's intentions. For example, if the document had been locked away in a safe place all this time, that circumstance might suggest its importance in the decedent's mind. On the other hand, evidence that the document was found in a folder marked "to be discarded" or among meaningless or unrelated documents might suggest decedent's intention to revoke it. In addition, as already alluded to, the passage of time between the alleged Will's execution in 1978 and decedent's death in 2014 is, standing alone, curious. The

reason to vacate the Surrogate Court's ten-year-old judgment issuing letters of administration that was based on the undisputed allegation that decedent died intestate. Gary seeks the equitable remedy – codified in Rule 4:50 – of vacatur, asserting, in essence, that it is no longer equitable for the prior judgment to govern or that there are other reasons justifying relief from that judgment. See R. 4:50-1(e) and (f). And Laura not only questions the availability of this remedy based on her rather general assertion that the 1978 Will is invalid or not genuine, but also on the long delay in seeking relief – a delay she argues is unreasonable. See R. 4:50-2 (declaring that an application for relief from a prior judgment must be made "within a reasonable time").[10] Questions about the document and

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record reveals that both parties were minors in 1978 and yet the alleged Will names one of them as executor; someone careful enough to make a Will at such a young age might, it would seem, remain careful and likely continue his estate planning as time wore on. All that raises questions about whether decedent ever engaged in further estate planning after 1978 and that suggests the potential for the existence of a later Will which would, by operation of law, revoke the 1978 Will. See N.J.S.A. 3B:3-13(a); Matter of Estate of Lagreca, 297 N.J. Super. 67, 70-71 (App. Div. 1997).

[10] Rule 4:50-2 declares that vacatur applications must be instituted "within a reasonable time." That standard suggests that an application may be untimely even when filed within one year of the judgment to be vacated, see, e.g., Orner v. Liu, 419 N.J. Super. 431, 437 (App. Div. 2011), or it might be timely when filed years after entry of the judgment to be vacated, see, e.g., Washington v. Penwell, 700 F.2d 570, 573 (9th Cir. 1983); Dunlop v. Pan Am. World Airways, Inc., 672 F.2d 1044, 1051 (2d Cir. 1982). What is reasonable within the rule's meaning depends on the diligence of the applicant and the inuring prejudice to the aggrieved party if it is vacated, and those parameters may vary from case to case. In considering the timeliness of Gary's request to probate the purported

its discovery need to be answered and fully developed before the court can determine whether relief should be granted or denied.

In the final analysis, once a complete record is created and the circumstances understood, the court must adjudge the push and pull of vacatur's equitable concepts, Shammas, 9 N.J. at 328, by what then Judge (later Justice) Sullivan observed when examining a similar circumstance: a decedent's "testamentary disposition of his estate must be given effect if at all possible." In re Ewert, 65 N.J. Super. 100, 104 (App. Div. 1961); see also In re Estate of Payne, 186 N.J. 324, 335 (2006); In re Estate of Branigan, 129 N.J. 324, 332 (1992). In determining whether the 1978 Will should be admitted to probate the court must ascertain, as best as can be understood in light of the fact that the decedent is no longer here to tell us his intentions, whether decedent meant to dispose of his estate pursuant to the 1978 Will.

1978 Will, the court needs to consider not only when it was discovered but why it wasn't discovered sooner; the court should also consider whether it would be prejudicial to Laura to set aside the 2015 judgment issuing letters of administration and to probate this Will all these years later. See Garza v. Paone, 44 N.J. Super. 553, 558 (App. Div. 1957). These are all questions that cannot be determined on the competing papers, particularly when the moving and opposing papers are void of specifics. Ultimately, whether relief is appropriate in light of the timing of the application and its substance, as Justice Brennan said for the Court in Shammas v. Shammas, 9 N.J. 321, 328 (1952), "rests in the sound discretion of the trial court" with "[e]quitable principles" acting as a "guide in administering relief to determine whether in the particular circumstances justice and equity require that relief be granted or denied."

* * *

In short, the matter will be treated as a contested case. Plaintiff is directed to forthwith turnover the 1978 Will to the Surrogate's office for safekeeping pending further order, and the court will stay the further administration of the estate pursuant to the Surrogate Court's 2015 judgment pending the court's determination of whether the 1978 Will should be probated. The matter will be scheduled for a case management conference for the imposition of parameters on the discovery that needs to be conducted.[11]

An appropriate order has been entered.

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[11] Gary also filed a motion in the General Equity matter by which he seeks to: vacate the March 2020 settlement agreement; dismiss the complaint and all claims in that matter; and consolidate this case with that case, among other things. That motion was heard at the same time as the applications in this matter. The court ruled on that motion separately under Docket No. MON-C-56-19.