Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 22nd day of October, 2019, are as follows:

BY WEIMER, J.:

2019-C-00405 *SUCCESSION OF EDWARD ROBIN, SR. C/W SUCCESSION OF EDWARD ROBIN, SR. (Parish of St. Bernard)*

This court granted the writ application of an heir to determine the validity of an undated act signed by a testator in the presence of two witnesses and a notary public in which the testator declared that all of his prior testaments were revoked. Although lacking a date, this court finds that the act of revocation is valid as an authentic act. Because extrinsic evidence regarding the date on which the act of revocation was executed did not "negate or vary" the content of the act of revocation, the lower courts improperly applied La. C.C. art. 1848 to preclude the admission of such evidence. The extrinsic evidence establishes that the act of revocation was executed after the testament at issue in this case. Because the testament was revoked by the testator, the trial court's judgment is reversed, and this matter is remanded to the trial court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Chief Judge Susan M. Chehardy of the Court of Appeal, Fifth Circuit, appointed as Justice pro tempore, sitting for the vacancy in the First District.

Retired Judge Michael Kirby appointed Justice ad hoc, sitting for Clark, J.

Hughes, J., concurs with reasons.

10/22/19

SUPREME COURT OF LOUISIANA

No. 2019-C-0405

SUCCESSION OF EDWARD ROBIN, SR.

C/W

SUCCESSION OF EDWARD ROBIN, SR.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FOURTH CIRCUIT, PARISH OF ST. BERNARD

WEIMER, Justice.[1]

This court granted the writ application of an heir to determine the validity of an undated act signed by a testator in the presence of two witnesses and a notary public in which the testator declared that all of his prior testaments were revoked. Although lacking a date, this court finds that the act of revocation is valid as an authentic act. Because extrinsic evidence regarding the date on which the act of revocation was executed did not "negate or vary" the content of the act of revocation, the lower courts improperly applied La. C.C. art. 1848 to preclude the admission of such evidence. The extrinsic evidence establishes that the act of revocation was executed after the testament at issue in this case. Because the testament was revoked

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by the testator, the trial court's judgment is reversed, and this matter is remanded to the trial court for further proceedings consistent with this opinion.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Edward Robin (Testator) had ten children: five from his first marriage to Doris G. Robin–Chris, Don, Brad, Edward, Jr., and Donna Robin; three from his second marriage to Thaslia C. Robin–Marcela R. Dardar, Elizabeth R. Locicero, and Lee Robin; and two other children–Chantel R. Viada and Chad Robin. On November 4, 2004, Testator executed a notarial testament before Notary Public Todd Villarrubia and two witnesses. In that testament, Testator bequeathed his gun collection and hunting equipment to Lee and the remainder of his estate to Brad and Don. His other seven children were not included in the testament. Brad and Don were named in the testament as co-executors of the estate.

Testator also executed a "REVOCATION OF ANY AND ALL PRIOR WILLS AND CODICILS" before Notary Villarrubia (who notarized his 2004 testament) and two witnesses–Ralph Litolff, Jr. and Monique Hardy. That document (the act of revocation) was not dated and consisted of one sentence, which states: "I, EDWARD JOHN ROBIN, SR., revoke any and all prior Wills and Codicils that I may have made as pursuant to La. Civ. Code Ann. Art. 1607."

Testator died on August 22, 2017.[2] Pursuant to a petition for appointment of administratrix premised on an allegation that Testator died intestate, Testator's daughter, Chantel R. Viada (Heir), was appointed as the administratrix on January 4, 2018. On January 10, 2018, Brad Robin (Legatee) filed a petition for injunction and for removal of the administratrix based on the fact that Testator did not die intestate.

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[2] Donna died before Testator, without descendants.

In his petition, Legatee alleged that Testator left a testament in notarial form dated November 4, 2004,[3] recognized that an act of revocation had been executed by Testator, and urged that the act of revocation, which had not been dated by Notary, was ineffective because it did not satisfy the authentic act requirement of La. C.C. art. 1607.

A copy of the undated act of revocation was attached as an exhibit to Legatee's petition. Also attached to that petition was an affidavit of a witness to the act of revocation, Mr. Litolff,[4] which confirms that Testator's act of revocation did not contain a date and that a date was added to the document on a later day.

Legatee also filed a petition to probate Testator's 2004 testament and to confirm him as the independent executor. On January 16, 2018, the trial court probated the testament and appointed Legatee as an independent executor. Subsequently, Legatee filed a supplemental memorandum in support of his petition for injunction, arguing that the undated act of revocation was not authentic because it was not self-proving (that is, it was not full proof of the agreement as required by La. C.C. art. 1835), as extrinsic evidence is needed to show when the act of revocation was signed in order to establish if the 2004 testament was revoked. Legatee further stated that "[t]hird parties cannot rely on the Revocation because they do not know by the four corners of the document when it was executed."

Heir opposed both of Legatee's petitions, alleging that Legatee admitted "that on January 14, 2016, the Decedent executed before a notary Todd M. Villarrubia and two witnesses a sworn revocation of all prior wills pursuant to La. C.C. art. 1607."

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[3] There is no allegation or proof in the record that Testator executed any other testament.

[4] A copy of the undated act of revocation, as well as a copy of act of revocation with "JANUARY 14, 2016" affixed thereto, were attached as exhibits to Mr. Litolff's affidavit.

In her opposition, Heir challenged Legatee's attack on the validity of the undated act of revocation, urging that La. C.C. art. 1833 does not require an authentic act to be dated to be valid. She averred that nothing in the law precludes the date from being added to an authentic act after everyone has signed or from being proved by extrinsic evidence. Heir also alleged that "it is unrefuted that in 2016, the Decedent swore before a notary and two witnesses that he was revoking his prior wills and he duly signed his name before the notary and two witnesses."

At the February 8, 2018 hearing on the motion to remove Heir as administratrix, Legatee introduced into evidence the undated act of revocation and Notary's affidavit, which confirmed that the date was added to the act of revocation the day after its execution. In the absence of an execution date or specific reference to the 2004 testament, Legatee argued that Testator's act of revocation is not self-proving as to what testament is being revoked as required by La. C.C. art. 1835; therefore, it is not authentic.

Mr. Litolff, who was a witness to the act of revocation, was called by Legatee to testify at the 2018 hearing. Mr. Litolff testified that he had known Testator "for probably about seven or eight years," after being "introduced to [Testator] shortly after the BP oil spill," which was in 2010, as Testator was a spill claimant. About being asked "[a]t some point in time … to go to [Notary's] office with [Testator] present," Mr. Litolff confirmed that the request occurred "in 2016." Immediately afterwards, Mr. Litolff was questioned about the execution of Testator's act of revocation before him, another witness, and Notary. Mr. Litolff identified the undated act of revocation as the document he had witnessed. In the exchange that followed, Mr. Litolff confirmed that he received a copy of the undated act of revocation from Notary by email "two years" earlier, that is, in 2016.

On cross-examination of Mr. Litolff, when Heir's counsel offered a copy of the act of revocation dated "January 14, 2016," into evidence, Legatee's counsel objected on the ground of fraud/forgery based on "uncontested proof that someone went in after the fact and added something to the document." When the trial court ruled that the dated act of revocation was inadmissible, Heir's counsel proffered the document into evidence.

In determining the validity of Testator's act of revocation, the trial court observed that "the revision comments to La. C.C. art. 1607 indicate that while a date is not required in an authentic act as per La. C.C. art. 1833, when its purpose is to revoke a testament, there must be a clear identification of the testament to be revoked in the authentic act." Since the act of revocation initially did not include a date, the trial court found that clear identification of the testament to be revoked was necessary for the revocation to be valid. Absent identification in the undated act of revocation of the "specific testament" (by date) that Testator sought to revoke,[5] the trial court held "there is no way to identify the testament the decedent intended to revoke." Therefore, "the revocation of the testament [was held to be] invalid." Accordingly, Heir was removed as administratrix and ordered to provide an accounting of all assets of the succession since her appointment and to return all succession property to Legatee, and Legatee's appointment as the independent executor was confirmed.

On appeal, after observing that La. C.C. art. 1607 authorizes the revocation of a testament by a declaration of revocation in an authentic act, a majority of the appellate court acknowledged that the validity of an authentic act does not depend on the inclusion of the execution date. **Succession of Robin**, 18-0538, 18-0315, p. 5 (La.App. 4 Cir. 1/30/19), __ So.3d __ (citing La. C.C. art. 1833). Nonetheless,

[5] The trial court declined to consider extrinsic evidence regarding the execution date.

"[t]estimonial or other evidence may not be admitted to negate or vary the contents of an authentic act." ***Id.*** (quoting La. C.C. art. 1848). According to the appellate court majority, the undated act of revocation was not "self-proving," which is required of an authentic act. ***Id.*** (citing **Acurio v. Acurio**, 16-1395, pp. 6-7 (La. 5/3/17), 224 So.3d 935, 938-39). From the face of the undated act, the majority was unable to determine when the act of revocation was executed. ***Id.*** Resort to extrinsic or testimonial evidence to prove when the act of revocation was executed and to which testament the revocation applied was found by the appellate court to directly conflict with La. C.C. art. 1848. ***Id.*** Accordingly, the appellate court majority found that the undated act "cannot be self-proving when it is not known when [the undated act of revocation] was executed or what testament was revoked."[6] ***Id.***, 18-0538, 18-0315 at 5-6, __ So.3d at __. According to the appellate court majority, because the undated act failed to revoke the 2004 testament, "the trial court was correct in removing [Heir] from office as administratrix and confirming … the appointment of [Legatee] as independent executor." ***Id.***, 18-0538, 18-0315 at 7, __ So.3d at __.

The dissenting appellate court judge found that the act of revocation was a valid authentic act since it was a writing, signed by Testator, two witnesses, and Notary. **Succession of Robin**, 18-0538, 18-0315 at 1, __ So.3d at __ (Bartholomew-Woods, J, dissenting) (citing La. C.C. arts. 1607, 1833). Furthermore, the dissenting judge noted that parol evidence was admissible to prove when the act of revocation was executed so as "to 'give effect' to the authentic act,"[7] as such information did "not

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[6] The appellate court majority further found that as a forgery, the altered act was inadmissible, as found by the trial court. **Succession of Robin**, 18-0538, 18-0315 at 6, __ So.3d at __ (quoting La. C.C. art. 1835, 1984 Revision Comment (b) ("A forged act is of course not authentic and can have no evidentiary effect.")).

[7] See **Comeaux v. C.F. Bean Corp.**, 99-0924, p. 13 (La.App. 4 Cir. 12/15/99), 750 So.2d 291, 299-300; **Wimbush v. Jones**, 136 So.2d 704, 706 (La.App. 2 Cir. 1961); see also **Heth v. Moore**, 316 So.2d 764, 767 (La.App. 1 Cir. 1975).

‘negate’ or ‘vary’ the contents of the revocation.” ***Id.*** (citing La. C.C. art. 1848). Instead, the extrinsic evidence sought to be introduced “simply provide[s] context as to when it was executed.” ***Id.*** According to the dissenter, the phrase “clear identification of the testament to be revoked” referenced in the revision comments to La. C.C. art. 1607 does not require the testament to be “specifically named/mentioned.” ***Id.***, 18-0538, 18-0315 at 2, __ So.3d at __ (Bartholomew-Woods, J, dissenting). Therefore, the act of revocation, “which revoked ‘any and all prior wills and codicils’ clearly–though not specifically,” identified the 2004 testament. ***Id.***

This court granted Heir’s writ application to consider whether Testator effectuated a revocation of his 2004 testament in light of the absence of the execution date on the act of revocation. **Succession of Robin**, 19-0405 (La. 5/28/19), __ So.3d __.

DISCUSSION

We begin with a consideration of the relevant codal provisions. Concerning the revocation of an entire testament, La. C.C. art. 1607 provides:

> Revocation of an entire testament occurs when the testator does any of the following:
>
> (1) Physically destroys the testament, or has it destroyed at his direction.
>
> (2) So declares in one of the forms prescribed for testaments or in an authentic act.
>
> (3) Identifies and clearly revokes the testament by a writing that is entirely written and signed by the testator in his own handwriting.

Pertinent to this case is La. C.C. art. 1607(2). Pursuant to this codal provision, Testator was free to revoke a prior testament by an authentic act in which he declared his intent to revoke that testament.

Concerning an authentic act, La. C.C. art. 1833 provides, in pertinent part:

A. An authentic act is a writing executed before a notary public or other officer authorized to perform that function, in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed. The typed or hand-printed name of each person shall be placed in a legible form immediately beneath the signature of each person signing the act.

B. To be an authentic act, the writing need not be executed at one time or place, or before the same notary public or in the presence of the same witnesses, provided that each party who executes it does so before a notary public or other officer authorized to perform that function, and in the presence of two witnesses and each party, each witness, and each notary public signs it. The failure to include the typed or hand-printed name of each person signing the act shall not affect the validity or authenticity of the act.

That Testator's act of revocation was a writing signed by Testator in the presence of two witnesses and Notary (as required by La. C.C. art. 1833(A)) is undisputed; therefore, "the very goal envisioned by authentic acts, which is 'to prevent contestations concerning the proof or evidence' that the signatures are indeed those of the parties" was satisfied in this case. See **Acurio v. Acurio**, 16-1395, p. 6 (La. 5/3/17), 224 So.3d 935, 939. Nonetheless, Legatee contends that Testator's act of revocation is not an authentic act because it was not dated at the time of execution. However, there is no requirement in La. C.C. art. 1833 or any other article of the Louisiana Civil Code that requires an authentic act contain the date on which it was executed. Unlike the law on testaments[8] and the law on modification of a testament,[9] the law on revocation of an entire testament by authentic act does not require that an act of revocation by authentic act contain an execution date. La. C.C. art. 1607(2).

[8] See La. C.C. art. 1574, *et seq*. As of July 1, 1999, there are only two forms of testaments in Louisiana: "olographic and notarial." La. C.C. art. 1574. "An olographic testament is one entirely written, **dated**, and signed in the handwriting of the testator." La. C.C. art. 1575(A) (emphasis added). The notarial testament must be executed in accordance with the formalities of La. C.C. arts. 1577-1580.1. La. C.C. art. 1576. According to La. C.C. art. 1577, a notarial testament must be written, **dated**, and notarized.

[9] Noteworthy is the fact that a modification of a testament (as opposed to a revocation of an entire testament) must be in one of the forms prescribed for a testament. See La. C.C. art. 1610.

Therefore, omission of the execution date by Notary does not automatically prevent Testator's act of revocation from being an authentic act or render it invalid. To find otherwise would require this court to impose an additional form requirement for a revocation of an entire testament by use of an authentic act. What is not codally or statutorily required cannot be jurisprudentially inserted. Furthermore, this court's holding in **Succession of Gordon v. Bridges**, 257 La. 1086, 1096, 245 So.2d 319, 322-23 (1971),[10] supports upholding the validity of an undated authentic act due to the lack of a codal requirement for a date.

In arguing the self-proving aspect of an authentic act, Legatee urged that although authentic as to form, an act may not be authentic as to content, citing **Succession of Holloway**, 531 So.2d 431 (La. 1988). In **Succession of Holloway**, this court found that, although signed by the testator in the presence of two witnesses and a notary in accordance with La. C.C. art. 1833, a statutory will that contained only a month and year was invalid since it did not satisfy the date requirement of La. R.S. 9:2442 (1976).[11] ***Id.***, 531 So.2d 432-33. Legatee's reliance on **Succession of Holloway** is misplaced. Unlike **Succession of Holloway**, the instant case does not involve the validity of a testament or other document that is statutorily required to be dated, nor does this case involve a testamentary revocation that is by law required to be made "in one of the forms prescribed for testaments."[12]

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[10] In **Succession of Gordon**, which was decided based on the pre-1974 version of La. R.S. 9:2442 under which a statutory will was not required to be dated, this court found that an undated statutory will that was signed, witnessed, notarized, and otherwise statutorily compliant was valid. ***Id.***, 257 La. at 1095-96, 245 So.2d at 322-23. By 1974 La. Act 246, § 1, the legislature amended La. R.S. 9:2442 to provide that the statutory will "shall be dated." In Act 1421 of 1997, the legislature moved the substance of La. R.S. 9:2442 (1974) into La. C.C. art. 1577.

[11] To be complete, a date must include a month, day and year. See **Succession of Holloway**, 531 So.2d at 433 (citing **Heffner v. Heffner**, 48 La.Ann. 1089, 1090, 20 So. 281, 282 (1896)).

[12] See La. C.C. art. 1607(2). No one disputes that Testator's act of revocation was executed after the enactment of La. C.C. art. 1607 in 1997 by Act 1421, effective July 1, 1999, which "expand[ed a testator's] ability to revoke [a testament] by adding the use of an authentic act to do so." See La.

The parties do not dispute that Testator's act of revocation conformed to the codal requirements of La. C.C. art. 1833, governing authentic acts. The validity of the act of revocation instead hinges on whether Testator declared his intent to revoke an entire testament in the act of revocation, as required by La. C.C. art. 1607(2). In finding that the act of revocation is invalid, the lower courts held that without a date on the act of revocation, it is impossible to determine from the face of the act which testaments were revoked by Testator.[13] Finding that the act of revocation is not self-proving in that regard, the lower courts declared the act of revocation to be invalid, essentially concluding that in the absence of an execution date on the action of revocation, the prior testament being revoked by Testator must be identifiable (by date) from the four corners of the act of revocation for the revocation to be valid. Such a finding imposes a requirement not codally required and calls into question the role that an authentic act plays in the judicial process.

"An authentic act constitutes full proof of the agreement it contains, as against the parties, their heirs, and successors by universal or particular title." La. C.C. art. 1835.[14] "[A]n authentic act is presumed to be valid" and is "clothed with a presumption of genuineness." **Mars Beach, LLC v. McQuirter**, 17-0670, p. 6 (La.App. 1 Cir. 11/1/17), 234 So.3d 908, 912, writ denied, 17-2000 (La. 2/2/18), 233 So.3d 614; **Couvillon v. Couvillon**, 03-2006, p. 3 (La.App. 1 Cir. 6/25/04), 886 So.2d

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C.C. art. 1607, 1997 Revision Comments. Prior to the effective date of La. C.C. art. 1607(2), a written revocation had to be in one of the forms prescribed for testaments. See La. C.C. art. 1692 (1870) ("The act by which a testamentary disposition is revoked, must be made in one of the forms prescribed for testaments, and clothed with the same formalities.").

[13] The lower courts refused to consider extrinsic evidence relative to the execution date, indicating that La. C.C. art. 1848 precludes the introduction of evidence on this issue.

[14] La. C.C. art. 1835 was enacted by 1984 La. Acts 331, §1, effective January 1, 1985, and reproduces La. C.C. art. 2236 (1870), which provided: "The authentic act is full proof of the agreement contained in it, [between] the contracting parties and their heirs or assigns, unless it be declared to be a forgery."

474, 475. "Parties to an authentic act [and their heirs, and successors by universal or particular title] are not permitted to deny the material recitals therein contained." **Templet v. Babbitt**, 198 La. 810, 817, 5 So.2d 13, 15 (1941). Accordingly, Testator's act of revocation "constitutes full proof of the agreement it contains," that is, that Testator intended to revoke any and all previously executed testaments and codicils, which no one denies in this case. Pursuant to La. C.C. art. 1835, Testator's act of revocation is self-proving as to that declaration, without the notary and witnesses having to appear and attest to the authenticity. See **Acurio**, 16-1395 at 6, 224 So.3d at 939 (relative to the "goal envisioned by authentic acts" quoted *supra*); see also La. C.E. art. 902(8);[15] 5 SAUL LITVINOFF, LOUISIANA CIVIL LAW TREATISE: THE LAW OF OBLIGATIONS § 12.22, p. 305 (2d ed. 2001) (the production of the authentic act "dispenses with the need for any other proof that the act has actually been executed by the parties" as the act proves "the appearance of the parties and the declarations made by them.").

Contrary to the appellate court majority's finding, nothing in La. C.C. art. 1835 requires that an act of revocation by authentic act be full proof of every fact that the proponent of the authentic act must prove in order to prevail in the case. Where an authentic act is devoid of an execution date, as here, the admissibility of extrinsic evidence to prove such fact must be considered under La. C.C. art. 1848 (titled "Testimonial or other evidence not admitted to disprove a writing"), which provides:

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[15] Concerning self-authentication, La. C.E. art. 902, in pertinent part, provides:

> Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:
>
> . . . .
>
> (8) (a) Authentic acts[.]

> Testimonial or other evidence may not be admitted to negate or vary the contents of an authentic act …. Nevertheless, in the interest of justice, that evidence may be admitted to prove such circumstances as a vice of consent or to prove that the written act was modified by a subsequent and valid oral agreement.

The first sentence of Article 1848 states what evidence is inadmissible: "[t]estimonial or other evidence may not be admitted to negate or vary the contents of an authentic act." The second sentence of Article 1848 provides an exception to the prohibition contained in the first sentence and authorizes the introduction of evidence "to prove such circumstances as a vice of consent or to prove that the written act was modified by a subsequent and valid oral agreement." See **Succession of Robinson**, 94-2229 (La. 5/22/95), 654 So.2d 682, 685 (citing Casenotes, *Civil Law: Parole Evidence to Vary an Authentic Act*, 27 Loy.L.Rev. 719 (1970-71)) (parol evidence is rarely admissible to contradict or destroy the authentic act). Contrary to Legatee's urging, Article 1848 does not limit the use of extrinsic evidence to the items enumerated in the second sentence thereof. Instead, Article 1848, as its title suggests, only addresses the introduction of evidence to "disprove" an authentic act and does not prohibit the introduction of extrinsic evidence that **does not** negate or vary the contents of the

authentic act.[16] Thus, the issue is whether Heir sought to offer evidence of the date of the execution of the act of revocation to "negate or vary the content" of that act.

In accordance with La. C.C. art. 1607, the act of revocation contained a declaration of Testator's intent to revoke his prior testaments. Heir is not attempting to supply extrinsic evidence to negate or vary the terms of Testator's act of revocation or the fact that Testator revoked all of his prior testaments.[17] Rather, the extrinsic evidence relied on by Heir supports Testator's revocation efforts and provides the context for Testator's revocation in that supplementation of the act of revocation with the execution date through extrinsic evidence enables the court to determine if Testator intended to revoke his 2004 testament. As observed by the dissenting appellate court judge, since extrinsic evidence as to the execution date neither negates nor varies the content of the act of revocation at issue in this case, its admissibility is not precluded by La. C.C. art. 1848. Such a finding is consistent with the jurisprudence and other secondary sources that recognize that parol evidence is admissible for such purposes, *i.e.*, to "give effect" to an authentic act that is not

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[16] La. C.C. art. 1848 was enacted by 1984 La. Act 331 and "reproduces the substance of C.C. Art. 2276 (1870) and incorporates exceptions recognized by the Louisiana jurisprudence." La. C.C. art. 1848, 1984 Revision Comment (a). La. C.C. art. 2776 (1870) provided: "Neither shall parol evidence be admitted against or beyond what is contained in the acts, nor on what may have been said before, or at the time of making them, or since." The courts declined to apply former La. C.C. art. 2276 in such a manner as to preclude the introduction of parol evidence when not offered to contradict the declarations contained in the authentic act, but instead offered to clear up ambiguities and uncertainties, thereby giving effect to the authentic act and the true intent of the parties. See **Dickson v. Ford**, 38 La. Ann. 736, 739 (1886) (where the authentic act was silent as to the origin of the obligation which the mortgage was intended to secure, the court found that parol evidence to show the alleged true consideration of the mortgage was not precluded by La. C.C. art. 2276 (1870)); **Love v. Dedon**, 239 La. 109, 114, 118 So. 2d 122, 123-24 (1960) (the court found that parol evidence concerning the reason that prompted the execution of two property deeds, that is, to effect a settlement of the community previously existing before the parties, was not prohibited by La. C.C. art. 2276 (1870)); **Heth v. Moore**, 316 So.2d 764, 767 (La.App. 1 Cir. 1975) (parol evidence was admissible for purpose of resolving ambiguities as to intent of parties to lease agreement concerning the time for exercising the option and defining the property that was the subject of the option).

[17] See, e.g., **Dickson**, 38 La. Ann. at 739-40; **Love**, 239 La. at 113-15, 118 So.2d at 123-24; *cf.* **Teche Realty & Inv. Co., Inc. v. Morrow**, 95-1473, p. 3 (La.App. 3 Cir. 4/17/96), 673 So.2d 1145, 1147 ("Parol evidence is admissible to prove the existence of subsequent agreements that modify a written agreement.").

required by law to be dated. See **Succession of Gordon**, 257 La. at 1096, 245 So.2d at 323 (which held that the date of a statutory will, that was not required by law to be dated, "may be established…by ordinary proof when and if proof of it is needed."). See also **Heth v. Moore**, 316 So.2d 767 (La.App. 1 Cir. 1975);[18] **Wimbush v. Jones**, 136 So.2d 704, 706 (La.App. 2 Cir. 1961);[19] see also 5 LITVINOFF, LOUISIANA CIVIL LAW TREATISE: OBLIGATIONS § 12.91 at 364-65 (discussing the meaning of "negate" and "vary" relative to La. C.C. art. 1848).[20] *Cf.* **Succession of Holloway**, 531 So.2d at 432-33 (in which this court found that extrinsic evidence relative to the date was inadmissible where the document was required by law to be dated).[21]

Accordingly, as recognized by the dissenting appellate court judge, extrinsic evidence is admissible to show the date on which the act of revocation was executed and to allow for a determination of whether Testator intended to revoke his 2004 testament. Such a holding serves the interest of justice in that it gives effect to Testator's intent that his surviving children share equally in his estate; to find

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[18] In **Heth**, the court found that parol evidence was not prohibited because it was "offered and used to Support and Give effect to the contract." ***Id.***, 316 So.2d at 767.

[19] The courts of this state "have consistently construed [former La. C.C. art.] 2276 [now La. C.C. art. 1848] to allow parol evidence when it tends to support and not destroy the authenticity of the act." **Wimbush**, 136 So.2d at 706 (citing **Dickson**, 38 La.Ann. 736; **Love**, 239 La. 109, 118 So.2d 122, and **Collins v. Brunet**, 239 La. 402, 118 So.2d 454 (1960)).

[20] "To *negate* the contents of an authentic act … means to contradict its recitals." 5 LITVINOFF, LOUISIANA CIVIL LAW TREATISE: OBLIGATIONS § 12.91 at 364. "To *vary* the contents of a written act means to add to or to detract from its recitals for the purpose of increasing or diminishing the burden placed upon a party by an obligation evidenced by the act, such as the adding of a condition or a term for performance that the act does not mention." ***Id.*** at 365. "[I]f the testimonial or other extrinsic proof does not contradict[, add to, or detract from] the terms of the [recitals in the authentic act,] such proof is admissible." ***Id.***

[21] Addressing the admissibility of extrinsic evidence to prove the date on which a statutory will was executed, where the date requirement of La. R.S. 9:2442 was not satisfied, the **Holloway** court found that "extrinsic evidence [relative to the execution date] should not be considered." ***Id.***, 531 So.2d at 734 (citing **Heffner**, 48 La. Ann. 1098, 20 So. 281, and contrasting **Succession of Boyd**, 306 So.2d 687, 692 (La. 1975) (which upheld the use of extrinsic evidence to "resolve ambiguity regarding the date written by the testator" on an olographic testament)).

otherwise would render Testator's revocation meaningless.[22] Therefore, the lower courts erred in refusing to consider extrinsic evidence relative to the execution date for purposes of determining if Testator's 2004 testament was among those "prior Wills" Testator intended to revoke.

The evidence in the record establishes Mr. Litolff did not know Testator prior to the 2010 BP oil spill and that it was not until 2016 (or two years prior to the 2018 hearing in this matter) that Mr. Litolff was asked to join Testator at Notary's office for the purpose of witnessing Testator's signing of the act of revocation. Furthermore, Notary stated in his affidavit that the proper date was affixed to the act of revocation the day after it was executed. Accordingly, evidence offered by Legatee, who opposed the act of revocation, shows Testator's act of revocation was executed in 2016–long after Testator executed his 2004 testament.

CONCLUSION

In summary, Testator's act of revocation was by authentic act because it was executed before a notary and two witnesses. La. C.C. art. 1833. This authentic act evidences, and is full proof of,[23] Testator's intent to revoke any and all prior testaments, thus satisfying the requirements of La. C.C. art. 1607(2). Extrinsic evidence as to the date of the execution of the act of revocation is not precluded by La. C.C. art. 1848 in that it does not "negate or vary the contents" of Testator's act of revocation. Such evidence establishes that the act of revocation was executed long

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[22] Relative to the interpretation of legacies, La. C.C. art. 1612 provides: "[a] disposition should be interpreted in a sense in which it can have effect, rather than in one in which it can have none." While this article is not directly applicable to a revocation of an entire testament by authentic act, it shows the strong public policy requiring courts to give effect to the testator's intent. See also La. C.C. art. 1611(A) (providing the "intent of the testator controls the interpretation of his testament" and explaining that the "rules of interpretation [of legacies] found [in La. C.C. art. 1612, *et seq*.] apply only when the testator's intent cannot be ascertained from the language of the testament" and that "[i]n applying th[o]se rules, the court may be aided by any competent evidence.").

[23] See La. C.C. art. 1835.

after Testator's 2004 testament. Therefore, Heir has shown that, by his act of revocation, Testator revoked his 2004 testament. To find otherwise would be to allow Legatee to override Testator's obvious intent by inventing a formalistic requirement that does not exist in the law; that is, that an authentic act be dated or that an undated act of revocation refer to the testament being revoked by date.

DECREE

For the foregoing reasons, the trial court's judgment is reversed, and this matter is remanded to the trial court for further proceedings consistent with this opinion.

REVERSED; REMANDED.

10/22/19

SUPREME COURT OF LOUISIANA

No. 2019-C-00405

SUCCESSION OF EDWARD ROBIN, SR.

C/W

SUCCESSION OF EDWARD ROBIN, SR.

On Writ of Certiorari to the Court of Appeal,
Fourth Circuit, Parish of St. Bernard

Hughes, J., concurs.

I respectfully concur with the result in this case, especially given that there was no evidence or even suggestion that the revocation might apply to another will.

The Legislature changed the law to no longer require that a revocation be in the same form with the same formalities as a testament. There is the possibility therefore in a different case that supplying a date through parol evidence would make a substantive change and should not be allowed to alter a notarial act without date.