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MEMORANDUM

TO: Probate Council
Amicus Application

FROM: Nazneen S. Hasan and Timothy White

RE: In re Frankford

DATE: March 11, 2025

Overview

Counsel for the Personal Representative/Appellant, Michael Frankford,[1] submitted an amicus application that addresses the issues arising under MCL 700.2503 (Ex. 1, Application). The issue is whether the exceptions for a writing to constitute a decedent's will weaken the formalities provided under MCL 700.2502 such that the exception eliminates the utility of the rule. The applicant is in the process of seeking leave to appeal the unpublished Per Curiam decision of the Court of Appeals issued on February 18, 2025 (Ex. 2).

The Court of Appeals affirmed the Probate Court's ruling that Courtnie, the proponent of the writing at issue (Ex. 3), presented clear and convincing evidence that decedent intended the writing to constitute his last will. The Court of Appeals, therefore, found that the trial court did not err by admitting the writing at issue to probate as decedent's will.

The Amicus Committee recommends filing an amicus brief advocating that the Supreme Court grant Appellant's application for leave to appeal. One of the main concerns the Committee had was that the Court of Appeals' interpretation of MCL 700.2503 being overly broad. Another reason for why the Committee believes that the Supreme Court should grant leave to appeal, is the application of *Horton*. The Court of Appeals cites *Horton* for the proposition that in order for a document to be considered a Will under MCL 700.2503 it "must be final in nature" and it must be more than a "mere draft" or a "mere unexecuted intention to leave by will". Yet the Committee struggled with understanding how any court could look at the 2 page list at issue and determine

[1] Applicant is represented by Mr. Andy Mayoras, chair of the Amicus Committee, and due to the conflict he has excused himself from these discussions.

that it "is final in nature" or that it does not fall under the limitation that the court in *Horton* placed on the application of MCL 700.2503.

Relevant Facts and Lower Court Ruling

The decedent was married to Debora Frankford for 33 years prior to her death in 2015. She had children from a previous union, April, and Chad (who is now deceased). Debora and decedent did not share any children, and decedent did not have any children from a previous union. April has five children, one of whom is appellee, Courtnie Gaines[2].

Also, shortly after his wife's death, in 2015, decedent sought legal counsel to prepare an estate plan with Ms. Kathryn Caruso, a probate and estate planning attorney based in Clarkston, Michigan. She provided draft estate planning documents for decedent to review. She asked him to contact her to finalize the documents and schedule a time for execution of same. He did not follow through and he never signed the draft estate planning documents Caruso provided to him, which included a Last Will and Testament, Revocable Living Trust, Durable Power of Attorney, Medical Power of Attorney, and HIPAA authorization. The estate planning documents included a life estate deed.

Decedent died in 2022, and shortly thereafter, Michael filed for probate intestate as the sole heir of decedent. Shortly thereafter, Courtnie located a folder of documents in decedent's home in his computer room, which she claimed were exactly where she was told to search for them. The folder contained 12 pages of documents, and Courtnie chose the two-page to do list among the pages from the folder to add to her petition for probate testate, making the matter a contested will matter.

A bench trial was held and there were two full days of testimony from decedent's stepfamily members, but there was also testimony provided by Katherine, Michele, and Michael that the Committee found to be minimized in the opinion. The probate court stated that it went "back and forth" in making its decision to find clear and convincing evidence that the two-page to do list was decedent's will. The probate court explained that several witnesses testified that decedent told them several times over several years that he had a will, that April was getting the house and Courtnie would be in charge, meaning she'd be the fiduciary. The probate court found the witness testimony of the stepfamily members credible, while not stating whether it did not find Michael or Michele's testimony credible. The trial court further found that the handwritten notes, and estate planning documents "were 'all consistent'". The probate court further concluded that when decedent told Michele that his will was not finished, he must have been referring to his handwritten to do list that did not dispose of his entire estate and not the drafts provided by

[2] *See* the Opinion for additional family members, omitted here. *See* Opinion for additional information regarding that after decedent's wife's death, decedent had a new girlfriend, Michele Wharton. As part of the testimony provided at trial, arguments were made that relationships between decedent and his stepchildren and step-grandchildren soured due to this new relationship with Michele.

Katherine, his estate planning attorney. The probate court also found that the writing at issue was one document, "clearly intended to be read after [decedent] died". The probate court then entered an order admitting the writing at issue as decedent's will under MCL 700.2503.

In its unpublished opinion, the Court of Appeals noted that the testimony of several witnesses indicated that decedent told his friends and family that he had a will. The Court of Appeals stated, "[it] is a reasonable inference that decedent wrote the list in contemplation of his death and intended the items in the list to govern after his passing. See *In re Estate of Horton*, 325 Mich App at 334 ("Ultimately, in deciding whether a person intends a document to constitute a will, the question is whether the person intended the document to govern the posthumous distribution of his or her property.")".

The Court of Appeals stated that it considered the testimony of numerous witnesses along with reviewing the unsigned estate planning documents, decedent's friends and stepfamily members who all testified that decedent met with an attorney to have "his affairs in order". This is inconsistent with the two-page to do list offered by Courtnie, which is clearly not in order. It is in fact not one that was prepared by an attorney, was incomplete, purported to be in the decedent's handwriting, was undated, untitled, and did not dispose of his entire estate. The Court of Appeals found that testimony was consistent that decedent intended for the house to go to April, Courtnie to be in charge of distribution, and the property and money to be split among the step-grandchildren and step-great-grandchildren. Here, one can infer that the Court of Appeals must mean when it says it is "consistent", it meant that there was consistency between the draft prepared by Katherine and the to do list offered to probate—although this is not expressly stated in the opinion. While Courtnie was the only one with whom decedent specifically used the word "will," he also physically showed her where it was located in a box in Debora's "computer room." The Court of Appeals also appeared to give substantial weight to where the documents were located and discovered after decedent's death.

The Court of Appeals states that Michael did not argue that the to do list fails to accurately portray decedent's testamentary intentions. Instead, he only argued that Courtnie did not meet the required statutory standard of showing clear and convincing evidence that the writing should be admitted to probate as decedent's will. The Court of Appeals seemed to discredit certain testimony while giving credence to others, all while deferring to the probate court on the issue of testimonial credibility.

Analysis

MCL 700.2503 requires that the proponent must establish that the proffered document itself was intended to be a will.

As to consistency not being a necessary requirement of the clear and convincing standard and inappropriately given too much weight by the Court of Appeals. The Court of Appeals noted that the Trial Court noted that the testimony of the decedent's wishes, the notes, and the estate planning documents were all consistent. However, consistency is not a statutory

requirement. The document offered must be more than just consistent with the decedent's wishes, **it must be intended to constitute a final will**. Also, 2503 is clear that the proponent must establish the matter by clear and convincing evidence. The question the Committee had was if the probate court recognized that it went "back and forth" then how did it find the testimony to be "clear and convincing"? Unsigned drafts are typically presumed to be unsigned for a reason, such as perhaps the decedent had not made decisions about how to dispose of his estate at his death, yet here, it does not appear the Court of Appeals (or perhaps even the trial court) did not take this into consideration. Instead, the Court of Appeals decision would seem to undo that presumption. Instead it would appear that the Court of Appeals is saying that if consistent unsigned documents and notes are found together after decedent's date of death, then an inference can be made that decedent intended that, to the extent the documents at issue are consistent, that they are intended to be decedent's final statement of his testamentary intent, and any inconsistencies can or should be ignored.

As to the witness testimony failing to meet the clear and convincing standard. The COA opinion notes the testimony of several witnesses, including his stepfamily, Michael and Michele, wherein decedent purported to inform them he had a will. But the testimony does not appear to reveal the actual document decedent referred to. Did the probate court presume that when decedent stated he had a will he had to have meant the to do list to the exclusion of the draft he had an attorney prepare? The Committee questioned that when there is such testimony, how do we know which document the decedent was referencing in those statements such that it could meet the requirements of 2503 and be admitted as the decedent's Will? The committee struggled to see how there could possibly be clear and convincing evidence that establishes that the document(s) Mr. Frankford was exclusively referring to the 2 page list, which was eventually admitted by the Probate Court.

For example, according to the testimony provided, Mr. Frankford told his friend Mr. McKenzie that he went to a female attorney to have his Will made. This would mean that when Mr. Frankford was referencing the draft Will Katherine prepared and not the two-page to do list. Similarly, according to Ms. Turman's testimony, Mr. Frankford told her that he went to an attorney and his estate was "all in order…." This again seems to suggest that when Mr. Frankford was referring to his Will, he was referring to the documents prepared by Caruso and not the 2 page list.

The testimony provided by Michael's witnesses did not seem to be given the same credence as the testimony provided by Courtnie's witnesses by the probate court. The Committee discussed that for the probate court to find clear and convincing evidence that the two-page to do list was decedent's will, the probate court had to have found Mr. McKenzie's and Ms. Turman's as well as Ms. Caruso's testimony as not credible.

As to the document offered to probate. Also troublesome is that the two-page to do list offered to probate was buried in a folder of approximately 12-15 pages of documents. It does not have a title and is not dated. There is no testimony, that we can glean from this opinion at least, that decedent instructed Courtnie to locate the two-page to do list and that he identified those

specific two-pages as his will to her to the exclusion of the unsigned draft will that was prepared by Katherine and also purportedly in that same folder.

The application of *In re Horton* seemed inaccurate. The Court of Appeals cites *Horton* for the proposition that in order for a document to be considered a Will under MCL 700.2503 it "must be final in nature" and it must me more than a "mere draft" or a "mere unexecuted intention to leave by will". The Committee struggled with how the two-page document "is final in nature" or that it does not fall under the limitation that the court in *Horton* placed on the application of MCL 700.2503. Most importantly is that the two-page at issue appeared to be a to do list of things he intended to do at some point in the future from when it was written but prior to his death. Words such as "I need…, I will set up…, I will make…" appear throughout.

As to the analysis of MCL 700.2503. The Committee believed that MCL 700.2503 was an exception to MCL 700.2502 and should be applied in limited circumstances. And *Horton* should be viewed as the outer edge of invoking MCL 700.2503. The Committee believed that Section 2503 should be reserved for those limited circumstances where a writing fails to meet the requirements under MCL 700.2502(1) and fails to meet the requirements of a holographic will under MCL 700.2502(2). The case at hand can be easily differentiated from *Horton* in that the electronic note in that matter was indeed titled a "final" document, and was clearly in contemplation of decedent's imminent death, with no indication of future tasks to be completed. In *Horton,* the date and time could be authenticated although there was no signature. Here, the two-page to do list was dated 7 years prior to his death, listed various things decedent wished to do prior to his death, some of which he did and some of which remained to be completed. The two-page to do list did not dispose of all of his residue and was not in contemplation of imminent death.

Consideration should be given to *In re Estate of Attia,* 317 Mich App 705, 895 NW2d 564 (2016) as well as *In re Estate of Clark T. Smoke,* 2007 Mich App LEXIS 2809, 2007 WL 4415499, Unpublished Opinion. The focus that *Attia* and *Smoke* had on the specific document at issue is the correct interpretation and application of MCL 700.2503. This ruling by the Court of Appeals would seem to provide a very different standard as to the scope and application of MCL 700.2503, which the Supreme Court could clarify.

In sum, as to the writing at issue having been declared a will, it would have been another thing if the writing at issue had been an unwitnessed but signed will, or if the two-page writing at issue was titled, signed, dated, or even acknowledged if revised by signing, initialing, and/or dating the writing. It would have been a different matter if the document itself had more indications that it was to be considered decedent's testamentary intent. Here, there lacks clear and convincing evidence that the two-page writing was indeed intended to be a reflection of decedent's testamentary intent.

Conclusion

In conclusion, the Committee recommends that the Section authorize an amicus brief that advocates that: (1) the Supreme Court should grant leave to appeal and consider the issues, which could have significant impact on estate planning attorneys and clients, (2) the Supreme Court should focus its analysis primarily on MCL 700.2503 as the Committee believed the position the Court of Appeals took was too broad of an interpretation of this statute and its application of *Horton* in its analysis of Section 2503. There is concern that the expansion of Section 2503 to the point where it erodes Section 2502. There is concern that to do lists could become wills, which could then lead to even more probate litigation. The opinion has the potential of eroding the importance of having properly executed estate planning documents, including wills. There was concern that an undated, unsigned document, with no title to indicate it is intended as a will, written far in advance of the decedent's death and that speaks to future actions decedent planned to take could be admissible as a will in other cases. The Committee believed that this case has the potential to substantially impact the section's attorneys and clients.

The Committee recommended that Dykema author the brief.

Amicus Committee:

Nazneen Hasan
Timothy White
Kurt Olson
Ryan Bourjaily
Patricia Davis
Angela Hentowski
David Skidmore
Trevor Weston

EXHIBIT 1

Amicus Curiae Committee
Probate and Estate Planning Section of the State Bar of Michigan

Application for Consideration

If you believe that you have a case that warrants involvement of the Probate and Estate Planning Section of the State Bar of Michigan ("Section"), based upon the Section's Policy Regarding Consideration of Amicus Curiae Matters, please complete this form and submit it to the Chair of the Amicus Curiae Committee, along with all relevant pleadings of the parties involved in the case, and all court orders and opinions rendered.

Date February 24, 2025

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Attach Additional Sheets as Required

Name of Case In re Estate of Frankford

Parties Involved Michael Frankford, Personal Representative and intestate heir, and Courtnie Fultz, the decedent's step-granddaughter and the proponent of the purported will under MCL 700.2503.

Current Status Trial Court affirmed by the Michigan Court of Appeals.

Deadlines Application for Leave to Appeal to the Michigan Supreme Court is due on April 1, 2025.

Issue(s) Presented Whether the trial court clearly erred in admitting a two-page portion (attached) of various unsigned, handwritten notes as the decedent's will under MCL 700.2503.

Michigan Statute(s) or Court Rule(s) at Issue MCL 700.2503

Common Law Issues/Cases at Issue *In re Attia,* 317 Mich App 705; 895 N W 2d 564 (2016); *In re Horton Estate*, 324 Mich App 325; 925 N W 2d 207 (2018); and *In re Reid Estate*, unpublished per curiam opinion of the Court of Appels, issued February 27, 2014 (Docket No. 311336)

Why do you believe that this case requires the involvement of the Probate and Estate Planning Section? This case allows the "harmless error" exception for a valid will to swallow the rule. Sadly, the Court of Appeals panel did not appear to take this simple probate issue seriously, and without assistance from the Probate Section via amicus support, the Supreme Court may deny leave and allow this opinion to stand. This would open the door to all sorts of informal, not-final writings—even electronic ones due to the *Horton* case, including theoretically, texts, emails, and phone notes, and any writing such as a cocktail napkin to be submitted as a valid will. This is true even if contained within a list of "to-do" items, with no signature, date, witnesses, or written notation indicating the document is intended to be a final will or testamentary disposition, as with this case. This case advances the erosion of standards for a valid will so far down the slippery slope to make them meaningless.

Do you believe that a decision in this case will substantially impact this Section's attorneys and their clients? If so, how? This case could potentially flood probate courts with attempted probate submissions of informal documents that do not come close to meeting the traditional standards for a valid will, leading to more probate litigation and reduced importance of estate planning attorneys.

*****No attorney who is representing any party in the action or is affiliated with a firm representing any party in the action may address the Council or the Committee for Special Projects (CSP) with regard to the application. All attendees at the meeting who are affiliated with a firm representing any party in the action shall be excused from the meeting during consideration of the application.*****

4853-5180-0577.2

EXHIBIT 2

STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF FRANKFORD.

MICHAEL FRANKFORD, Personal Representative of the ESTATE OF DAVID WARREN FRANKFORD,

Appellant,

v

COURTNIE FULTZ,

Appellee.

UNPUBLISHED
February 18, 2025
12:03 PM

No. 367800
Oakland County Probate Court
LC No. 2022-410204-DE

Before: YOUNG, P.J., and GARRETT and WALLACE, JJ.

PER CURIAM.

Appellant, Michael Frankford ("Michael"), appeals as of right the trial court's order admitting two handwritten, unsigned documents as David Warren Frankford's ("decedent") will for probate under MCL 700.2503 (documents intended as wills). We affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Decedent was married to Debora Frankford ("Debora") for 33 years until she passed away in March 2015. At the time of their marriage, Debora had two young children: eight-year-old April Gaines ("April") and Chad Wayne, now deceased. April now has five children: appellee, Courtnie Fultz ("Courtnie"), Christine Gignac ("Chrissy"), Candice Motley,[1] Alyssa Gaines, and Autumn Gaines. Chad had two children: Destiney Bailey and Amanda Wayne. In addition to their seven total children, April and Chad have nine total grandchildren.

[1] Candice's last name was previously Bauknecht, but changed upon her marriage in April 2023.

A. DECEDENT'S ESTATE PLANNING DOCUMENTS

Shortly after his wife's death, decedent met with an attorney, Kathryn Caruso ("Caruso"), to prepare a will and finalize his estate. Decedent took dated and handwritten notes either during or after the meeting. On May 12, 2015, decedent received drafts from Caruso of his Last Will and Testament (the unsigned will), his Revocable Living Trust (the trust), Durable Power of Attorney, Medical Power of Attorney, and HIPAA Authorization. The documents also contained an enhanced life estate deed, referred to as a ladybird deed, to decedent's house in Holly, Michigan. The deed granted the house to April. The unsigned will nominated Courtnie to act as decedent's personal representative and, in the event that she was unavailable, nominated April. The unsigned will left all decedent's tangible personal property to the trust. The trust nominated Courtnie as trustee after decedent's death and April as successor trustee if Courtnie was "unwilling or unable to act." The trust stated, in pertinent part:

> 5.1 DESIGNATED PRIMARY BENEFICIARY:
>
> [Decedent's] designated Primary Beneficiaries are his step-grandchildren, namely, COURTNEY PLUMMER, CHRISSY GIGNEC, CANDACE BAUCHENECT, ALYSSA GAINES, AUTUMN GAINES, DESTINY BAILEY AND AMANDA WAYNE; and a class of step-great-grandchildren, namely, MILEY PLUMMER, THOMAS GIGNEC, DAKOTA GIGNEC, AURORA GIGNEC, ELLIOT BAUCHENECT, and ROWAN BAILEY.

Caruso asked decedent to review the documents and contact her to arrange formal execution. For unknown reasons, decedent never followed up with Caruso and never formally executed any of the documents. Decedent passed away over seven years later on October 28, 2022. Michael applied as the brother of decedent and only heir, asserted decedent died intestate and requested informal appointment as personal representative.

At some point after decedent's passing, Courtnie found a packet of handwritten documents inside a box in Debora's "computer room." Underneath the handwritten documents were the estate planning documents decedent previously received from Caruso. Courtnie later testified the box was "where [decedent] had told [her] it was." The first two pages were a list of guns decedent owned. The third page was a note about a PNC Bank beneficiary form along with an account number marked "this is for grandkids college." Page four was a list of decedent's step-family. Pages five and six were a numbered list titled "how to set up will or trust," beginning with "property deeds" before matching "house-April" with "ladybird" and "cabin-kids" with "trust." Pages seven and eight consisted of a list numbered 1 to 15 (the unsigned will), and stated, in relevant part:

> (1) Courtnie's name correct spelling (last name)[2]
>
> (2) Deed ID. # for McKinley (to grandkids)

[2] Courtnie is mistakenly referred to as "Courtney Plummer" in the estate planning documents.

(3) Bank Acc # I need to put Courtnie's name on

(4) PNC Bank Acc. # for school trust. Use by 21 or divide between grandkids when Autumn turns 25

* * *

(9) I need to sell Lakewood Shores property

(10) My IRA divide between grandkids[.] Need benf. form for Courtnie[.] 70% to grandkids + 30% to great grandkids[.] Must be 25 yrs old to get money.

* * *

(13) I am to be cremated, half of my ashes on top of Deb + half dump in the river[.] Next float trip down the river, take $2,000.00 from savings acc to pay for (up north party) and the luncheon at my memorial service.

(14) I will set up with Dryer Funeral Home a prepaid cremation, NO viewing[.] Have a memorial service within [one] month and a luncheon for my family + friends, you can have a memorial service + luncheon at the house if you want to, put up a good spread of food + booze, keep at least $500 for up north service[.] When you throw ashes in river have a party. I am not religious so do not have a preacher, kids can say something like they did at gram['s] funeral.

(15) April to get the house, split up contest [sic]. Among kids except for personal thing [sic]. Like furniture to designated people[.] I will make a list.

Pages 9 through 12 were the May 2015 notes decedent wrote during or after his meeting with Caruso.

Courtnie filed a competing petition for probate and sought appointment as personal representative. Courtnie attached the unsigned will to the petition and requested it be admitted to probate as decedent's will. Michael objected, arguing seven years had passed and decedent never executed the proffered documents nor did he ever contact Caruso about executing them. Michael asserted the relationship between decedent and his step-family had soured in the years since Debora's death, exacerbated by decedent's new girlfriend, Michele Wharton ("Michele"). Decedent "made it known" if Michele continued to be excluded, decedent no longer wished to associate with his step-family.

B. BENCH TRIAL

Michael and Courtnie filed trial briefs. Michael argued the unsigned estate planning documents, including the unsigned will in list-form, were "mere drafts" that decedent did not intend to become his will, and the only people able to testify decedent ever mentioned having a will were members of his step-family who stood to inherit if the documents were probated as decedent's will. Michael argued the notes were unreliable because they were not dated or signed, and the handwriting was not verified by an expert as belonging to decedent. Courtnie argued

testimony would prove decedent "believed his estate plan was secure, and that he was leaving his property to [his step-family]." Courtnie argued "the face of the documents and supporting evidence demonstrate clear and convincing evidence that the documents reflect [decedent]'s wishes and should be considered his will pursuant to MCL 700.2503."

At trial, Caruso testified her notes reflected decedent "knew he had a brother and was opting to exclude him." Linda Turman ("Linda"), also testified she was great friends with decedent for over 45 years, and decedent considered his step-family to be his family. In contrast, Linda believed there was conflict between decedent and Michael. Linda testified decedent never wanted to discuss Michael, and became tense at the mention of him. Decedent told Linda he was worried his step-family would not "take" him dating Michele very well because it was soon after Debora passed. Decedent told Linda he visited an attorney and his estate was "all in order and it was just going to April and the kids."

Greg McKenzie ("Greg") testified he and decedent were best friends for 20 years, describing decedent's relationship with his step-family as "excellent" and decedent was always talking about all the activities and holidays they spent together. Greg discussed with decedent if he planned on leaving anything to Michael when he passed. Decedent said no, but clarified he "might leave [Michael] an old rifle that [their] dad gave [decedent] that [Michael] wanted." Greg estimated that in 2019, decedent asked Greg if he had his estate in order, telling Greg he "went to a lawyer, woman lawyer in town and got a will made." Decedent told Greg he was leaving the house to April and "everything" to his "grandchildren and his daughter." Greg believed Courtnie was to be in charge of the estate.

Courtnie testified that after Debora passed, decedent had a conversation with Courtnie, Chrissy, Candice, and Destiney regarding his estate plan. Decedent stated the money in his bank account was for all of the grandchildren for their education. Decedent told Courtnie she needed to prepare to be in charge of these things. April would get the house, but not any money because decedent was splitting his money 70% to the step-grandchildren and 30% for the step-great-grandchildren. Decedent warned them to behave on the "up north property," (the property) because he was leaving it to them. Courtnie never saw decedent's will, but decedent showed her where it was located in a manila folder in a box in Debora's "computer room."

Decedent was diagnosed with cancer at some point after 2019. At that time, decedent told Courtnie he wanted a living room chair to go to Michele on his passing. Courtnie joked: "[Y]ou better have a will." Decedent responded: "[Y]ou know, I do, and you know where it is[.]" Courtnie recalled her last conversation with decedent regarding his estate plan was about July 2022. Courtnie wanted a toilet installed in the property and decedent said she would be able to do so with the money she received on his passing.

Courtnie asserted she and her family had a "great relationship" with decedent and Courtnie "never used the word 'step grandpa' ever in [her] life." The entire family got together at least once a month to celebrate a family member's birthday and they celebrated every holiday together at April's house. Decedent picked Courtnie's daughter up at least once a week for ice cream from 2015, until his passing. Courtnie reiterated she was close with decedent her entire life and there "was never an issue between my grandpa and us, ever."

Destiney testified decedent took on a "very much male figure" role in her life after her father passed away, and he was "very involved" in her life and the lives of her children. After Debora passed, decedent told Destiney he was meeting with a lawyer "to get everything in order because he didn't want [them] to have to go through what he was going through with [Debora's estate]." Destiney testified she had multiple conversations with decedent over the years and decedent was consistent in stating the house was going to April and his money would be divided between the step-grandchildren and step-great-grandchildren. Decedent told Destiney his estate documents were located in Debora's "computer room." Decedent stated his will was "finalized[.]" A receipt was located after decedent's passing with the documents showing decedent paid for his will to be finalized. Destiney opined there might be a signed copy of the will in decedent's locked gun closet because it was unlike decedent to pay to execute a will and fail to do so. Decedent was "very thorough" and Destiney believed decedent thought his will "was in order and settled[.]"

April testified decedent always introduced her as his daughter and treated her as such. The relationship between April and decedent did not change after Debora's passing. Decedent "was there for every event, every birthday, every holiday. He was involved in all of our lives." In February 2016, decedent told April he wanted the house to go to her on his passing and the property to go to his step-grandchildren. April acknowledged decedent never specifically told her he had a will, but told April on multiple occasions his estate plans were "taken care of" and "[e]verything was handled with the funeral home." Courtnie contacted the funeral home upon decedent's passing and delivered his eulogy.

Chrissy and Candice testified their relationship with decedent did not change after Debora's passing and they remained close with him until his death. Candice explained her son had cancer in the past year and was receiving treatment at the same time as decedent. Decedent texted or called Candice almost every day to check in on her son's treatment and let her know decedent loved them. Amanda testified decedent was a "father figure" for her because of her own father's passing. Amanda and decedent met for lunch at the same restaurant on a monthly basis. Courtnie, Destiney, April, Chrissy, and Candice all presented photographs to the trial court of themselves and their children with decedent and Michele throughout the years after Debora passed.

Michele lived with decedent for the last two years of his life. Michele characterized her relationship with decedent's step-family as "[mostly] good" but stated April would not speak to her. Michele acknowledged she stated in her affidavit: "The complete lack of communication between April and I created considerable tension between [decedent] and April and their own relationship, which continued to deteriorate over time." Michele did not attend holidays with decedent at April's house because she was not invited. Michele attended holiday gatherings with decedent's other family, including Michael, and explained decedent would spend "an hour or two" at April's house before meeting Michele.

Michele characterized decedent's relationship with Michael as "good." Decedent told Michele he had met with a lawyer in 2015, and "put Courtnie on his checking account and [Courtnie] on the safety [sic] deposit box." Michele asserted about three weeks before decedent passed, he "just looked at [her] and said I did not finish my will." Michele contacted Courtnie, but not Michael, the day of decedent's passing. Michele did not know why she did not contact Michael.

Michael testified he and decedent were "very close." Michael asserted he visited decedent "[p]robably once a week" and "talked to him once a week" on the phone.

After listening to two full days of testimony from decedent's family members, the trial court found "by clear and convincing evidence, [the list[3] is] in fact a writing reference[d] in [MCL 700.2503], a writing that [decedent] intended to be his [will]." The trial court explained in making the decision, it went "back and forth." The trial court reiterated that several witnesses testified that decedent told them many times over the years that April was getting the house, Courtnie was going to be in charge of the estate, and the step-grandchildren were getting the property, among other things. The trial court "found their testimony very credible[,]" and noted the testimony, the handwritten notes, and the estate planning documents were "all consistent." The trial court acknowledged the list did not "get rid of everything" but found when decedent told Michele his will was not finished, he was referring to the fact the list did not dispose of all his personal property. The trial court held the list was "clearly all one document, clearly intended to be read after [decedent] died." The trial court entered an order admitting the list for probate as decedent's will under MCL 700.2503. This appeal followed.

II. THE TRIAL COURT DID NOT ERR IN CONCLUDING THERE WAS CLEAR AND CONVINCING EVIDENCE THAT DECEDENT INTENDED THE LIST TO CONSTITUTE HIS WILL

Michael contends on appeal that Courtnie did not prove by clear and convincing evidence that decedent intended the unsigned list to constitute his will and the trial court erred in admitting the list to probate. We disagree.

A. STANDARDS OF REVIEW

Appeals from a probate court decision are reviewed on the record, not de novo. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). The standard of review of findings of fact made by a probate court sitting without a jury is whether those findings are clearly erroneous. *In re Bennett Estate*, 255 Mich App 545, 549; 662 NW2d 772 (2003). A finding is clearly erroneous when "a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *Id*. The reviewing court will defer to the probate court on matters of credibility, and will give broad deference to findings of fact made by the probate court because of the probate court's unique vantage point regarding witnesses, their testimony, and other influencing factors not readily ascertainable to the reviewing court. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCR 2.613(C).

"This Court reviews de novo the proper interpretation of statutes. . . ." *In re Reisman Estate*, 266 Mich App 522, 526; 702 NW2d 658 (2005). Likewise, we review de novo the language

[3] Referring to the unsigned will—the handwritten document containing a list of 15 items on pages 7 and 8 of the unsigned estate planning documents that Courtnie submitted to probate court as decedent's will.

used in wills and the probate court's construction of a will. *Id.*; *In re Raymond Estate*, 483 Mich 48, 53; 764 NW2d 1 (2009).

B. ANALYSIS

This is a contested will case wherein "the proponent of a will bears the burden of establishing prima facie proof of due execution." *In re Estate of Horton*, 325 Mich App 325, 330; 925 NW2d 207 (2018) (quotation marks omitted); see also MCL 700.3407(1)(b). It is undisputed the list is not a formal will under MCL 700.2502 because it was not executed.[4] However, MCL 700.2503 states:

> Although a document or writing added upon a document was not executed in compliance with section 2502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute . . . [t]he decedent's will. [MCL 700.2503(a).]

"Under MCL 700.2503, any document or writing can constitute a valid will provided that the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute the decedent's will." *In re Estate of Horton*, 325 Mich App at 332 (quotation marks omitted); MCL 700.3407(1)(b). In other words, the document or writing must "evince testamentary intent, meaning that it must operate to transfer property only upon and by reason of the death of the maker[.]" *Id.* (quotation marks and citation omitted). "Moreover, the document must be final in nature; that is, [m]ere drafts or a mere unexecuted intention to leave by will is of no effect." *Id.* (quotation marks and citation omitted).

> Evidence is clear and convincing when:
>
> it produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the fact-finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. Evidence may be

[4] According to MCL 700.2502(1), for a will to be valid, it must be:

> (a) In writing.
>
> (b) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.
>
> (c) Signed by at least 2 individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will as described in subdivision (b) or the testator's acknowledgment of that signature or acknowledgment of the will. [MCL 700.2502(1) (footnotes omitted).]

> uncontroverted, and yet not be clear and convincing. Conversely, evidence may be clear and convincing despite the fact that it has been contradicted. [*In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (quotation marks and citation omitted).]

Michael argues the trial court erred in concluding Courtnie presented clear and convincing evidence that decedent intended the list to constitute his will because it is a "mere draft" of a to-do list and not a final testamentary document. Michael asserts decedent did not intend the list to be his will because the list is unsigned, undated, untitled, does not dispose of all of decedent's assets, and does not nominate a personal representative. Michael further argues the testimony at trial did not amount to clear and convincing evidence that decedent intended the list to constitute his will because it indicated no one besides Courtnie specifically heard decedent say he had a will.

In this case, the list divided up decedent's bank accounts and disposed of the house, the property, and various items of personal property. Decedent gave explicit instructions for his cremation, funeral, spreading of his ashes, and celebration of life. Decedent explained he would prepay for his cremation and identified from which bank account to remove the funds. Decedent specifically documented how he wanted his remains handled and property divided posthumously. It is a reasonable inference that decedent wrote the list in contemplation of his death and intended the items in the list to govern after his passing. See *In re Estate of Horton*, 325 Mich App at 334 ("Ultimately, in deciding whether a person intends a document to constitute a will, the question is whether the person intended the document to govern the posthumous distribution of his or her property.").

The statutory provisions in the Estates and Protected Individuals Code ("EPIC"), MCL 700.1101 *et seq*., "must be liberally construed and applied to promote its underlying purposes and policies . . . including to discover and make effective a decedent's intent in distribution of the decedent's property[.]" *In re Estate of Horton*, 325 Mich App at 330 (quotation marks omitted); see also MCL 700.1201(b). "In considering the decedent's intent, 'EPIC permits the admission of extrinsic evidence in order to determine whether the decedent intended a document to constitute his or her will.' " *In re Estate of Horton*, 325 Mich App at 332; *In re Attia Estate*, 317 Mich App 705, 709; 895 NW2d 564 (2016); see also MCL 700.2502(3). Here, the trial court considered the testimony of numerous witnesses along with the unsigned estate planning documents. Decedent's friends and step-family members testified decedent repeatedly told them that he had met with a lawyer and his affairs were in order. Testimony was consistent that decedent intended for the house to go to April, Courtnie to be in charge of distribution, and the property and money to be split among the step-grandchildren and step-great-grandchildren. While Courtnie was the only one with whom decedent specifically used the word "will," he also physically showed her where it was located in a box in Debora's "computer room." Upon decedent's death, the list was located along with a packet of documents reinforcing decedent's purported testamentary wishes inside the identified box.

Michael does not argue the list fails to accurately portray decedent's testamentary intentions, only that Courtnie failed to meet the required clear and convincing evidence standard. Michael refers to Michele's testimony stating decedent told her three weeks before his passing that he did not finish his will, and argues the "mere possibility [decedent] did not believe that he finished his will should have caused the [t]rial [c]ourt enough concern to justify a finding that [decedent] died intestate." Michael references Destiney's indication regarding the existence of a

possible signed will in decedent's locked gun closet, and testimony that it was unlike decedent to fail to sign his will, as support for this argument. Michael states because Courtnie is "one of the people who stood to inherit everything if [the list] was admitted, she unsurprisingly testified that [decedent] confirmed to her that he had a will and told her where the will was stored." Not only is this not relevant to our analysis on appeal, as we are deferential to the credibility findings of the trial court, but Michael fails to acknowledge a similar problem arises because Michael is the primary beneficiary if decedent is determined to have died intestate. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993) ("The reviewing court will defer to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court.").

The trial court found the testimony of decedent's friends and step-family to be credible and consistent with decedent's testamentary intentions in accordance with the packet of documents submitted. The trial court found decedent "told everybody what he wanted, he wrote down what he wanted. The lawyer put into writing what he wanted. It's all consistent." Although parts of the list could be construed as a "to-do list" or as edits to the estate planning documents, testimony consistently indicates decedent thought his affairs were in order. The trial court found the list was in decedent's handwriting and was "the document that [decedent] intended, as he told Courtnie, to control the disposition of his assets after his death." Considering all of the evidence, we hold that the trial court did not err in finding by clear and convincing evidence that decedent intended the list to constitute his will. Any conflicting evidence is not sufficiently strong to leave us with a definite and firm conviction that a mistake has been made. See also *In re Granville Estate*, 345 Mich 495, 499; 76 NW2d 827 (1956) ("The trial judge who heard the witnesses as trier of the facts is better able to judge of their credibility and the weight to be accorded their testimony, and we do not reverse unless the evidence clearly preponderates in the opposite direction.").

III. CONCLUSION

The trial court did not clearly err by concluding Courtnie presented clear and convincing evidence decedent intended the list to constitute his will. Accordingly, the trial court did not err by admitting the list to probate as decedent's will.

Affirmed.

/s/ Adrienne N. Young
/s/ Kristina Robinson Garrett
/s/ Randy J. Wallace

EXHIBIT 3

1) COURTNIES NAME CORRECT SPELLING (LAST NAME)
2) DEED I.D.# FOR McKINLEY (TO GRANDKIDS)
3) BANK ACC# I NEED TO PUT COURTNIES NAME ON
4) PNC BANK ACC.# FOR SCHOOL TRUST USE BY 21 OR DIVIDEUP BETWEEN GRANDKIDS WHEN AUTUMN TURNS 25
COURTNIE - DONE
CHRISSY - DONE
CANDICE - IN PROCESS
DESTINEY - SELL GRAMS CAR AND PAY HER $2,250
AMANDA. - SHE IS 12 YRS
ALYASSA - SHE IS 9 YRS
AUTUMN - SHE IS 7 YRS
* NEED BENF. FORM FROM PNC.
THERE IS $10,000 WORTH OF GE STOCK.
AS OF NOW IN ACC#

5. SAFE IN HOUSE COMBO #

6. SAFETY DEPOSIT BOX KEY ? NEED COURTNIE TO CO SIGN

7. ALL MONEY IN HOUSE SAFE + SAFETY BOX [redacted] GOES TO MILEY

8 MILEY IS TO GET $500 DOLLAR BILL (WORTH $750.00) AND EISINHOWER DOLLAR COINS ABOUT $1 TO [redacted] AND ALL MONEY + COINS IN SAFE + SECURITY BOX, ALSO SHE GETS THE SAFE IN HOUSE TO STORE THIS MONEY

9. I NEED TO SELL LAKEWOOD SHORES PROPERTY

10) MY IRA DIVIDE BETWEEN GRANDKIDS
NEED BENF. FORM FOR COURTNIE
70% TO GRANDKIDS + 30% TO GREAT GRANDKIDS
MUST BE 25 YRS OLD TO GET MONEY

11. NEED TAX I.D.# FOR HOUSE + McKINLEY + LAKEWOOD SHORES PROPERTY

12. DEBS DEATH CERT.

13 I AM TO BE CREMATED, HALF OF MY ASHES ON TOP OF DEB + HALF DUMP IN THE RIVER NEXT FLOAT TRIP DOWN THE RIVER, TAKE $2,000.00 FROM SAVINGS ACC TO PAY FOR (UP NORTH PARTY), AND THE LUNCHEON AT MY MEMERIOL SERVICE

14 I WILL SET UP WITH DRYER FUNERAL HOME A PREPAID CREMATION, NO VIEWING HAVE A MEMORIAL SERVICE WITHIN 1 MONTH AND A LUNCHEON FOR MY FAMILY + FRIENDS, YOU CAN HAVE MEMORIAL SERVICE + LUNCHEON AT THE HOUSE ~~[illegible]~~ IF YOU WANT TO, PUT UP A GOOD SPREAD OF FOOD + BOOZE, KEEP AT LEAST $500 FOR UP NORTH SERVICE WHEN YOU THROW ASHES IN RIVER HAVE A PARTY. I AM NOT RELIGOUS SO DO NOT HAVE A PREACHER, KIDS CAN SAY SOMETHING LIKE THEY DID AT GRAMS FUNERAL

15 APRIL TO GET THE HOUSE, SPLIT UP CONTEST AMOUNG KIDS EXCEPT FOR ~~[illegible]~~ PERSONAL THING LIKE FURNITRE TO DESIGNATED PEOPLE I WILL MAKE A LIST.