

ANSWER TO QUESTION NO. 10

Pursuant to Michigan law, MCL 700.2502(1), a will is only valid if it is (1) in writing; (2) signed by the testator and (3) signed by at least 2 individuals who witnessed the testator's signature. Here, Dennis Dwayne's will was in writing, and signed by Dwayne, but it was only witnessed by one witness, Jean. Because the will was only signed by one witness, the document does not qualify as a valid will.

While a holographic will does not need to be witnessed, MCL 700.2502(2), it must be dated, signed by the testator, and the material portions of the will must be in the testator's handwriting. Here, the facts indicate that the will was created and printed on a computer. Because the material portions of the will were not in the testator's handwriting, the document fails as a holographic will.

It is irrelevant that Jean, an interested party, witnessed the will. The signing of a will by an interested witness does not invalidate the will. MCL 700.2505(2).

Jean will argue the validity of the will despite its noncompliance with the precise requirements of MCL 700.2502 because MCL 700.2503 provides that a testamentary document will be treated as if it is in compliance with the law if the proponent of the will (in this case, Jean) establishes by clear and convincing evidence that the decedent intended the document to constitute his will. If Jean's argument is successful, the will of Dennis Dwayne will be upheld as valid, and Jean will take 50% of Dennis' estate.

However, Michigan has an elective share statute, designed to protect spouses against disinheritance. Under MCL 700.2202(2), Barbie may choose to (1) abide by the terms of the will; (2) take her dower right of a 1/3 life estate in all land owned by Dennis at any time during the marriage, MCL 558.1; or (3) take 1/2 of the amount she would have received had Dennis died intestate (discussed below), reduced by 1/2 of the value of all property Barbie received from Dennis by any means other than testate or intestate succession. This includes jointly held bank accounts, life insurance proceeds, and large transfers made within 2 years before the decedent's death. MCL 700.2202(7).

In addition to the elective share statute, Barbie is entitled to a homestead allowance of at least \$15,000, MCL 700.2402, an

exempt property allowance of at least \$10,000, MCL 700.2404, and a reasonable family allowance, MCL 700.2403. The family allowance may be paid as a lump sum of \$18,000, MCL 700.2405(2). All of the allowances are adjusted annually for inflation, MCL 700.1210, and have priority over all claims against the estate except for administration costs and reasonable funeral and burial expenses. \$2402; \$2403(2); and \$2404(2). Thus, Jean's 50% share of Dennis' estate is reduced by Barbie's elective share, as well as the statutory allowances.

Barbie will argue that Dennis' will is invalid because it neither qualifies as a will nor a holographic will, for the reasons discussed above. Further, Barbie will argue that Jean failed to prove by clear and convincing evidence that Dennis intended the document to constitute his will.

In the event that Barbie's arguments are successful, then Dennis will have died intestate. As a surviving spouse with shared descendants, Barbie will take the first \$150,000, plus 1/2 of the remainder of the estate. MCL 700.2102. The minimum amount is adjusted annually for inflation. MCL 700.1210.

The remainder of Dennis' estate goes to his descendants by representation. MCL 700.2103(a). Ronnie and Paulie, as children of Dennis, will clearly take a portion of the estate. Kathleen, as a stepchild, will be unable to take a portion of Dennis' estate because a stepchild is specifically excluded as a child entitled to take by intestate succession. MCL 700.1103(f).

Lastly, the unborn baby (Dale) will most likely take a portion of Dennis' estate. A child conceived by a married woman with the consent of her husband using reproductive technology is considered to be the couple's child for the purposes of intestate succession. While Dennis was unaware that Barbie had a frozen embryo implanted in October 2009, his consent to the child's conception is presumed unless the contrary is shown by clear and convincing evidence. MCL 700.2114(1)(a). Here, the facts indicate that the couple planned to have more children before Dennis received his diagnosis. However, a contrary argument could be made that Dennis could not have consented to the conception of the child where he was unaware of the implantation procedure that occurred in October.

While baby Dale was not alive at the time his father died, he is treated as though he were living for the purposes of intestate succession if Dale survives for 120 hours (5 days) after his birth. MCL 700.2108.