

PROBATE COURT OF STARK COUNTY, OHIO JUDGE CURT
WERREN

IN THE MATTER OF: LINDA R. KELLY

CASE NO. 252541

JUL 03 2025

MAGISTRATE'S DECISION AND ORDER

STARK COUNTY
PROBATE COURT

Pursuant to a prior order referring the above entitled proceeding to me for hearing, I proceeded under the provisions of Civil Rule 53 to hear and examine such proceeding and respectfully submit the following decision and order thereon.

This matter was heard on Jun 25, 2025 upon the
APPLICATION TO TREAT DOCUMENT AS WILL NOTWITHSTANDING NONCOMPLIANCE,

Appearances were made by:
THOMAS KELLY AND KARA DODSON AND JUDITH HARPER

A copy of the magistrate's decision and order was filed on the above stamped date with the Court and copies were mailed or personally served to the parties and/or their attorneys of record.
Findings of fact and the decision and order are as stated in the attachments hereto.

NOTICE TO ATTORNEYS AND PARTIES

Civil Rule 53(D)(3) and (4) provides as follows: A party may, within fourteen (14) days of the filing of the decision, serve and file written objections to the decision. If objections are timely served and filed by the party, any other party may serve and file objections within ten (10) days of the date on which the first objections were filed, or within the time otherwise prescribed by this rule, whichever period last expires. Such objections shall be considered a motion. Objections shall be specific and state with particularity the grounds therefor. Upon consideration of the objections the Court may adopt, reject or modify the decision; hear additional evidence; recommit the matter to the magistrate with instructions; or hear the matter itself.

Civil Rule 53(D)(4)(e) provides as follows: Permanent and interim orders. The court may adopt a decision and enter judgment without waiting for timely objections by the parties, but the filing of timely written objections shall operate as an automatic stay of execution of that judgment until the court disposes of those objections and thereby vacates, modifies, or adheres to the judgment previously entered. The court may make an interim order on the basis of a decision without waiting for or ruling on timely objections by the parties where immediate relief is justified. An interim order shall not be subject to the automatic stay caused by the filing of timely objections. An interim order shall not extend more than twenty-eight days from the date of its entry unless, within that time and for good cause shown, the court extends the interim order for an additional twenty-eight days.

These and all other provisions of the Ohio Rules of Civil Procedure must be in compliance or objections will be overruled.

Submitted by: , Magistrate

Tape index number: 250625-5674

CASE NO. 252541

FINDINGS OF FACT AND CONCLUSIONS OF LAW

SEE ATTACHMENT A

MAGISTRATE'S DECISION AND ORDER

SEE ATTACHMENT A

[X] That pursuant to Civil Rule 53(D)(4)(e)(ii), based on the decision immediate relief is justified in this case for this recommendation to take effect forthwith as an interim order.

Dated: Jul 3, 2025

MAGISTRATE


Tim Jeffries

ATTACHMENT “A”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court on the Application to Treat Document as Will Notwithstanding Noncompliance, filed on May 22, 2025.

The Decedent, Linda Kelly, died on January 25, 2025, survived by her spouse Terry Kelly, and her son Thomas Kelly, the natural child of Linda and Terry.

The document submitted for probate is handwritten, dated January 20, 2025, and signed by Linda Kelly, Terry Kelly, and Thomas Kelly, and notarized by Judith Harper. The document does not include the attestation clause required by R.C. 2107.03, indicating that it was “subscribed in the conscious presence of the testator and two witnesses.” It also purports to be a joint will of both Linda and Terry Kelly, contains only one bequest—the couple’s home to Thomas Kelly—and does not contain a residuary clause.

On May 30, 2025, this Court issued an Interlocutory Entry denying the admission of the document to probate and scheduled a hearing on the matter.

At the hearing, testimony was taken from Judith Harper and Thomas Kelly, and attorney Kara Dodson made argument to the Court.

Ms. Harper, a secretary at Aultman Hospital, testified that she was asked by Thomas Kelly to notarize the purported will. She inquired of Linda Kelly whether she understood the document to be her will and, upon satisfying herself that Linda did so, proceeded to notarize it. She further testified that she witnessed the signing of the document by Linda, Terry, and Thomas Kelly and that all were present together in the same room and in each other’s conscious presence at the time of signing.

Thomas Kelly testified that he drafted the document at Linda Kelly’s direction. He stated that while his father, Terry Kelly, was in the early stages of dementia at the time, both parents understood what they were signing. He acknowledged that Terry Kelly’s dementia has since advanced significantly. However, Attorney Dodson reported to the Court that Thomas Kelly had no recollection of the events of the signing day in a subsequent conversation.

Based on the testimony presented, the Court finds that the applicant has established the following by clear and convincing evidence:

1. Thomas Kelly prepared the document at the direction of the decedent.
2. The decedent, Linda Kelly, signed the document and intended it to serve as her will.
3. The document was signed in the conscious presence of Thomas Kelly, Terry Kelly, and Judith Harper.

Further, the Court finds, pursuant to RC 2106.08, that due to the current mental condition of Terry Kelly, as testified to by Thomas Kelly and explained by Attorney Dodson, Terry Kelly is unable to make his elections as set forth in RC 2106.01.

MAGISTRATE'S DECISION AND ORDER

1. The Applicant has established that the document attached to the application and identified as Exhibit 1 does not comply with the formal requirements of R.C. 2107.03, but the conditions of R.C. 2107.24 for treating a document as a will notwithstanding noncompliance have been sufficiently met and that the document dated January 20, 2025, shall be treated as the Last Will and Testament of Linda Kelly and admitted to probate.

2. The Court shall appoint by separate entry a suitable person to make an investigation and report to the Court as provided for under RC 2106.08.

JUDGE CURT
WERREN

JUN 25 2025

STARK COUNTY
PROBATE COURT

252541

T LINDA R. KELLY, TERRY L. KELLY BEING OF
SOUND MIND AND BODY, REVOKES ANY
PREVIOUS WILLS, NOT ACTING UNDER
DURESS AND FULLY UNDERSTANDS THE
NATURE OF THIS WILL. DO ATTEST THAT
THE REAL ESTATE AT 7907 COLUMBUS RD.
LOUISVILLE OHIO 44641 AND ALL PROPERTY
WITHIN BE WILLED TO OUR SON
(THOMAS DAVID KELLY)

(SON) x *Thomas D. Kelly*

(MOTHER) x *Linda R Kelly*

J.H. (FATHER) x *Terry L Kelly*
1-20-24 25 Notary - *Judith Harper*
(WITNESS) x *Judith Harper*

Judith Harper
Notary Public, State of Ohio
My Commission Expires
January 26, 2025

