IN THE SUPREME COURT OF GUAM

IN THE MATTER OF THE ESTATE OF PURANCHAND DHALUMAL HEMLANI, AKA P.D. HEMLANI, Deceased,

By

RADHI P. HEMLANI,
Petitioner-Appellee,

JACK P. HEMLANI,
Contestant-Appellant.

Supreme Court Case No.: CVA06-010
Superior Court Case No.: PR0074-04

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on May 2, 2007
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; and RAMONA V. MANGLONA, Justice *Pro Tempore*.[1]

TORRES, J.:

[1] Contestant-Appellant Jack Hemlani appeals from a Superior Court Findings of Fact and Conclusions of Law, which denied his will contest and ordered the admission to probate of the Last Will and Testament of his father, Puranchand Dhalumal Hemlani, aka P.D. Hemlani.

[2] On appeal, Jack argues that the will, dated December 20, 2003, was not executed in compliance with the statutory formalities required for witnessed wills set forth in 15 GCA § 201. More specifically, Jack argues that the will was not subscribed or acknowledged in compliance with section 201(c) because P.D. did not declare to the attesting witnesses that the instrument was his will, and was not executed in compliance with section 201(d) because P.D. never requested that the witnesses sign the will in P.D.'s presence. He further argues that the probate court erred by applying a presumption of due execution which has not been recognized by Guam law. Jack also asserts the probate court erred by applying a test of substantial compliance when the Guam statute should be construed to require strict compliance with statutory formalities for the execution of witnessed wills. Finally, Jack contends that the probate court erroneously considered evidence of P.D.'s execution of prior wills in determining whether the instant will was duly executed.

[3] The probate court's findings involving the execution and attestation of P.D.'s will are supported by substantial evidence. Consequently, we affirm.

[1] After oral argument in this matter, but prior to the issuance of this opinion, Justice Robert J. Torres was sworn in as Chief Justice and Justice F. Philip Carbullido assumed the role of Associate Justice.

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] P.D. Hemlani died testate on March 12, 2004. In his Last Will and Testament, dated December 20, 2003, P.D. named his widow, Radhi Hemlani, as the sole beneficiary of his estate. Jack was expressly disinherited under the will.

[5] Radhi filed a petition to admit P.D.'s will into probate, which Jack contested. In his contest, Jack alleged that at the time of the execution of P.D.'s will, P.D. was not of sound and disposing mind. Jack also alleged that P.D.'s will was made in direct result of duress, menace, fraud, and undue influence. After a bench trial, the probate court issued its Findings of Fact and Conclusions of Law, which denied Jack's objections and ordered that the will be admitted to probate. Jack timely filed a Notice of Appeal. Appellant's Excerpts of Record ("ER"), tab 7 (Finds. Fact & Concl. L., Aug. 1, 2006).

II. JURISDICTION

[6] This court has jurisdiction pursuant to Guam's Organic Act over an appeal of any cause in Guam decided by the Superior Court of Guam or other courts established under the laws of Guam. 48 U.S.C. § 1424-1(a)(2) (Westlaw (2008)). Title 15 GCA § 3433 establishes this court's jurisdiction over an appeal from an order admitting a will to probate. P.D.'s will was ordered admitted to probate by a separate order filed on September 11, 2006. Appellee's Supplemental Excerpts of Record ("SER"), tab 3 at 1 (Order for Probate and Appointment of Executrix, Sept. 8, 2008). However, rather than waiting to appeal this order, Jack filed a Notice of Appeal on August 31, purporting to appeal Findings of Fact and Conclusions of Law that had already been issued by the probate court.

[7] Under the Guam Rules of Appellate Procedure, a notice of appeal "shall designate the judgment, order, or part thereof appealed from." Guam R. App. P. ("GRAP") 3(c)(1)(B)

(2007).[2] Although this rule does not expressly authorize appeal from Findings of Fact or Conclusions of Law, in this case, on the last page of the Findings of Fact and Conclusions of Law, the judge announced that "P.D. Hemlani's Will of December 20, 2003, is admitted to probate." ER, tab ER7 at 17 (Finds. Fact & Concl. L., Aug.-1, 2006).

[8] GRAP Rule 4(a)(2) provides that this court shall treat a notice of appeal filed after the announcement of decision, sentence or order, but before entry of the judgment or order, as being filed after such entry and on the date thereof. We have stated in *dicta* that, by implication, a notice of appeal filed during the period between announcement of a decision and a final judgment must be read to refer to the judgment, following federal precedent involving a substantially similar rule of appellate procedure, Federal Rules of Appellate Procedure Rule 4(a)(2). *Sananap v. Cyfred, Ltd.*, 2008 Guam 10 ¶ 8 (citing *Firstier Mortgage Co. v. Investors Mortgage Ins. Co.*, 498 U.S. 269, 275 (1991)). (Federal Rule 4(a)(2) "permits a premature notice of appeal from that bench ruling to relate forward to judgment and serve as an effective notice of appeal *from the final judgment*." (emphasis in original)).

[9] We will permit Jack's premature notice of appeal from the Findings of Fact and Conclusions of Law to relate forward to the order of September 8, 2006 that specifically admitted the will to probate. Because Jack's notice of appeal of the Findings of Fact and Conclusions of Law serves as an effective notice of appeal from the order admitting the will to probate, we assert jurisdiction pursuant to 15 GCA § 3433.

[2] The Guam Rules of Appellate Procedure were amended February 21, 2007, subsequent to Jack's filing of his notice of appeal. We apply the new rules here, the relevant portions of which are substantially unchanged, because the new rules apply to all cases commenced prior to the effective date of the new rules and still pending, except to the extent that the application of the new rules to those pending cases would not be feasible, or would work injustice. *Re: Adoption of the Guam Rules of Appellate Procedure*, PRM07-003 (Promulgation Order No. 07-003-01, Feb. 21, 2007).

III. STANDARD OF REVIEW

[10] Issues of statutory interpretation are afforded *de novo* review. *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 16 (citing *Ada v. Guam Tel. Auth.*, 1999 Guam 10 ¶ 10). Whether or not a will has been executed in accordance with the statutory requirements is a question of fact and the trial court's determination on that issue will not be reversed on appeal if there is any substantial evidence to sustain it. *In re Fletcher's Estate*, 325 P.2d 103, 105 (Cal. 1958). "Substantial evidence is relevant evidence that a reasonable person may accept as sufficient to support a conclusion, even if inconsistent conclusions may be drawn from the evidence." *B.M. Co. v. Avery*, 2002 Guam 19 ¶ 13 (citing *Leon Guerrero v. DLB Constr. Co.*, 1999 Guam 9 ¶ 20).

IV. DISCUSSION

[11] On appeal, Jack alleges several errors in the lower court's decision admitting the instant will to probate. We examine each of the issues in turn.

A. Statutory Formalities of Guam Probate Code section 201

[12] Title 15 GCA § 201 prescribes the formalities necessary for the proper execution of a will. It provides that every will must be in writing and every will, other than a holographic will, must be executed and attested pursuant to formalities, listed in subsections (a) through (d). Subsections (a) and (b) involve conditions on the subscription of the testator's name to the will, and are not disputed on appeal.[3] Subsections (c) and (d) provide the following:

[3] Subsections (a) and (b) of 15 GCA § 201 provide:

> (a) It must be subscribed at the end thereof by the testator himself, or it must be subscribed by some person in the testator's presence and by the testator's direction. A person who subscribes the testator's name, by the testator's direction, should write his own name as a witness to the will, but a failure to do so will not affect the validity of the will.
>
> (b) The subscription must be made, or the testator must acknowledge it to have been made by the testator or by the testator's authority, in the presence of both of the attesting witnesses, present at the same time.

15 GCA § 201 (2005).

> (c) The testator, at the time of subscribing or acknowledging the instrument, must declare to the attesting witnesses that it is his will.
>
> (d) There must be at least two (2) attesting witnesses, each of whom must sign the instrument as a witness, at the end of the will, at the testator's request and in the testator's presence. The witnesses should give their places of residence, but a failure to do so will not affect the validity of the will.

15 GCA § 201 (2005).

[13] At trial, Jack argued that the formality required by subsection 201(c) (the "declaration requirement") was not met because P.D. failed to declare to the three attesting witnesses that the document they witnessed him sign on December 20, 2003, was his will. Jack also contended that the will was not duly executed under subsection 201(d) (the "request requirement") because P.D. never requested that the witnesses sign the will, nor was such request made by a third party in P.D.'s presence, and the attesting witnesses did not sign the instrument in P.D.'s presence.

[14] The probate court found instead that, based on the total circumstances, testator's conduct, and the existence of the attestation clause, the witnesses and the testator knew that the document being signed was P.D.'s will. ER, tab ER7 at 12 (Finds. Fact & Concl. Law). Further, the court found that, in P.D.'s presence, a third party, Attorney Jacques Bronze, requested the witnesses to sign the will. *Id.* at 6. Thus, the court found that the will had been duly executed pursuant to section 201's declaration and request requirements. *Id.* at 12.

[15] On appeal, Jack argues the narrowest possible interpretation of the declaration and request requirements.[4] Jack essentially believes the statute requires that a testator must make an

[4] Jack argues: "The lower court's finding that Mr. Hemlani made no declaration to the attesting witnesses is supported by the uncontroverted testimonies of Mr. Servande and Ms. Abraham. Mr. Servande testified repeatedly that, at the time of the signing of the will, Mr. Hemlani did not say anything. ER4 at 22-24, 40. Ms. Abraham similarly testified that Mr. Hemlani did not speak to her at the time of the will's execution. ER5 at 60. Based on the testimony of these witnesses, it is clear that Mr. Hemlani at no time during the time of execution of the will declared to the attesting witnesses that the instrument was his will . . . . Thus, the will was not duly executed in strict compliance with 15 GCA 201(c), and should have been denied admission to probate on this basis." -Reply Br. at 6 (Jan. 30, 2007).

express oral declaration that the instrument is his will and request the witnesses sign in the testator's presence in order to comply with the requirements of subsections 201(c) and (d).

[16] "Our duty is to interpret statutes in light of their terms and legislative intent." *People v. Flores*, 2004 Guam 18 ¶ 8, quoting *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 46 n.7. In determining whether to literally construe the terms "declare" and "request" in section 201, we look to legislative intent. In this case, California law provided the basis for the substantive changes to Guam's probate code, including section 201, enacted by the Guam Legislature in 1981. Guam Pub. L. 16-52 (Dec. 17, 1981). Therefore, we consider California case law interpreting the California statute from which our law is derived. *See People v. Hall*, 2004 Guam 12 ¶ 18; *see also In re Estate of Borja*, No. CV96-00044A, 1997 WL 208982, at *2 n.2 (D. Guam App. Div. 1997) (relying on California case law as persuasive in the interpretation of the Guam Probate Code, 15 GCA § 101 *et seq.*, because California law provided the basis for the substantive changes in the enactment of Guam's new Probate Code in 1981).

[17] The requisites of a formal or witnessed will as set forth in former California Probate Code section 50, as in our current law, are: (1) writing; (2) subscription by testator; (3) declaration by the testator; and (4) attesting witnesses who sign at testator's request and in his presence.[5] Two years after Guam's adoption of section 201, California amended its probate

[5] California Probate Code section 50, which prescribed the requirements for execution and attestation of formal wills, read as follows:

> Every will, other than a nuncupative will, must be in writing and every will, other than a holographic will and a nuncupative will, must be executed and attested as follows:
>
> . . . .
>
> (3) Testator's declaration. The testator, at the time of subscribing or acknowledging the instrument, must declare to the attesting witnesses that it is his will.
>
> (4) Attesting witnesses. There must be at least two attesting witnesses, each of whom must sign the instrument as a witness, at the end of the will, at the

code, liberalizing some of the requisite statutory formalities for wills. *See* 14 Witkin, Summary of Cal. Law (9th ed. 1990) Wills and Probate, §§ 4-5 at 39-41, quoting 16 Cal. Law Revision Com. Rep., at 2318-19. Guam at the time of recodifying this area of law never enacted California's amendments, retaining instead the earlier version, which has remained unamended to this day. Thus, California cases interpreting California's former section 50 and probate law, prior to the 1983 amendments, are persuasive authority in interpreting section 201.[6]

[18] This court acknowledges that under the California law of wills and trusts "[t]he legislative mandates are supreme, and there is no right to make testamentary disposition except upon compliance with those mandates." *In re Walker's Estate*, 42 P. 815, 816 (Cal. 1895). However, California courts have not demanded literal compliance with the statutory formalities of publication and request in order to find compliance with the legislative mandates. As early as 1908, the Supreme Court of California considered, *inter alia*, whether the declaration requirement had been met absent an express declaration. *In re Johnson's Estate*, 93 P. 1015 (Cal. 1908). In *Johnson*, the court determined "[t]here was no very satisfactory evidence that at the time of its execution the deceased made an express declaration to the subscribing witnesses that the document executed was her will, or expressly requested them to attest it." *Id.* at 1016. Nonetheless, the court found that:

> testator's request and in his presence. The witnesses should give their places of residence, but a failure to do so will not affect the validity of the will.

Estate of Mangieri, 127 Cal. Rptr. 438, 439 (Ct. App. 1976).

[6] When section 50 was first drafted by the California Code Commission and enacted by the California legislature in 1931, it was a codification and restatement of existing law. As expressed by the code's drafter, the Commission's "task was primarily the restatement of the law. Only such changes in the substance of the law have been incorporated in the Probate Code as were considered to be so plainly meritorious as to be practically non-controversial." Evans, "Comments on the Probate Code of California," 19 Cal. L. Rev. 602, 603 (1931). Thus, case law prior to section 50's adoption was not displaced by the 1931 enactment, and remains relevant.

> an express declaration and request are not absolutely necessary. It is sufficient if, at the time, she did, by words or conduct, convey to them the information that the instrument was her will, and that she desired them to attest it as witnesses.

Id.

[19] Seven years later, the Supreme Court of California again considered whether there was sufficient evidence to support a trial court's finding of due execution where it was argued that the statutory elements of declaration and request were lacking. The court found these requirements were met where, "from the whole transaction as shown by the testimony," it was "clear that all of [the witnesses and testator] understood that he was promulgating the document as his will, that he desired these persons to sign the same as witnesses, and that they were signing in compliance with his desire so manifested by his manner and actions." *In re Silva's Estate*, 145 P. 1015, 1016 (Cal. 1915). Although *Silva's Estate* was decided before the adoption of section 50 into the California probate code, this finding remained the law in later cases that directly construed section 50. *See, e.g., In re La Mont's Estate*, 248 P.2d 1, 3 (Cal. 1952); *In re Gray's Estate*, 171 P.2d 113, 115 (Cal. Dist. Ct. App. 1946).

[20] Thus, California courts have found that the declaration and request formalities need not be accomplished through express words but rather compliance may be implied from the testator's words or conduct. In addition, the declaration and request requirements may be fulfilled by a third person, so long as the declaration that the instrument is a will is made in the presence and hearing of the testator and of the witnesses, so that the witnesses may know, of their own knowledge, that the testator assented to what was said or done by the third person on his behalf. *See Hill v. Davis*, 167 P. 465, 466 (Okla. 1917), *overruled on other grounds by In re Nitey's Estate*, 53 P.2d 215 (Okla. Dec. 20, 1935). As the court explained in *In re Norswing's Estate*, the essential questions are whether the testator manifested that he knew what he was

executing, and whether the attesting witnesses understood that the testator was promulgating the instrument as his will at the time of subscribing or acknowledging it. 118 P.2d 858, 859-60 (Cal. Dist. Ct. App. 1941).

[21] The California Supreme Court, writing in 1915, expressly acknowledged that rejecting a literal interpretation of the Legislature's words is not the same as dispensing with the requirement of proof of any of the statutory requirements for the making of wills. Instead, it stated:

> [I]n determining what is required, regard should be had to the essential purpose of the various provisions, rather than to a strict and rigid reading of the words used by the Legislature. And so it has generally been held that, under statutes like ours, the declaration by the testator that the document is his will, and his request for its attestation, need not be stated in exact terms, but may be implied from his conduct and the attendant circumstances.

In re Cullberg's Estate, 146 P. 888, 890 (Cal. 1915) (citations omitted).

[22] Based on these authorities, it is apparent to us that the declaration and request statutory formalities of California's former section 50 were liberally interpreted by its courts nearly a century ago, long before California's 1983 revision of its probate code. After California codified its probate law in 1933 in section 50, courts still did not demand literal compliance with the requirements of declaration and request. *See In re Norswing's Estate*, 118 P.2d at 859-60.

B. Standard of Compliance

[23] On appeal, Jack contends that that the probate court erred in applying a standard of substantial compliance. Jack argued to the court that statutory requirements must be strictly followed in the execution of a will, while Radhi argued that substantial compliance should be favored over the technical, literal compliance with will formalities. ER, tab ER7 at 10-11 (Finds. Fact & Concl. L.). The court agreed with Radhi, that substantial compliance with will

formalities and the total circumstances should be considered in determining whether the requirements of 15 GCA § 201 have been met. ER, tab ER7 at 11-12 (Finds. Fact & Concl. L.).[7]

[24] Our review of the California probate cases that have examined the declaration and request statutory formalities reveals that the courts have only on rare occasion applied a standard of substantial compliance in determining the validity of witnessed wills.[8] *See In re La Mont's Estate*, 248 P.2d at 2-3 ("The decisive question is whether there has been substantial compliance with the requirements of subsection (4) of section 50 of the Probate Code . . . ."). Instead, California courts arguably achieved the same liberalizing effects by applying the presumption of due execution, discussed below. *See also* 14 Witkin, Summary 10th (2005) Wills, § 136 "Former Statute and Case Law," at 201. We will consider the issue of whether this jurisdiction adopts a strict versus substantial compliance standard when a case more sharply presents this question.[9] It is unnecessary to make this determination in this case because, as discussed herein,

[7] Radhi specifically contends that the trial court properly applied the standard of *substantial compliance* based on California cases dating from 1915, 1948, and 1929 illustrating that the courts have followed a nonliteral approach. Appellee's Br. at 7-9 (Jan. 16, 2007).

[8] Conversely, our examination of the cases cited by Jack in his brief to support the adoption of a strict compliance standard has revealed cases that primarily concern the subscription requirement (codified in Guam law as subsections 201 (a) and (b)). *See* Appellant's Br. at 10 (Dec. 18, 2006), citing: *In re Estate of Howell*, 324 P.2d 578, 582 (Cal. 1958); *In re Estate of Edwardson*, 8 Cal. Rptr. 889 (Dist. Ct. App. 1960); *In re Chase's Estate*, 124 P.2d 895, 897 (Cal. Dist. Ct. App. 1942); *In re Seaman's Estate*, 80 P. 700 (Cal. 1905); *In re Moore's Estate*, 206 P.2d 413 (Cal. Dist. Ct. App. 1949) (stating "[t]he sole question presented is whether or not the typed name of the testator at the end of the document constitutes his signature, there being no evidence that same was affixed by decedent himself, and no acknowledgment by him that the typed name was his signature."). One case cited in this section of Appellant's Opening Brief, *In re Krause's Estate*, 117 P.2d 1 (Cal. 1941), found a failure to meet the required formalities and to satisfy the statutory requirements where a subscribing witness gave clear, uncontradicted testimony that showed the testatrix did not sign the purported will in the presence of the attesting witnesses, and that she neither declared nor acknowledged to them that it was her will or that she had subscribed it.

[9] Substantial compliance has been described as a functional rule designed to cure the inequity caused by the "harsh and relentless formalism" of the law of wills. *See* Langbein, *Substantial Compliance with the Wills Act*, 88 Harv. L. Rev. 489 (1975); Nelson & Starck, *Formalities and Formalism: A Critical Look at the Execution of Wills*, 6 Pepp. L. Rev. 331, 356 (1979). The RESTATEMENT (THIRD) OF PROP.: WILLS AND OTHER DONATIVE TRANSFERS § 3.3, reporter's note (1999) has stated that "in the absence of a legislative corrective . . . the court should apply a rule of substantial compliance rule." Others, including the Commissioners on Uniform State Laws, have advocated legislative adoption of a harmless error provision, permitting courts to excuse noncompliance with the Wills Act in the form of innocent defects in compliance with the formalities.

we find each of the formalities has been strictly complied with, and thus do not need to consider whether and to what extent this jurisdiction will adopt either a strict or substantial compliance standard.

[25] Following the precedent of California courts that have liberally interpreted California probate law, we, too, decline to demand literal compliance with the declaration and request formalities. We instead hold that, to comply with the formalities of declaration and request, as established by statute in 15 GCA § 201(c) and (d), it is not necessary that the testator expressly declare that the document is his will nor that the witnesses sign the will at the testator's express request and in his presence. It is sufficient for the declaration and request to be implied by testator's conduct and the attendant circumstances. In addition, we hold that these requirements are met in this case where there is a declaration and request by a third party who was entrusted with the preparation of testator's will and there is evidence that the testator has acquiesced to the third party's agency.

[26] Here, the probate court did not err as a matter of law in declining Jack's invitation to demand literal compliance, instead interpreting the statutory requirements of section 201 as permitting compliance to be determined from the total circumstances.

C. Due Execution of P.D.'s Will

[27] Having determined that section 201 of Title 15 Guam Code Annotated does not demand literal compliance with the declaration and request formalities, we next consider whether P.D.'s will was duly executed in compliance with these requirements. Guam law provides that the Superior Court shall try any issue of fact involving the due execution and attestation of the will, and any other issue substantially affecting the validity of the will. 15 GCA § 1603 (2005). Because the issue of due execution is one of fact, we apply a highly deferential standard of

review: "[T]he trial court's finding . . . will not be reversed on appeal if there is any substantial evidence to sustain it." *In re Fletcher's Estate*, 325 P.2d 103, 105 (Cal. 1958).

1. Compliance with the request formality

[28] Title 15 GCA section 201(d) provides that there must be at least two attesting witnesses, each of whom must sign the instrument as a witness, at the end of the will, at the testator's request and in the testator's presence. 15 GCA § 201(d) (2005). A third person, such as the testator's attorney or legatee, may accomplish the statutory formality of requesting that the witnesses sign the will, provided this is done in the presence of the testator. *Hill v. Davis*, 167 P. at 467.[10]

[29] Jack argues that any request that the witnesses sign P.D.'s will was made by a third person outside of P.D.'s presence. Appellant's Reply Br. at 11 (Jan. 30, 2007). The probate court found otherwise. It determined that the subscribing witnesses Manases Servande ("Servande"), Anterina Abraham ("Abraham"), and Emelita Tubig ("Tubig") signed the will after Attorney Bronze asked them to do so. ER, tab ER7 at 6, (Finds. Fact & Concl. L). The court found that this request occurred when witnesses were motioned to a table in a room adjacent to P.D.'s room, where they signed the document in an area which was within sight of P.D. *Id.*.

[30] The probate court's finding that the request was made in P.D.'s presence is supported by substantial evidence. Both P.D.'s nephew, Ishwar Hemlani, aka Don, and P.D.'s attorney Jacques Bronze testified that after P.D. signed his will, Attorney Bronze gave the will to the

[10] Other jurisdictions have also held that a request by a third party to witnesses that they sign the will is sufficient to show that the testator requested the witnesses to sign the will, where it appears from the facts that the third party was authorized by the testator or where the request occurs in the testator's presence. *See, e.g., Scott v. Leonard*, 184 P.2d 138, 140 (Colo. 1947); *Dubach v. Jolly*, 117 N.E. 77, 80 (Ill. 1917); *In re Cummings' Estate*, 11 P.2d 968, 971 (Mont. 1932); *In re Christenson's Estate*, 150 N.W. 213, 216 (Minn. 1914).

three witnesses and instructed them to witness the will by signing where their names were indicated. SER, tab 1 at 19 (Bench Trial Transcript ("Tr."), Jan. 13, 2006); SER, tab 2 at 26 (Tr., Jan. 5, 2006). Attorney Bronze also testified that after P.D. signed the will, Bronze took the will to a small table right next to [P.D.'s] bed and told the witnesses that "[y]ou have to now sign the will." SER, tab 1 at 19 (Tr.). Abraham also testified to this effect, though she stated it was Don, not Attorney Bronze, who instructed her at the table to sign the will. ER, tab ER5 at 132 (Tr. (Oct. 19, 2005). Don testified that the witnesses then signed the will at a table "[j]ust a few feet away from [P.D.]." SER, tab 2 at 30 (Tr.). Abraham also testified that the witnesses signed the will at the table that was in the living room, which was still within view of P.D. ER, tab ER5 at 110 (Tr.).

[31] Jack argues that there is conflicting evidence in the record that could support a finding that the request was not made in P.D.'s presence.[11] Despite the testimony of Don and Abraham, Servande testified that after P.D. signed his will, the witnesses signing the will at the table could not see P.D. from that location, because of a partition standing between P.D.'s bed and the witnesses' table. ER, tab ER4 at 57 (Tr. at 32, Oct. 17, 2005). Jack points to this possibly contradictory testimony in urging us on appeal to overturn the probate court's implicit factual finding that the request that the witnesses sign the will was made in P.D.'s presence. However, as the California Supreme Court has stated: "[t]he law does not require that all the witnesses shall testify without conflict concerning the execution of the will, nor that at the time of the

[11] Jack mistakenly relies on *In re Krause's Estate*, 117 P. 2d 1 (Cal. 1941), to support his argument. That case held that where the attitude of a subscribing witness is not adverse and the witness' clear, uncontradicted testimony shows positively that the testator did not sign the purported will in the presence of the witnesses nor declared or acknowledged that it was his will, it is error for the trial court to presume the will was properly executed. However, *Krause* is inapposite here, because it involved *uncontradicted* testimony by a subscribing witness. Conversely, even if Servande's testimony could support a finding that the request was made outside of P.D.'s presence, this testimony is contradicted by the testimony of the other subscribing witness, Abraham, as well as Attorney Bronze and Don.

probate both of the subscribing witnesses shall testify to all the facts necessary to constitute a statutory execution thereof." *In re Silva's Estate*, 145 P. at 1016. Our duty as an appellate court is not to independently weigh conflicting evidence but rather determine whether the court's findings were supported by substantial evidence.

[32] "Substantial evidence is relevant evidence that a reasonable person may accept as sufficient to support a conclusion, even if inconsistent conclusions may be drawn from the evidence." *B.M. Co. v. Avery*, 2002 Guam 19 ¶ 13. Because the testimony of Abraham, Attorney Bronze, and Don is relevant evidence that a reasonable person may accept as sufficient to support the probate court's conclusion that the request was made in P.D.'s presence, we decline to overturn the court's findings. It is for the probate court as fact-finder to weigh the credibility of witnesses and resolve conflicting testimony, not this court. Although we acknowledge that conflicting testimony was presented, the existence of such testimony does not affect our determination that the judge's factual finding was supported by substantial evidence.

[33] Jack also attempts to assign error to the probate court's additional factual finding that the three subscribing witnesses were asked by Don, prior to entering the living room, to be witnesses to his uncle's will. ER, tab ER7 at 12 (Finds. Fact & Concl. L.). This suggests that the probate court found compliance with the request requirement of subsection 201(d) from the evidence of Don's requests, made *outside* of P.D.'s presence. Jack cites to *Hill*, 167 P. 465, for the proposition that any declaration made by Don, outside the hearing range of the testator, would be insufficient to fulfill the declaration requirement because the cases show that when a declaration and request are made by a third person speaking on the testator's behalf, they must be made in the testator's and witnesses' presence. Appellant's Br. at 14-15 (Dec. 18, 2006).

[34] We agree that if the only substantial evidence supporting the probate court's finding of due execution in compliance with the section 201 formalities were the requests made by Don outside of P.D.'s presence, the purported will would necessarily fail. However, because the probate court also made a factual finding that the request was made by Attorney Bronze in the presence of P.D., its finding of compliance with subsection 201(d) was not necessarily based on an erroneous interpretation of law, and any reliance on Don's requests was harmless error.

[35] Based on the authorities discussed above, we find that there is substantial evidence here that P.D.'s will had been witnessed at his request, and in his presence, through his attorney, Jacques Bronze.[12] We therefore affirm the probate court's finding of due execution in compliance with the statutory request formality.

2. Compliance with the declaration formality

[36] Subsection 201(c) establishes that the testator, at the time of subscribing or acknowledging the instrument, must declare to the attesting witnesses that it is his will. 15 GCA § 201(c) (2005). We have already held that a probate court may find compliance with the declaration requirement of subsection 201(c) from the total circumstances, including the testator's conduct and the presence of an attestation clause. In this case, the court found that although P.D. did not declare to the witnesses that they had just witnessed the signing of his will,

[12] Further, there is sufficient evidence in the record for the trial court to have inferred P.D.'s acquiescence to having the will promulgated on his behalf, not from any positive conduct, but from the fact that nothing in P.D.'s conduct indicated objection. As the Supreme Court of California indicated:

> Indeed, it is settled that not even an act or motion indicating acquiescence by the testator in the request to the witnesses is necessary, where it is made in his presence, and he knows that the witnesses are signing in response to such request, and makes no objection. Under such circumstances, his silence is a sufficient indication that the request is by his authority.

In re Cullberg's Estate, 146 P. 888, 890 (Cal. 1915) (quoting *In re Hull's Will*, 89 N.W. 979, 981 (Iowa 1902)).

based on the total circumstances, testator's conduct, and the existence of an attestation clause, a presumption of due execution could be applied. ER, tab ER7 at 12 (Finds. Fact & Concl. L).

[37] As we have stated above, the question of due execution of a will is one of fact, and the trial court's finding thereon will not be reversed on appeal if there is any substantial evidence to sustain it. *In re Fletcher's Estate*, 325 P.2d at 105. The court in its findings of fact found that P.D. did not personally inform the witnesses that they were witnessing his will. ER, tab ER7 at 6 (Finds. Fact & Concl. L). The court made no additional express finding that, in P.D.'s presence, a third person declared to the attesting witnesses that the document was P.D.'s will. Thus, the judge's articulated factual findings were arguably inadequate to support the conclusion that the declaration requirement had been complied with, absent application of a presumption of due execution.

[38] Where the probate court makes findings of fact, but they are inadequate, the governing principles are much the same as when the court makes no findings at all. This court sitting in review can consider a failure to make adequate findings of fact a nonreversible error if we can ascertain from the record that one party or the other was clearly entitled to judgment in its favor, but a remand is necessary where we cannot get a clear understanding of the basis of the probate court's judgment from its findings. Our review is limited to determining whether there is any substantial evidence, contradicted or uncontradicted, which will support the ultimate factual finding of the court that the will was duly executed. *See Bullis v. Sec. Pac. Nat'l Bank*, 582 P.2d 109, 112 (Cal. 1978).

[39] There was support in the transcript from three witnesses for a factual finding that, in P.D.'s presence, a third person speaking on P.D.'s behalf declared the document to be his will. Attorney Bronze testified that before P.D. signed his will, Bronze told him, "I'm here for you to

have—to sign your will." SER, tab 1 at 19 (Tr.). Witness Abraham testified that the lawyer said, "This is the will. You have to . . . you have to sign it." ER, tab ER5 at 120 (Tr.). Don testified that before P.D. signed the will, Attorney Bronze stated to P.D., "This is the will . . . [g]o ahead and sign." SER, tab 2 at 29 (Tr.).[13]

[40] The probate court's finding of the will's due execution is a factual finding supported by substantial evidence. Thus, we would affirm the probate court's judgment regardless of its application of a presumption of due execution. However, because the parties dispute whether such a presumption was correctly applied by the court below, we will address this issue.

3. Presumption of due execution

[41] In her brief, Radhi contends that the will should be admitted to probate even absent substantial evidence supporting a finding of compliance with the statutory formalities, because the attestation clause found in the will properly raises the presumption of due execution. In his reply, Jack argues that the probate court erred when it applied a presumption of due execution

[13] The testimony of the fourth witness whose transcripts have been provided to the court, Servande, is less clear on this point, but is not directly contradictory. Bill Mann, Radhi's Attorney, asked Servande during direct exam:

> Q. [ ] They gave the paper, no one said anything.
>
> A. No. He presented the --- just the paper for ---
>
> Q. Yeah, a paper.
>
> A. (Inaudible – indiscernible) –
>
> Q. And then . . . then – So P.D. got the paper? So when – Right. – Start signing it? Okay? And no one said anything, there was no conversation? No conversation. So after he signed the paper; right? – So he signed . . . so he signed the paper; right? He signed the paper; okay? Then what happened?
>
> A. We were told to go out.

ER, tab ER4 at 53-54 (Tr.).

> Q. Okay. And then did – then no one said – and you said earlier that there was no talking in the room; right?
>
> A. There was no . . . no conversation.
>
> Q. Okay. And then you saw P.D. sign it – sign the document?...

Id. at ~~24~~ 49.

not recognized by Guam law. In the alternative, he argues that the court erroneously applied the presumption given purportedly uncontroverted evidence from two witnesses that should have rebutted the presumption.

[42] The presumption of due execution is applied by numerous jurisdictions.[14] Upon demonstration of due execution, this presumption shifts the burden of proof from the proponents of a will to any contestants. Unless the contestants advance disproof, the proponents need establish no more than due execution. The Supreme Court of California has applied the presumption, finding that a prima facie case of due execution arises from the proof of the genuineness of the signatures in the attestation clause. *In re Pitcairn's Estate*, 59 P.2d 90, 92 (Cal. 1936). "This presumption arises whether or not the will contains an attestation clause, but certainly arises where . . . such a clause is contained in the will." *In re Braue's Estate*, 114 P.2d 386, 387 (Cal. Dist. Ct. App. 1941). The court has described this presumption as:

> [O]ne of the most beneficent and useful known to the law, and since the testamentary disposition of property is favored and protected . . ., it should be applied wherever it is reasonable to do so, in order that technical rules of law may not be allowed to defeat the expressed wishes of those who make wills.

In re Gray's Estate, 171 P.2d 113, 116-17 (Cal. Dist. Ct. App. 1946) (internal citations omitted).

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[14] *See In re Thurman's Estate*, 369 P.2d 925, 927 (Utah 1962) ("Where there is an attestation clause reciting observance of the statutory requirements for the execution of a will, and the genuineness of the signatures is proved, a presumption arises that the recitals contained therein are true and that the will was duly executed."); *Walker v. Walker*, 929 P.2d 316, 318 (Or. Ct. App. 1996) ("An attestation clause that recites due execution of the instrument creates a strong presumption in favor of due execution, which can be overcome only by clear and convincing evidence."); *In re Estate of Farr*, 49 P.3d 415, 420 (Kan. 2002) ("An attestation clause is presumptive evidence of the facts stated in it."); *see also In re Hurley's Estate*, 245 P. 711 (Colo. 1926) ("A full attestation clause, reciting compliance with all formalities of execution, and signed by the witnesses, is prima facie evidence of the validity of the will.").

[43] We hold that Guam recognizes a presumption of due execution.[15] Proof of the signatures of the testator and the witnesses, on its own, makes out a prima facie case of due execution. *See In re Fletcher's Estate*, 325 P.2d at 104-05. Once a prima facie case of due execution is made out, the burden shifts to the contestant to show lack of due execution. *In re Latour's Estate*, 74 P. 441, 442 (Cal. 1903).

[44] In this case, the will presents on its face a regular and complete attestation clause signed by the three attesting witnesses, namely Tubig, Servande, and Abraham.[16] The attestation clause fully recites the formalities of the will's execution, providing:

> [T]he undersigned, in the presence and hearing of the Testator, hereby at his request, sign as witnesses pursuant to the provisions of the Guam Code Annotated, Chapter 15, § 201, understanding this instrument to be the Will of [Testator], and being present at the same time as [Testator] executed same and acknowledged to us his signature thereon and that the foregoing instrument is his Will.

ER, tab ER2 at 21 (Last Will and Testament, Dec. 20, 2003).

[45] Both Servande and Abraham testified to having signed the attestation clause. ER, tab ER4 at 29 (Tr.); ER, tab ER5 at 74 (Tr.). The genuineness of P.D.'s signature is uncontested. The attestation clause contained within P.D.'s will, bearing the signatures of three witnesses, two

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[15] Our recognition of such a presumption is buttressed by but does not arise from 15 GCA § 1605, which provides that, as evidence of a will's execution, the court may admit proof of the handwriting of the testator and of any of the subscribing witnesses if none of the subscribing witnesses can be produced by sworn testimony in open court. 15 GCA § 1605 (2005). This provision, deriving from a similar provision in the former California probate code (Former § 372, enacted by Stats. 1931, c. 281, § 372), applies in the specific circumstances where none of the subscribing witnesses are available to testify, and provides that in the absence of any counter showing, proof of the handwriting of the testator and of the subscribing witnesses is sufficient evidence to prove the execution of the will. *In re Gerst's Estate*, 315 P.2d 49, 54 (Cal. Dist. Ct. App. 1957). Where subscribing witnesses are available to testify, California courts have not derived their authority for application of the presumption of due execution from this statute, nor do we.

[16] Jack maintains that "the lower court received no evidence proving [Tubig's] alleged signature on the will to be genuine." Reply Br. at 12-13. The foundation of the presumption is the proof of genuineness of the signatures, "for the instrument is then on its face a valid will." *In re Pitcairn's Estate*, 59 P.2d at 92. The record indicates that parties stipulated to the fact that Tubig was in the Philippines at the time of trial, but does not indicate that the parties stipulated as to the authenticity of Tubig's signature. Accordingly, we will consider this case to have two attesting witnesses required by law, Servande and Abraham.

of whom testified to their signature at trial, is sufficient evidence to invoke the presumption of due execution.

[46] "[T]he court is not required to find according to the presumption when contrary evidence is clear." *In re Fletcher's Estate*, 325 P.2d at 105. However, the presumption authorizes a finding of due execution even if conflicting testimony is presented, unless the trial court chooses to believe the conflicting testimony. *Id.* A presumption of due execution is "independent evidence which may be weighed against positive testimony." *In re Pitcairn's Estate*, 59 P.2d at 93. The presumption of due execution can be overcome only by clear and convincing evidence to the contrary. *In re Warren's Estate*, 4 P.2d 635, 637 (Or. 1931) ("The attestation clause reciting the due execution of the will creates a strong presumption in its favor which prevails unless overcome by clear and convincing evidence.").[17]

[47] Jack contends that the attestation clause fails as to witness Abraham because she was illiterate and no one read the clause aloud to her. Reply Br. at 13. We reject this argument. The failure of a witness to read an attestation clause does not destroy the presumption. *See In re Gray's Estate*, 201 P.2d 392 at 396. As we noted above, the presumption arises from proof of genuineness of the signatures and is independent evidence which may be weighed against positive testimony. Although Abraham testified that she could not read the attestation clause, Abraham testified to the genuineness of her signature and to the fact that the witnesses signed the will at the table that was in the living room, which was still within view of P.D. ER, tab ER5 at 110 (Tr.) ("But the table was right there where we can see the Mister."). Abraham as well as

[17] Other jurisdictions have adopted a similar standard. *See, e.g., In re Rowlands' Estate*, 18 N.W.2d 290, 292 (S.D. 1945); *In re Zych's Will*, 28 N.W.2d 316, 319 (Wis. 1947).

Servande testified to having witnessed the subscription of the will. Her positive testimony confirms, rather than refutes, the recital in the attestation clause.

[48] Jack has not presented clear evidence contradicting the presumption of due execution or the positive testimony of the witnesses. Jack asserts there was uncontroverted testimony from Servande and Abraham that P.D. neither actually himself declared nor himself actually requested attestation of his will, and that they both signed the in a room "separate from the room where Mr. Hemlani was."—Reply Br. at 12. However, as we have discussed above, the declaration and request formalities may be accomplished by a third party acting on P.D.'s behalf and in his presence. The testimony that the witnesses were in a separate room does not necessarily demonstrate that the declaration and request occurred outside of P.D.'s presence. The court appears to have found that the signing occurred within sight of and in the presence of P.D., even if the room in which the witnesses signed the will was a separate room adjacent to P.D.'s room.

[49] Thus, the attestation clause, signed by the three attesting witnesses, two of whom testified in trial to the genuineness of their signatures, made a prima facie case that the will was duly executed. Jack failed to rebut this presumption with clear and convincing evidence.

D. P.D.'s Previous Wills

[50] Jack assigns error to the probate court for noting, while applying the presumption of due execution, that "P.D. was familiar with how the signing of a will occurred[,] as he executed his will on at least three separate occasions during his lifetime." ER, tab ER7 at 12 (Finds. Fact & Concl. L.). Jack, citing to a California case, *In re Howell's Estate*, 324 P.2d 578 (Cal. 1958), contends that a court may not rely on evidence of the testator's intention in determining whether

the statutory probate requirements have been met, and further, that the court here erroneously considered evidence of P.D.'s execution of previous wills for that purpose.

[51] *In re Howell's Estate* is inapposite here, because that case concerned the subscription requirement, specifically the requirement that wills be executed at the end thereof. *Id.* In *Howell*, the court found that where there was no evidence that the three sheets of a purported will were attached together or constituted a single document at the time they were signed by testatrix, where the first page was a printed form and the other two were typewritten, and where the purported will was not subscribed by testatrix and the attesting witnesses at the end as required by Section 50 of the probate code. In such circumstances, extrinsic evidence that the testator intended to validly create a will was irrelevant.

[52] In contrast, compliance with the subscription formality was never disputed in this case. The probate court did not consider evidence of P.D.'s intent to subscribe a purported will that was not in fact validly subscribed. Instead, the court considered evidence of P.D's prior execution of wills as evidence supporting the court's application of the presumption of due execution. The court's consideration of the testimony regarding the prior wills served as evidence of the P.D.'s familiarity with the execution of wills, not evidence of intent to validly subscribe a will. *See* ER, tab ER7 at 12 (Finds. Fact & Concl. L.). It is not error for a court to consider whether there is evidence showing that the testator was suffering from any mistake as to the contents of the document, evidence which might rebut the presumption of due execution that the court is applying. *See In re Johanson's Estate*, 144 P.2d 72, 79 (Cal. Dist. Ct. App. 1944).

[53] Jack also attempts to assign error by arguing that any such earlier executions of wills were outside the knowledge of the attesting witnesses, so those executions could not indicate to the witnesses in any way Mr. Hemlani's acquiescence to events surrounding him. -Reply Br. at

14. However, we see nothing in the probate court's conclusions of law to indicate that the evidence was being considered for that purpose.

[54] Because Jack fails to direct this court to any persuasive authority to support his contention that the probate court's consideration of testimony of P.D.'s prior execution of wills was in error, we reject Jack's argument. Instead, the probate court's consideration of P.D.'s execution of prior wills, as evidence buttressing its application of the presumption of due execution, was not error.

V. CONCLUSION

[55] The probate court did not err as a matter of law when it determined compliance with the statutory formalities of 15 GCA § 201(c) and (d) based on the total circumstances rather than construing the statute to demand literal compliance. We, however, decline at this time to adopt a standard of substantial or strict compliance in interpreting these subsections, instead following the precedent of California courts who have liberally construed the provisions of a substantially similar statute, former section 50. It is unnecessary under subsection 201(c) that the testator expressly declare that the instrument is his will or under 201(d) that the testator expressly request that the witnesses sign the will. The request formality may be met where there is a request by a third party, who was entrusted with the preparation of the testator's will or has been otherwise authorized to make such a request, and where it can be inferred from the conduct of the testator that he has acquiesced to such a request. Similarly, the declaration formality can be met when the testator's conduct and attendant circumstances demonstrate that the testator has acquiesced to the promulgation of the instrument as his will.

[56] There is substantial evidence in the record to support the probate court's factual finding that the will was executed in compliance with the request formality, where P.D. acquiesced to the

requests for attestation made on his behalf and in his presence by his Attorney, Jacques Bronze. Although the probate court may have failed to make a factual finding that the will was executed in compliance with the declaration formality, there was substantial evidence in the record that could have supported such a finding. Moreover, we recognize a presumption of due execution which arises from proof of the genuineness of the signatures of the testator and the attesting witnesses. This presumption operates to establish a prima facie case of due execution where the presumption is raised. Here, an attestation clause bearing the signatures of three witnesses invoked the presumption of due execution which cured any inadequacy in the judge's findings of fact. Although the presumption of due execution is not conclusive, Jack failed to rebut this presumption with clear and convincing evidence showing the will was not duly executed in compliance with the statutory formalities of section 201. Finally, the probate court's consideration of P.D.'s execution of prior wills, as evidence failing to contradict the presumption of due execution of the instant will, was not in error.

[57] Accordingly, the order of the probate court denying Jack's contest and admitting to probate P.D.'s last will and testament dated December 20, 2003, is **AFFIRMED**.

F. PHILIP CARBULLIDO
F. PHILIP CARBULLIDO
Associate Justice

RAMONA V. MANGLONA
RAMONA V. MANGLONA
Justice *Pro Tempore*

ROBERT J. TORRES
ROBERT J. TORRES
Chief Justice