

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 502008CP002656XXXXNB  
PROBATE DIVISION IH

IN RE: THE ESTATE OF:  
SYDELL STIRLING,  
Deceased.

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**ORDER GRANTING PETITION TO FIND THAT SEPARATE  
WRITING OR LIST WAS REVOKED**

**THIS CAUSE** came before the Court on HOWARD J. STIRLING's Petition to Find that Separate Writing or List was Revoked and FRAN BAMBARA's Response thereto. The Court, having heard testimony and counsels' arguments, reviewed the pleadings, the court file and being otherwise fully advised in the premises, finds as follows:

SYDELL STIRLING ("Decedent") executed three documents: a will executed in 1994 ("1994 Will"); a separate writing leaving tangible personal property executed in 1999 ("Separate Writing"); and a second will executed in 2004 ("2004 Will"). It is undisputed that the Separate Writing referenced the 1994 Will and was incorporated. The 2004 Will revoked the 1994 Will.

Petitioner asserts that in revoking the 1994 Will, Decedent also revoked the incorporated Separate Writing. Respondent contends that the Separate Writing is separate and distinct, similar to a Trust that does not lose its separate identity merely because it refers to an accompanying Will for purposes of administration. Therefore, the Separate Writing should be upheld. The issue before the Court is whether the 2004 Will revoked the Separate Writing, where it is expressly incorporated in the 1994 Will. For the reasons set forth below, the Court finds that on its face, the plain meaning of the 2004 Will clearly and unambiguously communicates Decedent's intent to revoke the 1994 Will and the Separate Writing incorporated therein.

1. On September 12, 1994, Decedent executed a will ("1994 Will").
2. Five years later, on May 15, 1999, Decedent executed a Separate Writing or List ("Separate Writing"). The Separate Writing provides:

I, SYDELL STIRLING, pursuant to Sec. F.S. 732.515, make this separate writing or list of tangible personal property which is to be incorporated by reference into my Last Will and Testament dated September 12, 1994."

Listed in the Separate Writing is: "All personal effects to my daughter Fran."

3. On August 24, 2004, Decedent revoked all prior wills and codicils in executing her Last Will and Testament ("2004 Will"). The 2004 Will provides:

I may leave a writing designating certain persons to receive some or all of my jewelry, collectibles and other tangible personal property and I direct that my Personal Representative follow and obey the last dated of such a writing if found within thirty (30) days of the date of my death. (Emphasis added).

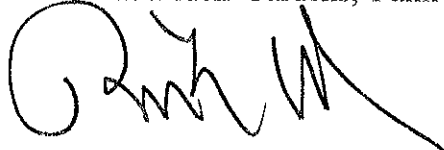
4. Thus, the Separate Writing and the 2004 Will both provided for the distribution of Decedent's tangible personal property. The plain meaning of "I may leave a writing" indicates that Decedent contemplated or anticipated a future writing, but had not yet prepared it. Such meaning fits with Decedent's express intent to revoke the Separate Writing when she revoked the 1994 Will.
5. The Court also took testimony from the drafting attorney, Daniel Ternner. While the substance of Mr. Ternner's testimony was not weighed in the Court's decision because the 2004 Will is unambiguous, it further supported Decedent's intent to revoke the Separate Writing.
6. Pursuant to the unambiguous language of the 2004 Will, the Court finds that the 1999 Separate Writing was revoked.

Based on the foregoing, it is:

**ORDERED AND ADJUDGED** that the Petition is granted.

**DONE AND ORDERED** in Chambers at Palm Beach Gardens, Palm Beach County,

Florida this 25<sup>th</sup> day of September, 2008.



HONORABLE RICHARD L. OFTEDAL  
Circuit Judge

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