

Ian P. Gillespie
DRIGGS, BILLS & DAY, P.C.
910 Brooks St., Suite 103
Missoula, MT 59801
Phone: (406) 206-9707
Fax: (406) 206-9707
Email: igillespie@advocates.com
Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF MONTANA
SUPREME COURT CAUSE NO. _____

In the Matter of the Estate of
JESSE L. BECK,

Deceased.

JASON BECK,

Appellant,

v.

ALEXIA BECK, Personal
Representative,

Appellee.

NOTICE OF APPEAL

NOTICE is given that Jason Beck, the Appellant above-named and who is the Petitioner for Formal Probate Proceedings in that cause of action filed in the Twenty-Second Judicial District, in and for the County of Carbon as Cause No. DP-2022-27, hereby appeals to the Supreme Court of the State of Montana from the Order

Sustaining Objection to Petition for Formal Probate and Denying Petition entered in such action on the 10th day of January, 2024, a true and correct copy of which is attached hereto as **Exhibit A**.

THE APPELLANT FURTHER CERTIFIES:

1. That this appeal is not subject to the mediation process required by M. R. App. P. 7.

2. That this appeal is not an appeal from an order certified as final under M. R. Civ. P. 54(b).

3. That notice under Mont. R. App. P. 27 is not required.

4. That all available transcripts of the proceedings in this cause have not been ordered from the court reporter contemporaneously with the filing of this notice of appeal because there are no transcripts of the proceedings in this cause. If all available transcripts have not been ordered, Appellant has complied with the provisions of M. R. App. P. 8(3) contemporaneously with the filing of this notice of appeal.

5. That included herewith is the filing fee prescribed by statute.

DATED this 11th day of January, 2024.

DRIGGS BILLS & DAY, P.C.

Attorney for Appellant Jason Beck

By: /s/ Ian P. Gillespie
Ian P. Gillespie

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing NOTICE OF APPEAL upon the Clerk of the District Court, each attorney of record, each court reporter from whom a transcript will be ordered, and each party not represented by an attorney in the above-referenced District Court action, as follows:

Eric W. Hinckley
Lowe Law Group
6028 S Ridgeline Dr Ste. 200
Ogden, UT 84405-6906
(801) 917-8500
eric_h@lowelawgroup.com
Attorney for Appellee Alexia Beck

Rochelle Loyning
Clerk of the 22nd Judicial District Court, Carbon County
102 N. Broadway Ave.
PO Box 948
Red Lodge, MT 59068
rloyning@mt.gov

Dated this 11th day of January, 2024.

/s/ Ian P. Gillespie
Ian P. Gillespie

EXHIBIT A

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5 **MONTANA TWENTY-SECOND JUDICIAL DISTRICT COURT, CARBON COUNTY**

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7 **IN THE MATTER OF THE ESTATE OF:**) Cause No. **DP 2022-27**
8 **JESSE L. BECK,**) Judge: **Matthew J. Wald**
9) **ORDER SUSTAINING OBJECTION TO**
10 Deceased.) **PETITION FOR FORMAL PROBATE**
11) **AND DENYING PETITION**

12 Before the Court is a *Petition for Formal Probate Proceedings* filed by Jason Beck
13 (“Jason”), brother of the Decedent Jesse L. Beck (“the Decedent”), as well as an *Objection to*
14 *Jason Beck’s Petition for Formal Probate Proceedings* filed by Alexia Beck (“Alexia”), daughter
15 of the Decedent. Jason is represented by Ian P. Gillespie. Alexia is represented by Eric W.
16 Hinckley. Having reviewed the parties’ filings, as well as the applicable law, the Court finds that
17 Alexia’s *Objection* has merit and must be sustained. As a result, Jason’s *Petition* must be denied.
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19 Jason’s *Petition* asks that the Court admit to probate a video wherein the Decedent states
20 his intention to give all his assets to Jason as Decedent’s sole heir. The sole question raised by the
21 *Petition*, and by Alexia’s *Objection*, is whether such a video recording qualifies as an intended
22 will under § 72-2-523, MCA (titled “Writings intended as wills”). Jason admits that the video
23 “does not meet the requirements for a will under MCA § 72-2-522”, which concerns traditionally
24 executed wills and holographic wills. However, Jason asserts that the video is a “document” that
25 was “intended as a will” and thus satisfies § 72-2-523. Alexia disagrees, asserting that a
26 “document” under § 72-2-523 clearly must be something in writing, and the term is not so broad
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1 as to include any thing that may possibly be stored digitally, such as a video. After a review of the
2 statute at issue, the Court must agree with Alexia that a video does not qualify as a document
3 under § 72-2-523.

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5 Section 72-2-523 provides that “[a]lthough a document or writing added upon a document
6 was not executed in compliance with [§] 72-2-522, the document or writing is treated as if it had
7 been executed in compliance with that section if the proponent of the document or writing
8 establishes by clear and convincing evidence that the decedent intended the document or writing
9 to constitute:

- 10
11 (1) the decedent's will;
12 (2) a partial or complete revocation of the will;
13 (3) an addition to or an alteration of the will; or
14 (4) a partial or complete revival of the decedent's formerly revoked will or of a
15 formerly revoked portion of the will.”

16 The plain language of § 72-2-523 clearly and unambiguously limits its application to writings and
17 documents and does not encompass other manners through which a decedent may have expressed
18 his or her testamentary intent. The title is “*Writings intended as wills*”. (Emphasis added). The
19 statute allows for probate, under certain circumstances, of “*a document or writing added upon a*
20 *document*” even if it “was not executed in compliance with 72-2-522.” (Emphasis added). In
21 construing a statute, the role of the judge is “simply to ascertain and declare what is in terms or in
22 substance contained therein, not to insert what has been omitted or to omit what has been
23 inserted.” Section 1-2-101, MCA. The analysis of whether Jason’s proffered video requires no
24 more than this review of the statutory language and thus can stop here: the statute by its own
25 unambiguous terms does not allow a video to be considered as a document or writing upon a
26 document that was intended as a will.
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1 Nevertheless, Jason urges the Court to essentially expand the meaning of “document” to
2 allow a video to meet the criteria of the statutory language. As written above, it would be
3 improper for the Court to engage in such creative analysis when the statute is clear and
4 unambiguous. For the sake of completeness, however, the Court will briefly address Jason’s
5 argument. Jason cites several dictionary definitions of “document” that, he argues, encompass
6 essentially anything stored digitally. *See, e.g.*, Black’s Law Dictionary, document (11th Ed. 2019)
7 (“Any electronic media content, other than a computer program or system file, intended to be
8 used in an electronic or printed form.”). Section 72-2-523 was adopted in 1994, well before the
9 sources that Jason cites were published, but even that definition is not so broad as to encompass a
10 video as opposed to a writing that is stored on a device. However, the Court need not even look
11 that far back, as the 8th Edition of Black’s Law Dictionary, published in 2004, defines document
12 as “[s]omething tangible on which words, symbols or marks are recorded” or “[t]he deeds,
13 agreements, title papers, letters, receipts, and other written instruments used to prove a fact.”
14 Black’s Law Dictionary, document (9th Ed. 2004). Clearly, any conception of “document” as
15 including all digital files whatsoever is a recent addition that offers no insight as to what the
16 Legislature intended when it adopted § -523, and likely would not encompass a video in any
17 event. Further, even if the Court accepted Jason’s definition of “document” in a general sense, it
18 makes no sense within the context of § -523. The statute allows for probate of a “document or
19 writing upon a document”, implying that documents can be written on. It strains credulity to
20 imagine that a video can have writing “upon it.” The Court cannot stretch the Montana probate
21 statutes as argued by Jason, and thus rejects Jason’s broad definition of document, at least as
22 applied here.
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1 This interpretation of § -523 concords with case law in Montana, other states, and
2 academic examinations of this issue. The parties do not dispute that Montana has never allowed
3 the probate of a video as an intended will. Jason has provided exactly zero cases from any
4 jurisdiction whatsoever doing so. However, the Montana Supreme Court appears to consider
5 “document” as synonymous with “writing”. See *In re Estate of Brooks*, 279 Mont. 516, 522
6 (1996) (noting that, under § -523, “the proponent of a document bears the burden of proving the
7 decedent's intent that the *writing* constitutes his or her will”)(emphasis added). In addition, Alexia
8 has offered limited caselaw from other jurisdictions that rejected the use of a recording as a
9 testamentary instrument. See, e.g. *In re Estate of Reed*, 672 P.2d 829, 833 (Wyo. 1983)(rejecting
10 the use of an audio recording as a testamentary instrument absent the legislature explicitly
11 choosing to allow it). Further, law review articles and other academic works have
12 overwhelmingly found that videos and other such recordings do not qualify. See, e.g. Natalie
13 Banta, *ARTICLE: Electronic Wills and Digital Assets: Reassessing Formality in the Digital Age*,
14 71 Baylor L. Rev. 547, 583 (2019)(“Although statutory approval may not even be needed for
15 documents that exist entirely in digital form saved on a computer, statutory approval would be
16 needed for an electronic will in the form of a video or audio recording. Even applying the lenient
17 harmless error doctrine, it is unlikely that a video or audio recording could overcome the *plain*
18 *statutory requirement of a writing.*”)(emphasis added).

19 While Jason attempts to distinguish Alexia’s sources, he fails to provide any similar
20 authority supporting his argument, beyond the dictionary references referred to above. The Court
21 considers cases involving electronic versions of writings, such as “electronic note[s]”, to be
22 clearly distinguishable, as these electronic writings are (1) writings, (2) fit even the older
23 definition of “document”, and (3) become indistinguishable from any other writing once printed

1 out. See *In re Estate of Horton*, 325 Mich. App. 325, 334-335, 925 N.W.2d 207 (2018)(“find[ing]
2 no error in the probate court's determination that decedent intended for the electronic document in
3 question to constitute his will”, where this was “a document he had *written*
4 electronically”).(Emphasis added). In short, nothing Jason has presented to the Court supports the
5 argument that a video qualifies as a “document” as envisioned by the Legislature when it adopted
6 § -523, or that the Court can consider the proffered video as a testamentary document.
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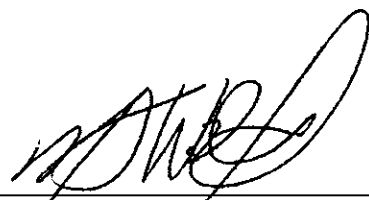
8 As such, the Court finds that a video recording of a decedent, even if it records him or her
9 expressing testamentary intent, does not qualify as a “document or writing upon a document” as
10 used in § -523. If Mr. Beck had wished to guarantee that his testamentary intent as expressed at
11 the moment in time when he was videoed was honored, he needed to have done so by meeting the
12 criteria of current Montana law. Alexia’s *Objection* has merit and is sustained, and Jason’s
13 *Petition* must be denied. As the Court has decided this issue on the plain statutory language, it
14 will not address other arguments raised, such as the general purpose of the statute.
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16 For these reasons,
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18 **IT IS HEREBY ORDERED** that Alexia’s *Objection to Jason Beck’s Petition for Formal*
19 *Probate Proceedings* is **SUSTAINED**.
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21 **IT IS FURTHER ORDERED** that Jason’s *Petition for Formal Probate Proceedings* is
22 **DENIED** and **DISMISSED**.
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24 **DATED** this 10th day of January, 2024.
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MATTHEW J. WALD, District Judge

26 cc: Eric W. Hinckley
27 Ian P. Gillespie
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CERTIFICATE OF SERVICE
This is to certify that the foregoing was duly served by mail,
fax, or email upon the parties to their attorneys of record at
their last known addresses.
Done this 10 day of January, 2024
By: Kathryn B. Auer
COURT ADMINISTRATOR for the HON. MATTHEW J. WALD

CERTIFICATE OF SERVICE

I, Ian Philip Gillespie, hereby certify that I have served true and accurate copies of the foregoing Notice - Notice of Appeal to the following on 01-11-2024:

Eric Wayne Hinckley (Attorney)
6028 South Ridgeline Drive
Suite 200
Ogden UT 84405
Representing: Alexia Beck
Service Method: eService

Rochelle Loyning (Clerk of District Court)
102 N. Broadway
PO Box 948
Red Lodge MT 59068
Service Method: eService
E-mail Address: RLoyning@mt.gov

Electronically Signed By: Ian Philip Gillespie
Dated: 01-11-2024