Holographic Designer

By Reg P. Wydeven
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As part of my practice, I love helping people get their affairs in order. But to be certain a person's wishes are followed, we must jump through the proper hoops. For example, for a will to be valid in Wisconsin, the testator, or person creating the will, must be at least 18 years old, be of sound mind, and not be under duress or undue influence (no one is forcing them to sign it). Finally, the will must be signed by the testator in front of two witnesses, who must also sign it.

A holographic will is one that is written by the testator, usually by hand. A holographic will is valid in Wisconsin so long as it meets the criteria I mentioned. Some states, however, are more lenient when it comes to the validity of holographic wills by not requiring them to be witnessed. This is especially true in dire circumstances.

For example, every law student knows the story of Cecil George Harris. He was a farmer living in Saskatchewan, Canada. On June 8, 1948, Harris became trapped under his tractor. He carved a will into the tractor's fender that read, "In case I die in this mess I leave all to the wife. Cecil Geo. Harris." Although it wasn't witnessed, his will was upheld. It's currently on display at the law library of the University of Saskatchewan College of Law.

According to 'The Guinness Book of World Records' the world's shortest will reads, "*Vše ženě*," which in Czech means "everything to wife." It was written on the bedroom wall of a man who realized he was about to die.

It appears that Australia, however, is the most relaxed when it comes to holographic wills.

The Brisbane Supreme Court recently held that an unsent draft of a text message on a dead man's phone was upheld as a valid will.

In the message the 55-year-old man composed to his brother, he gave "all that I have" to his brother and nephew. The message was discovered in the drafts folder of the man's phone after he committed suicide last year. It also indicated that he had "a bit of cash behind TV and a bit in the bank," and directed that his brother should "put my ashes in the back garden."

Justice Susan Brown explained that because the last words of the text message were "my will," this was evidence that he intended it to act as his will. According to her ruling, "The reference to his house and superannuation and his specification that the applicant was to take her own things indicates he was aware of the nature and extent of his estate, which was relatively small."

The man's widow argued that to be valid in Queensland, a will must be written, signed by the testator and two witnesses. Furthermore, because he never sent the message, she felt it was not conclusive evidence of his intentions.

Brown rejected her arguments, claiming the "informal nature" of the message did not prevent it from representing the man's wishes, especially because it was "created on or about the time that the deceased was contemplating death, such that he even indicated where he wanted his ashes to be placed."

As an estate planning attorney, this is an unsettling decision. The formalities of executing a will are there for a reason – namely to ensure there was no 'funny business' involved with the document.

I love to end with a joke, but I'm completely serious when I ask whether the court would look at the text message differently if the man had put a winking face emoji at the end of it. If you ask me, having a text message qualify as a will is a load of 💩.