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In re Estate of Douglas G. Todd, deceased. Chadd B. Todd, Personal Representative of the Estate of Douglas G. Todd, deceased, appellee, v. Judy Sheets, appellant.

___ N.W.3d ___

Filed October 30, 2026. No. S-25-743.

1. **Summary Judgment: Appeal and Error.** An appellate court affirms a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.
2. ____: ____. An appellate court reviews the lower court's grant of summary judgment de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor.
3. **Statutes: Appeal and Error.** Statutory interpretation presents a question of law that an appellate court resolves independently of the trial court.
4. **Wills: Parties.** When the material provisions of a purported joint will are in the handwriting of one party, it is not a valid holographic will of another party to the purported joint will, even if the other party has signed it.

Appeal from the County Court for Lincoln County: Tanya K. Roberts-Connick, Judge. Affirmed.

Randy Fair, of Dudden & Fair, P.C., L.L.O., for appellant.

Matthew D. Pederson, of Pederson Law Office, for appellee.

Funke, C.J., Cassel, Stacy, Papik, Freudenberg, Bergevin, and Vaughn, JJ.

Papik, J.

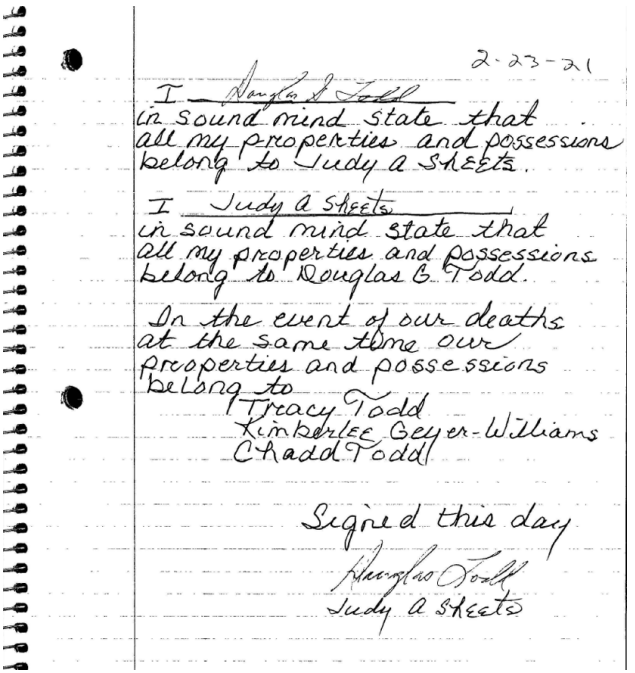
Under Nebraska law, holographic wills need not be witnessed, but the signature, the material provisions, and, with some limited exceptions, an indication of the date of signing, must be in the handwriting of the testator. But what if a purported holographic will is a joint will and the material provisions of that joint will are not in the handwriting of the person who has died but in that of the other person making the joint will? Does the joint will qualify as a valid holographic will of the decedent? This case presents that question. As we will explain, the material provisions of such a will are not in the handwriting of its testator and thus it is not a valid holographic will.

BACKGROUND

Probate Proceedings.

This appeal arises out of probate proceedings for the estate of Douglas G. Todd. After Douglas died in January 2025, his son Chadd B. Todd filed an application for informal probate of a will Douglas executed in 1984. In the will, Douglas directed that his sons would receive all his property.

Later, however, Judy Sheets filed an objection to the application for informal probate. Judy asserted that the 1984 will was not Douglas' last will. Instead, Judy claimed that Douglas had executed a two-page holographic will in February 2021 that left his estate to her. Consistent with that claim, Judy also filed a petition to have the purported holographic will admitted for probate. She attached the purported holographic will to her petition. We have reprinted a picture of those pages here:



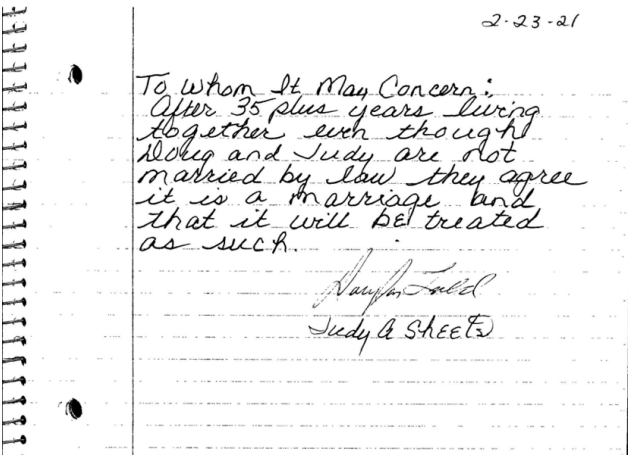
2-23-21

I Douglas A Todd
in sound mind state that
all my properties and possessions
belong to Judy A SHEETS.

I Judy A Sheets
in sound mind state that
all my properties and possessions
belong to Douglas G Todd.

In the event of our deaths
at the same time our
properties and possessions
belong to
Tracy Todd
Kimberlee Geyer-Williams
Chadd Todd

Signed this day
Douglas Todd
Judy A Sheets



2-23-21

To Whom It May Concern:
After 35 plus years living
together even though
Doug and Judy are not
married by law they agree
it is a marriage and
that it will be treated
as such.

Douglas Todd
Judy A SHEETS

Eventually, Chadd and Judy filed competing motions for summary judgment on Judy's objection to the application for informal probate and petition to admit the holographic will. The parties agreed that the question presented by their summary judgment motions was whether the 2021 handwritten document (2021 document) was a valid holographic will and thereby superseded Douglas' 1984 will.

Judy's deposition was offered and received as part of the summary judgment proceedings. In the deposition, Judy testified that after Douglas executed the 1984 will, she and Douglas began a long-term relationship. Although they never married, Judy testified that she and Douglas lived as though they were for over four decades up until Douglas' death in 2025. Even so, several pieces of property, including motor vehicles and real estate, were titled solely in Douglas' name at the time of his death.

Judy also testified regarding the purported holographic will. She stated that Douglas signed and dated the document and told her what to write, but she admitted that the rest of the document was in her handwriting.

County Court's Ruling.

The county court sustained Chadd's motion for summary judgment and denied Judy's motion for summary judgment. The county court concluded that there were no genuine issues of material fact and that the purported holographic will was not valid as a matter of law for two reasons. First, the county court concluded that the document was not a valid holographic will because the material provisions of the purported will were not in Douglas' handwriting. Alternatively, the county court concluded that the purported holographic will did not express testamentary intent.

Judy appealed, and we moved the case to our docket.

ASSIGNMENTS OF ERROR

Judy assigns several errors on appeal, all of which challenge the county court's reasons for concluding that the 2021

document was not a valid holographic will. Condensed and restated, she assigns that the county court erred by concluding that the 2021 document was not a valid holographic will (1) because its material provisions were not in Douglas' handwriting and (2) because it did not express testamentary intent.

STANDARD OF REVIEW

[1,2] An appellate court affirms a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law. *Bar at the Yard v. Friends Family*, 321 Neb. 606, 35 N.W.3d 813 (2026). An appellate court reviews the lower court's grant of summary judgment de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor. See *id.*

[3] Statutory interpretation presents a question of law that an appellate court resolves independently of the trial court. *State v. Strawn*, 318 Neb. 859, 19 N.W.3d 761 (2025).

ANALYSIS

Judy's Position: 2021 Document Is Valid Holographic Will Even Though Material Provisions Are in Her Handwriting.

It is Judy's position that the 2021 document was a valid will of Douglas. Because Douglas executed a valid will in 2021, Judy argues, it superseded his 1984 will and the county court should have admitted it for probate.

The 2021 document was not executed with all of the formalities ordinarily required of Nebraska wills. See Neb. Rev. Stat. § 30-2327 (Reissue 2016). At a minimum, the document was not "signed by at least two individuals each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will." *Id.* Judy readily admits this but argues that the 2021 document was a valid holographic will pursuant to Neb. Rev. Stat. § 30-2328 (Reissue 2016).

Section 30-2328 recognizes an exception to the usual requirement that wills bear the signature of two witnesses. That statute provides, in relevant part: "An instrument which purports to be testamentary in nature but does not comply with [§ 30-2327] is valid as a holographic will, whether or not witnessed, if the signature, the material provisions, and an indication of the date of signing are in the handwriting of the testator . . . ." § 30-2328.

The county court concluded that the 2021 document did not qualify as a valid holographic will under § 30-2328 because its material provisions were not in Douglas' handwriting. Although Judy admits that the material provisions in the 2021 document were entirely in her handwriting, she argues that the document still qualifies as a valid holographic will under § 30-2328. Judy points out that § 30-2328 requires that the signature and material provisions be in the handwriting of the "testator." Judy argues that she was a "testator" for purposes of § 30-2328 because the Nebraska Probate Code generally defines "[t]estator" as "the maker of a will," Neb. Rev. Stat. § 30-2209(49) (Reissue 2016), and she, along with Douglas, were the makers of a joint will.

Judy's argument that she is a "testator" of the purported holographic will requires us to discuss the nature of joint wills. We do so now.

Joint Wills.

The term "joint will" is used to refer to a testamentary instrument executed by two or more parties in which the parties set forth how their joint or separate property should be disposed of upon death. See, *Powell v. American Charter Fed. Sav. & Loan Assn.*, 245 Neb. 551, 514 N.W.2d 326 (1994); *Webb v. Smith*, 220 Ga. 809, 141 S.E.2d 899 (1965); 1 H.C. Underhill, A Treatise on the Law of Wills § 11 at 18 (1900) ("[a] joint will is an instrument executed as a will, by two or more testators at the same time, disposing of the property of each to the others, or to the survivor of the others,

or to some third party"). Although initially held invalid by English courts, joint wills came to be generally recognized as valid by American courts. See, e.g., *Curry v. Cotton*, 356 Ill. 538, 191 N.E. 307 (1934); *Williams v. Williams*, 123 Va. 643, 96 S.E. 749 (1918); 1 Underhill, *supra*.

The term "joint will," however, is something of a misnomer. It is a misnomer because a joint will actually contains two wills. As one court put it, "a joint will, is, in effect, the separate will of each person signing it as [a] testator." *Olive v. Biggs*, 276 N.C. 445, 455, 173 S.E.2d 301, 308 (1970).

This description of joint wills is not an outlier; court after court and commentator after commentator have recognized that a joint will is in fact multiple, separate wills that happen to be embodied in the same document. See, e.g., *Powell*, 245 Neb. at 557, 514 N.W.2d at 332 ("joint will is a single instrument which is executed by two parties and which represents their respective wills"); *Lane v. Woodland Hills Baptist Church*, 285 So. 2d 901, 903 (Miss. 1973) ("[i]t is well settled in this state that a joint will constitutes the separate will of each executing it"); *Webb*, 220 Ga. at 811, 141 S.E.2d at 901 (describing joint will as "simple testamentary instrument constituting the wills of two or more persons"); *Father Flanagan's Boys' Home v. Turpin*, 252 Iowa 603, 607, 106 N.W.2d 637, 639 (1960) ("[a] 'joint' will is nothing more than a single testamentary instrument constituting the wills of two or more persons, jointly executed. The term refers to form rather than substance. It is in effect the separate will of each maker . . ."); *Florey et al. v. Meeker et al.*, 194 Or. 257, 271, 240 P.2d 1177, 1183-84 (1952) ("[a] will, although joint in the sense that it incorporates in one instrument the testamentary disposition of two or more testators, is in effect the separate will of each of the testators who executed it"); 1 William J. Bowe & Douglas H. Parker, Page on the Law of Wills, § 11.1 at 552 (1960) ("[t]hough referred to as a joint will, using the singular form of the noun because a single instrument is involved, two wills are actually created"); 1 John E.

Alexander, Commentaries on the Law of Wills § 69 at 83 (1917) ("although two or more persons may jointly execute a single testamentary document, the instrument is the separate will of each testator and its legal effect is separate and distinct and not joint").

Consistent with the recognition that a joint will contains multiple, separate wills, joint wills are probated on the death of each testator as his or her separate will. See, *Lane, supra*; *Father Flanagan's Boys' Home, supra*; *Florey et al.*, 194 Or. at 272-73, 240 P.2d at 1184 ("joint instrument must operate severally as to each testator and be probated as the will of each testator"); *Collins v. Stroup*, 71 N.D. 679, 686, 3 N.W.2d 742, 745 (1942) (explaining that joint wills "ought to be probated upon the death of each testator as the separate will of the decedent"); *Curry*, 356 Ill. at 543, 191 N.E. at 309 ("[o]n the death of the testator first dying it is subject to record and probate as his will, and on the death of the surviving testator[,] it is subject to probate as his will"); 1 Bowe & Parker, *supra*, § 11.1 at 552 (joint will "would have to be fully and independently probated upon the death of each testator").

2021 Document Was Not Valid Holographic Will of Douglas.

Once it is understood that a joint will contains multiple, separate wills and that each separate will therein is probated independently upon the death of each testator, Judy's argument unravels. If Judy is correct that the 2021 document was a joint will, then the document contained both her will and Douglas' will. But even if wills for both Douglas and Judy were embodied in the 2021 document, the only will of the two that could be offered for probate in Douglas' estate matter was Douglas' will. At the risk of stating the obvious, it was Douglas who had died, and it was Douglas' property that was subject to disposition in the probate proceedings for his estate. Judy may have been a testator of her separate will that was also embodied in

the 2021 document, but only Douglas could be the testator of the will that Judy offered for probate.

Because only Douglas could be the testator of the will Judy offered in his probate proceedings, it did not qualify as a valid holographic will. As discussed above, the material provisions of holographic wills must be in the handwriting of the testator. There is no dispute that Judy handwrote the material provisions of the 2021 document. Thus, the 2021 document was not a valid holographic will of Douglas.

Our Decision Is Consistent With Other Courts and With Purpose of Holographic Will Statutes.

Although it appears relatively few courts have encountered the exact question before us today and even fewer have extensively discussed it, our decision is consistent with the weight of existing authority. A handful of courts have concluded, or at least suggested, that when the material provisions of a document purporting to be a joint will are entirely in one person's handwriting, it is not a valid holographic will of the other party to the purported joint will, even if the other party has signed it.

Judy cites one such case in her brief, *In re Cole's Will*, 171 N.C. 74, 87 S.E. 962 (1916). In that case, a husband prepared a document purporting to be a joint will of him and his wife. With the exception of the wife's signature, the document was entirely in the husband's handwriting. When the husband died, the document was offered for probate as his holographic will. The North Carolina Supreme Court concluded that the document was correctly admitted for probate as a holographic will of the husband but added that "this could not be done in this case as to the wife, as it does not comply, and could not comply, with the requirements of the statutory provisions as to a holographic will, for two people could not write such [a] will." *Id.* at 75, 87 S.E. at 963. Similar language appears

in several other cases. See, e.g., *George v. Smith*, 216 Ark. 896, 227 S.W.2d 952 (1950) (observing that document purporting to be joint will of two brothers was not holographic will of one brother because, with the exception of signature, document was in handwriting of other); *Graser v. Graser*, 147 Tex. 404, 215 S.W.2d 867 (1948) (observing that document purporting to be joint will of husband and wife was not holographic will of wife because material provisions were in husband's handwriting); *Puckett v. Hatcher*, 307 Ky. 160, 161, 209 S.W.2d 742, 743 (1948) (document purporting to be joint will "was not witnessed and since it was not written 'wholly' by either of them it could not be regarded as a holographic will"). A prominent treatise reaches the same conclusion. See 2 William J. Bowe & Douglas H. Parker, Page on the Law of Wills § 20.5 at 286 (1960) ("[a] joint will, in the handwriting of one testator, and signed by both testators is the valid holographic will of the testator in whose handwriting it is. It is not the valid holographic will of the other").

Judy contends that a West Virginia case, *Matheny v. Matheny*, 182 W. Va. 790, 392 S.E.2d 230 (1990), supports her contention that the 2021 document was a valid holographic will of Douglas. In that case, a husband and wife prepared a document that the court described as a "joint holographic will." *Id.* at 792, 392 S.E.2d at 232. The wife died, and then, several years later, the husband died. The case involved a dispute over whether the will should be admitted to probate as the will of the husband. The appellate court concluded that the document met the requirements for holographic wills in West Virginia, including the requirement that the will be in the handwriting of the testator. It stated that "a valid joint holographic will was made by" the husband and wife. *Id.* at 793, 392 S.E.2d at 233.

It is not clear that *Matheny* lends any support to Judy's argument. Although the opinion does not directly address whether the holographic will at issue was in the handwriting of the husband or the wife, a provision of the will quoted in

the opinion refers to the husband in the first person. If the material provisions of the document at issue in that case were, in fact, handwritten by the husband, the court's determination that it was a valid holographic will of the husband does not speak to the question presented in this case.

[4] In any event, nothing in *Matheny* persuades us that the 2021 document was a valid holographic will of Douglas for the reasons we have discussed. We join those courts and commentators that have concluded that when the material provisions of a purported joint will are in the handwriting of one party, it is not a valid holographic will of another party to the purported joint will, even if the other party has signed it.

We close by noting that our holding in this case is not only consistent with other authorities, it also aligns with the purpose of holographic will statutes. Many courts and commentators have observed that while the recognition of holographic wills allows wills to be made without the usual formality and expense, the requirement that the material provisions be in the handwriting of the testator serves as a guard against fraud. See, e.g., *Matter of Estate of Buckley*, 536 F.2d 580, 582 (3d Cir. 1976) (explaining that while holographic will statutes provide exception to certain formalities, requirement that document be written by testator guards against "forgery" because "[p]resumably, a document which the testator has written by himself represents his own desires and not those of a fraudulent interloper . . ."); *Matter of Estate of Krueger*, 529 N.W.2d 151, 154 (N.D. 1995) (requirement that material provisions be in handwriting of testator "is designed to ensure the authenticity of holographs, while still permitting lay persons to prepare their own wills without the expense and formality associated with attested wills"); 1 William J. Bowe & Douglas H. Parker, Page on the Law of Wills § 1.3 at 6 (1960) (explaining that some jurisdictions allow holographic wills to be probated "[b]ecause of the additional guaranty of trustworthiness that is thought to exist in the complete use of handwriting . . ."). That protection against fraud would be weakened if a document

written in one person's handwriting could be recognized as the valid holographic will of another.

Because the county court correctly determined that the 2021 document could not be a valid holographic will of Douglas when its material provisions were not in his handwriting, we need not address its alternative conclusion that the 2021 document did not adequately express testamentary intent.

CONCLUSION

Because we conclude that the county court did not err in determining that the 2021 document was not a valid holographic will, we affirm.

Affirmed.