

1 David R. Flyer, Bar #100697
Raquel Flyer, Bar #282248
2 **FLYER & FLYER, A Professional Law Corporation**
4120 Birch St., Ste. 101
3 Newport Beach, CA 92660
(949) 622-8444 (949) 622-8448 (fax)
4 davidflyer@flyerandflyer.com
raquelflyer@flyerandflyer.com

5 Attorneys for Petitioners/Objectors
6 BRENT VINH NGUYEN PHAM and
7 SEAN THANG NGUYEN PHAM

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 10 2018

DAVID H. YAMASAKI, Clerk of the Court

BY: C. VADRE DEPUTY

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE

11 IN RE ESTATE OF
12 HUU NGUYEN PHAM,
13 Decedent.

Case No. 30-2017-00910494-PL-LA-CJC
Before the Honorable
Thomas H. Shulte, Commissioner (Ret.)

14 BRENT VINH NGUYEN PHAM and SEAN
15 THANG NGUYEN PHAM

~~Proposed~~ **ORDER ON CONTESTANT
NGA T. NGUYEN'S WILL CONTEST**

16 Petitioners,
17 v.

Dates: May 21 & May 22, 2018
Dept.: C17

18 NGA T. NGUYEN
19 Respondent.

20 NGA T. NGUYEN,
21 Contestant,
22 v.

23 BRENT VINH NGUYEN PHAM and SEAN
24 THANG NGUYEN PHAM,
25 Objectors.

26
27 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

28 Appearances: David R. Flyer of the law firm of Flyer & Flyer, a Professional Law

1 Corporation, for BRENT VINH NGUYEN PHAM and SEAN THANG NGUYEN PHAM;
2 Mark A. Ross, Esq., of the law firm of Ross Law Group, APC, for NGA T. NGUYEN.

3 Trial lasted two court days.

4 The following witnesses testified: BRENT VINH NGUYEN PHAM, SEAN THANG
5 NGUYEN PHAM, Hong-Lien "Linda" T. Pham, NGA T. NGUYEN, Hoang N. Pham, M.D.,
6 and Gerald Maggio, Esq.. Documents were admitted in evidence.

7 The Court makes the following findings of fact:

8 There are two pending matters, the Will Contest filed by Contestant NGA T.
9 NGUYEN (mother of decedent) on July 17, 2017, and the Will Contest filed by Petitioners
10 BRENT VINH NGUYEN PHAM and SEAN THANG NGUYEN PHAM (sons of decedent),
11 on July 18, 2017.

12 The Court, having taken the two above-entitled will contest matters under
13 submission on 05/23/2018, and having fully considered the arguments of all parties, both
14 written and oral, as well as the evidence presented, now rules as follows:

15 NGA T. NGUYEN's Petition for Probate of a Lost Will as a will contest, having been
16 brought before the Court for trial, the Court finds and rules as follows:

17 In order to determine whether or not the purported Last Will and Testament of Huu
18 Nguyen Pham dated August 17, 2011 (the purportedly "lost will") should be admitted to
19 probate the Court must decide the following:

- 20 1. Did decedent create the purported will?
- 21 2. If so, is the will, in its form, sufficient to be entered into probate?
- 22 3. If so, is it lost?
- 23 4. If so, was it destroyed by decedent with the intent to revoke?

24 As to the first question, the Court finds by a preponderance of the evidence that the
25 document offered as a copy of a will dated August 17, 2011 was created by decedent, Huu
26 Pham.

27 The Court further finds that the subject will did not have the required attestations by
28 two witnesses as required by Probate Code section 6110. However, Contestant has met

1 her burden of proof to establish by clear and convincing evidence that decedent intended
2 the document to constitute his will as required by Probate Code 6110(c)(2).

3 There is no debate that an original or duplicate will cannot be found. The provisions
4 of the will therefore are being established by the statements that the decedent made to
5 others and by a photocopy of the purportedly lost will.

6 Finally, the question remains: Was the lost will destroyed by the decedent with the
7 intent to revoke?

8 The Court, having found that Contestant has presented sufficient evidence to
9 overcome the presumption effecting the burden of presenting evidence pursuant to
10 Probate Code 6124, bases its ruling on the weight of the evidence absent a presumption
11 one way or the other.

12 The Court considered the following evidence offered by Contestant to support the
13 proposition that decedent did not destroy the purported will with the intent to revoke:

14 1. The decedent's brother's testimony that the decedent had commented to him
15 sometime in 2016 that he had prepared a new will.

16 2. The fact that the objectors to the lost will had access to decedent's important
17 papers after his death.

18 On the other hand, the court considered the contravening evidence offered by the
19 Petitioners that decedent did destroy the purported will with the intent to revoke:

20 1. After the will was created decedent and his wife experienced a warming of
21 their relationship.

22 2. Contestant NGA T. NGUYEN stated in her July 23, 2014 declaration (Exhibit
23 110) that in June of 2014 decedent stated that he wanted NGA to be his executor. The
24 use of the word "wanted" indicates to the Court that at that point in time there was not
25 presently in existence a document nominating her as executrix of a will.

26 3. At paragraph 8 of NGA's declaration she indicated that since July of 2014
27 she had asked decedent several times whether he "set up" a new will. She reports that
28 decedent replied, "he was still working on it." The Court reads this statement by decedent

1 as an indication that as of July 23, 2014 and beyond, there was no new will presently in
2 existence, leading to the conclusion that the purported lost will of 2011 had been revoked.

3 4. In his response to the Request to Produce Documents associated with the
4 dissolution matter (Exhibit 112) decedent indicated that there was no will or codicils in his
5 possession and control and referred to the 2003 trust in its present tense, indicating that in
6 July of 2015 he considered the trust in full force and effect.

7 Having considered the weight of the evidence presented on each side, the Court
8 finds by preponderance of the evidence that decedent destroyed the 2011 lost will with the
9 intent to revoke.

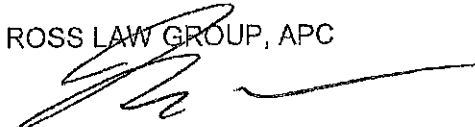
10 For that reason, the court denies NGA's Petition that the 2011 lost will be admitted
11 for Probate.

12 Counsel for the Petitioners/Objectors is directed to prepare the formal order herein,
13 submitting same to counsel for Contestant for approval as to form and content.

14 Court ordered clerk to give notice.

15 APPROVED AS TO FORM AND CONTENT:

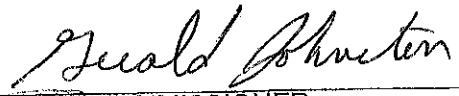
16 ROSS LAW GROUP, APC

17 
18 MARK A. ROSS
19 Attorneys for Contestant
NGA T. NGUYEN

20 IT IS SO ORDERED.

21 DATED:

22
23 SEP 10 2018

24 
25 JUDGE/COMMISSIONER
26 SUPERIOR COURT ~~GERALD JOHNSTON~~
27 in the absence of
28 Commissioner Thomas
Schutte.