

No. 1-12-1239

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STEVEN KRUZEK,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County.
)	
v.)	No. 2011 P 1312
)	
ESTATE OF FLORENCE KRUZEK, Deceased,)	Honorable
)	Susan Coleman,
Respondent-Appellee.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the circuit court's order finding petitioner's witness unqualified to testify as an expert in forensic document examination where: (1) no testimony or offer of proof was presented as to the basis of her findings; and (2) there was insufficient evidence establishing she had the knowledge, skill, experience, training or education to qualify her as an expert.

¶ 2 A document purporting to be the last will and testament of Florence Kruzek was admitted to probate. Her son, Steven Kruzek, requested formal proof of will pursuant to section 6-21 of the Probate Act of 1975 (755 ILCS 5/6-21 (West 2010)). At the final day of the hearing, Mr. Kruzek presented Tamara Kaiden as a witness and sought to have her qualified as an expert witness in

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forensic document examination. Ms. Kaiden apparently would have testified that the signature of the testator on the purported will was not genuine. The circuit court found that Ms. Kaiden was not qualified to testify as an expert witness and subsequently confirmed the order admitting the will to probate. On appeal, Mr. Kruzek contends the circuit court abused its discretion in finding that Ms. Kaiden did not qualify to testify as an expert witness. We affirm.

¶ 3 Attorney Robert J. Ross filed two wills of Florence Kruzek (the decedent). The first will, dated April 21, 2008, was filed on October 21, 2009, and consists of five pages. This will states that the decedent's husband's name is Raymond Kruzek and that she has two children, Wayne Kruzek, born January 7, 1956, and Steven Kruzek, born July 15, 1958. The will is a pour over will that gives everything to decedent's trust.

¶ 4 The second will, dated September 22, 2009, was filed on February 1, 2010, and consists of one page. This will revokes the decedent's earlier will and leaves to Wayne Kruzek everything the decedent owns, including her house and the contents thereof, her two cars, all of her bank accounts and stocks, her retirement funds, and her insurance policies. The decedent states in this will that she is leaving everything to Wayne Kruzek because her other son, Steven, has tried to commit suicide on multiple occasions, has twice been committed to a mental health facility and been declared mentally incompetent, has proved that he is not responsible enough to handle money, and may attempt suicide again if he were to spend or lose monies left to him in the will. The decedent also states that Steven had disappointed her by moving far away from her after the death of her husband.

¶ 5 The circuit court entered an order admitting the September 22, 2009, will to probate.

¶ 6 Steven Kruzek filed a motion to require proof of the September 22, 2009, will by testimony

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of the witnesses pursuant to section 6-21 of the Probate Act of 1975 (755 ILCS 5/6-21 (West 2010)).

In the motion, Mr. Kruzek alleged based on information and belief, that decedent's signature on the September 22, 2009, will is a forgery.

¶ 7 At the hearing on the motion, Bajo Bozovic¹ and Walter Bozovic testified that the September 22, 2009, will in question was brought to the automotive service station where the decedent had serviced her car three or four times a year for the last several years. Bajo Bozovic (witness number one on the will), Ljiljana Stanojevic (witness number two on the will), and Walter Bozovic (the notary on the will) all worked at the automotive service station. Bajo and Walter each testified to knowing the decedent, and they each testified to witnessing the decedent sign the will in their presence in September 2009, and that the decedent appeared to be of sound mind. Bajo testified to signing the will as a witness, Walter testified to signing the will as a notary, and they each testified to seeing Ljiljana sign the will as a witness and that Ljiljana was now living outside the country. Evidence was presented that a private investigator had unsuccessfully attempted to locate Ljiljana.

¶ 8 Steven Kruzek then presented Tamara Kaiden as a witness and sought to have her qualified as an expert witness in forensic document examination. During direct examination, Ms. Kaiden testified that after dropping out of Loyola University during her senior year, she worked as a graphic artist for 30 years. She began her career as a forensic document examiner in 2007 or 2008. Ms. Kaiden explained that there are government trained forensic document examiners and privately

¹Neither the testimony of Bajo Bozovic nor Walter Bozovic is included in the record on appeal; however, their testimony was summarized during closing arguments at the hearing on the motion for formal proof of will and during the circuit court's recitation of the facts. We recite their testimony based on the summary during closing arguments and the circuit court's findings of fact, both of which were consistent with each other and are undisputed.

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trained forensic document examiners, and that as a privately trained examiner, she began her training in the 1990's by "just picking up books through the World Association of Document Examiners" (WADE) and attending a WADE conference in 1999.

¶9 Ms. Kaiden testified she then took a "distance training course *** through a group called the International Handwriting University or something along those lines." She spent two years "mentoring" with this group, and the principal trainer was Bob Baier. Ms. Kaiden explained that "[t]his distance course curriculum provided case studies, reading from textbooks, tests, mock trials, class discussions, and this is live in real-time training. So it's a virtual classroom. So it's through teleconferencing."

¶10 Ms. Kaiden testified she then took a distance training course with Kathy Koppenhaver as her mentor. Kathy Koppenhaver has been in the field for almost 30 years, has worked on over 3,000 cases, testified over 300 times, and written several books regarding forensic document examination. Ms. Kaiden communicated with Kathy Koppenhaver weekly via teleconferencing and she attended seminars given by Kathy Koppenhaver in Maryland in 2009 and 2010.

¶11 Ms. Kaiden testified she is currently mentoring with a retired document examiner in Hoffman Estates named Darlene Hennessy.

¶12 Ms. Kaiden testified that forensic document examiners do not have to be certified or licensed. However, she has taken two proficiency tests. The first test was administered by Collaborative Testing Services. Ms. Kaiden successfully completed the test and answered all questions correctly. The second test was administered by ST2AR Skill-Task Training Assessment and Research, and focused on identifying disguised handwriting or "questioned writing regarding signatures." Ms.

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Kaiden correctly answered 94% of the questions asked.

¶ 13 Ms. Kaiden testified that in the course of her career as a forensic document examiner, she has worked "over 200 cases," has "rendered opinions in all of these cases," and has "reviewed thousands of documents." She has been qualified as an expert "in Federal Court, State Court, Civil Court, and Probate Court." She is a member of the Association of Certified Fraud Examiners and the American College of Forensic Examiners International.

¶ 14 On cross-examination, Ms. Kaiden testified there is no standard training program for privately trained forensic document examiners. Ms. Kaiden testified she took 40 hours of training from WADE in the 1990's, but that WADE "is a now defunct organization. It no longer exists." She does not know why it is now defunct.

¶ 15 Ms. Kaiden testified she trained for two years, from 2007 to 2009, with Bob Baier *via* teleconferencing. Ms. Kaiden stated she spent one to two hours on the phone with Bob Baier per week during the two years he trained her. She spent another eight hours per week doing reading assignments, homework, and case studies. Bob Baier is affiliated with the School of Forensic Document Examination located in California.

¶ 16 Ms. Kaiden testified she then trained once a week over the phone with Kathy Koppenhaver. This training lasted two years.

¶ 17 Ms. Kaiden was asked on cross-examination: "And when did you take the Collaborative Testing Services, was that in 2011?" She replied: "Yes *** And in 2010."

¶ 18 Ms. Kaiden testified that although she has worked on over 200 cases as a forensic document examiner, she has only testified in court six times, starting in 2010. The first case was a criminal

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case in "federal criminal court"; the second case was a civil case in Indiana; the third case was in Illinois probate court before Judge Henry Budzinski; the fourth case was a civil case in Chicago before Judge Pamela E. Hill-Veal; the fifth case was a domestic relations case in Rockford before Judge Joseph Bruce; and the sixth case was a civil case in "downtown Chicago somewhere" before Judge Thomas Fischer. In each of the six cases, the judge found her qualified to testify as an expert witness in forensic document examination. No judge has ever found her unqualified to so testify as an expert witness.

¶ 19 The court questioned Ms. Kaiden, asking her how long she had "named" herself as a document examiner, and she replied "2007/2008." The court asked about her training prior to 2007, and Ms. Kaiden replied she had self-trained with WADE. The court asked about conferences she had attended in person, and Ms. Kaiden replied she had attended a WADE conference in 1999, and two seminars with Kathy Koppenhaver in 2009 and 2010. The 2009 seminar, titled "Forensic Seminar and Workshop for Document Examiners," lasted 15 hours. The 2010 Seminar and Workshop for Document Examiners lasted 16 hours.

¶ 20 Following arguments, the circuit court found that Ms. Kaiden was not qualified to testify as an expert witness in forensic document examination. Specifically, the court stated:

"The court has heard testimony today with regard to the qualifications of Tamara Kaiden to testify as a forensic document examiner in this case. The issue before the court is whether or not the witness is qualified to give testimony, I'm assuming that the witness's testimony would go to whether or not the signature on the decedent's will was that of the decedent.

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The court has to determine whether or not this witness would be qualified as an expert by the knowledge, skill, experience, training or education so that she could testify with regards to that issue in the form of her opinion. Here she's being offered as an expert witness in forensic document examination.

The evidence of her qualifications came from on direct examination for the purposes of this formal proof of will hearing. She testified that she had completed two proficiency tests that were given by a Collaborative Testing Service. The court is unfamiliar with that service and unfamiliar with that organization.

The witness also testified that she's reviewed thousands of documents. I don't know what documents those were. The court has not been informed with regards to what documents those were.

On cross-examination, the witness testified that she had in essence received since completing a course in 1999, she has since that time received 31 hours of online training. There's been no details given with regards to what that training is, what the standards are for forensic document examiners.

This court itself has had the opportunity to on, not very many occasions, but on each occasion that this court has been asked to review the testimony of other forensic document examiners, this court has had the opportunity to qualify them as expert witnesses or to accept them as qualified expert witnesses, and they have given testimony with regards to the ultimate issues in cases.

However, I would say at this juncture the decision to admit or deny the expert's

opinion of testimony rests soundly within the discretion of the trial court here. There has been little or no information provided to the trial court with regards to any actual hands-on training that the witness has had in the past four years since she has started her work as a document examiner.

Therefore, the court finds that the evidence that has been presented with regards to the qualifications of this witness as an expert fall far short of that which the court believes would qualify her to give testimony as an expert with regards to forensic document examination."

¶ 21 After Ms. Kaiden was found not qualified to testify as an expert witness in forensic document examination, Steven Kruzek presented the testimony of his brother, Wayne Kruzek. Wayne testified that the decedent was his mother, and that she died on September 30, 2009, about one year and four months after the death of her husband on June 8, 2008.

¶ 22 Wayne testified that before the decedent's death, he drove her to attorney Robert Ross's office to execute her first will, in which she left all her assets to her trust. However, the trust was never funded.

¶ 23 Wayne testified the decedent subsequently told him she had executed a second will in which she left all her assets to him, and that the second will could be found in her house. The decedent told Wayne the second will excluded Steven as a beneficiary because Steven got into a huge argument with her on the day of his dad's funeral. Steven had argued that "he should have gotten something immediately from my dad passing away," and he was very upset that his dad left everything to the decedent. In response, the decedent asked Steven to leave the house.

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¶ 24 Wayne testified that the decedent further explained she was excluding Steven as a beneficiary because a few months after his dad died, she had discovered various documents revealing his dad had loaned Steven over \$200,000. The decedent told Steven, who was in the process of selling his house, that he should use the proceeds of the sale to pay back the loans. Instead of paying back the loans, Steven moved three hours away from the decedent in August 2008. Wayne testified that the decedent was very upset because "when she needed [Steven] the most he was moving three hours away."

¶ 25 Wayne testified he later discovered the second will in a filing cabinet in the decedent's family room. He does not remember the date he discovered this second will. He was not with the decedent when she executed this second will. Mr. Ross filed the second will on February 1, 2010, four months after the first will was filed.

¶ 26 Following Wayne's testimony, the circuit court summarized the testimony it had heard and found "there has been no competent evidence of fraud, forgery, compulsion or other improper conduct sufficient to invalidate the [decedent's second will dated September 22, 2009] that's been presented at this formal proof of will hearing." Accordingly, the court confirmed the order admitting the September 22, 2009, will to probate.

¶ 27 Steven subsequently filed a "motion to reconsider Tamara Kaiden as an expert." In this motion, Steven noted that during its oral ruling, the circuit court indicated its unfamiliarity with Collaborative Testing Services and failed to mention St2ar Skill-Task Training Assessment and Research, Inc., the two companies that had administered proficiency tests to Ms. Kaiden. Accordingly, Steven attached to his motion printouts from the websites of both Collaborative Testing

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Services and St2ar Skill-Task Training Assessment and Research, Inc. describing the companies' backgrounds and the testing provided. Steven provided no foundation for the admission of the printouts into evidence.

¶ 28 Steven next noted that during its ruling, the circuit court stated that Ms. Kaiden testified she had reviewed thousands of documents during her career, but that the court had not been informed of the contents of those documents. Accordingly, Steven attached to his motion an affidavit from Ms. Kaiden detailing her previous cases/clients and describing the work she performed for them.

¶ 29 Steven next expanded on Ms. Kaiden's testimony regarding her training with Bob Baier and Kathy Koppenhaver. Steven stated that during Ms. Kaiden's two years of training with Bob Baier, she had 208 hours of lecture time and 832 hours of doing reading assignments, homework, and case studies, for a total of over 1,000 hours of education between 2007 and 2009. Steven further cited to Ms. Kaiden's affidavit, which stated that during her training with Kathy Koppenhaver, she attended 70 one-hour lectures, completed 70 case studies, and did approximately 70 hours of homework for a total of approximately 210 hours. Further, Ms. Koppenhaver's course consisted of 36 lessons at an average of 7 hours per lesson, plus term papers that took about 15 hours to prepare for a total of 267 hours. Steven argued that between Ms. Koppenhaver's live lectures and course, Ms. Kaiden completed a total of approximately 477 hours.

¶ 30 Steven argued that the circuit court should reconsider its decision denying Ms. Kaiden's expert testimony. The court disagreed, entering a written order stating: "The court after reviewing Steven Kruzek's motion to reconsider and without a hearing on the same finds that there is no basis in fact to reconsider, and denies Steven Kruzek's motion to reconsider."

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¶ 31 On appeal, Steven contends the circuit court erred by finding that Ms. Kaiden was not qualified to testify as an expert witness in forensic document examination. Initially, we note Ms. Kaiden never specifically stated what she would have testified to; in its oral ruling, the circuit court stated it was "assuming that the witness's testimony would go to whether or not the signature on the decedent's will was that of the decedent." Even assuming that Ms. Kaiden would have testified the signature on the will was not that of the decedent, Ms. Kaiden never testified as to the methodology and basis for such a conclusion. For expert testimony to be admissible, the proponent must lay an adequate foundation establishing that the information upon which the expert based her opinion is reliable. *People v. Negron*, 2012 IL App (1st) 101194, ¶ 35; *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 32. Nor did counsel provide an offer of proof. The purpose of the offer of proof is to disclose to the trial judge and opposing counsel the nature of the offered evidence and to enable the reviewing court to determine whether the exclusion of the evidence was proper. *In re Kamesha J.*, 364 Ill. App. 3d 785, 792 (2006). Counsel's failure to make an offer of proof results in waiver of that issue on appeal. *Id.* Here, the failure to present any testimony or offer of proof regarding the methodology and basis for Ms. Kaiden's conclusions regarding the authenticity of the decedent's signature prevents us from determining whether the exclusion of her testimony was proper; the issue is waived.

¶ 32 Even choosing to address the issue on the merits, we affirm the circuit court. " 'Expert testimony is admissible if the proffered expert is qualified as an expert by knowledge, skill, experience, training, or education, and the testimony will assist the trier of fact in understanding the evidence.' [Citation.] 'Whether a witness is sufficiently qualified to testify as an expert is a matter

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committed to the sound discretion of the trial court, whose determination on the issue may be reversed only if it constitutes a clear abuse of that discretion.' [Citation.]" *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 53.

¶ 33 The circuit court found that Ms. Kaiden was not qualified to testify as an expert witness in forensic document examination, based on the following factors: (1) no evidence was presented as to the contents of the "thousands" of documents she allegedly had reviewed during the course of her career; (2) no evidence was presented as to the Collaborative Testing Services which had administered proficiency tests to her, and the court was unfamiliar with that organization; (3) no evidence was presented regarding the details of the 31 hours of training she had received in her two seminars with Kathy Koppenhaver in 2009 and 2010; (4) no details were given regarding the standards for training forensic document examiners; and (5) no evidence was provided as to any "actual hands-on training" Ms. Kaiden has had in the past four years since she began her work as a document examiner. In essence, the court found there had been no evidence presented regarding the details of Ms. Kaiden's education, testing, training or job experience. Accordingly, the circuit court found that the evidence presented fell "far short" of showing that Ms. Kaiden was qualified as an expert by knowledge, skill, experience, training, or education. The circuit court committed no clear abuse of discretion in so finding.

¶ 34 Steven argues that the circuit court misstated the evidence when it found Ms. Kaiden had completed two proficiency tests administered by Collaborative Testing Services. Steven argues that Ms. Kaiden testified on direct examination that she took only one test administered by Collaborative Testing Services, and that the other test she took was administered by St2ar Skill-Task Training

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Assessment and Research, Inc. However, on cross-examination, Ms. Kaiden indicated she took two tests from Collaborative Testing Services. Specifically, Ms. Kaiden was asked: "And when did you take the Collaborative Testing Services, was that in 2011?" She replied, "Yes *** And in 2010." Based on Ms. Kaiden's testimony during cross-examination, we cannot say the circuit court misstated the evidence regarding her proficiency testing.

¶ 35 Steven also argues that the circuit court misstated the evidence when it found that Ms. Kaiden had received 31 hours of "online training" since 1999. In actuality, Ms. Kaiden received 31 hours of in-person training during two seminars given by Kathy Koppenhaver. The misstatement was harmless, where the focus of the court's analysis with regard to the 31 hours of training was on the lack of evidence as to the details thereof.

¶ 36 Steven also argues that the circuit court improperly diminished the value of Ms. Kaiden's "distance learning." Steven explains that "distance learning occurs when there is a separation between the instructor and the student, usually due to geographical or time concerns that prevent the student from attending an on-campus course." Steven further argues that the court was wrong to find Ms. Kaiden lacked hands-on training, as the court improperly equated hands-on training with in-person training. Steven argues, "Ms. Kaiden's thousands of hours of education were live, *not* pre-recorded; she was required to attend the lectures and participate; she was required to complete homework, case studies, mock trials, and term papers." (Emphasis in the original.) Steven also argues that the circuit court disregarded that Ms. Kaiden's skills have been further developed through the 200-plus handwriting cases for which she has consulted and reviewed documents since 2007.

¶ 37 We disagree with Steven's argument that the circuit court improperly diminished the value

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of Ms. Kaiden's distance learning and her document reviews and improperly equated hands-on training with in-person training. The circuit court made clear it was not finding Ms. Kaiden unqualified as an expert in forensic document examination due to her distance learning and lack of in-person training, but rather that it was finding her unqualified as an expert due to the lack of evidence regarding the *details* of said learning and training. The court also made clear it was finding Ms. Kaiden unqualified to testify as an expert witness in forensic document examination because no evidence was presented as to the *contents* of the documents she allegedly had reviewed during the 200-plus handwriting cases for which she has consulted. As discussed above, the circuit court committed no clear abuse of discretion in so finding.

¶ 38 Steven argues that in his motion to reconsider, he presented new evidence that should have caused the circuit court to reverse its earlier ruling and find Ms. Kaiden qualified as an expert in forensic document examination. Specifically, Steven refers to: (1) printouts from the websites of Collaborative Testing Services and St2ar Skill-Task Training Assessment and Research, Inc. describing the companies' backgrounds and the testing provided; (2) an affidavit from Ms. Kaiden detailing her previous cases and clients and describing the work she performed for those clients and also detailing the training she received from Kathy Koppenhaver; and (3) Steven's statements in the motion to reconsider providing further details of Ms. Kaiden's training with Bob Baier and Kathy Koppenhaver.

¶ 39 "There are two types of post-judgment motions: the most common type which challenges the judgment, basing its attack upon facts apparent at the time the judgment was rendered, and another type which raises new facts or matters which were not presented to the court or considered by it

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when it ruled, but which, arguably, would have prevented rendition of the judgment had they been known to the court. A primary requisite of the latter type of post-judgment motion is that the newly discovered evidence was in fact 'newly discovered' and was not previously discoverable prior to judgment by the exercise of ordinary diligence." *Andersen v. Resource Economics Corp.*, 133 Ill. 2d 342, 347-48 (1990).

¶ 40 Here, the websites and the evidence detailing Ms. Kaiden's previous cases and training were not newly discoverable, but could have been discovered and submitted prior to judgment. Accordingly, the circuit court did not err in denying Steven's motion to reconsider.

¶ 41 Further, any error in failing to admit Ms. Kaiden's expert testimony and denying Steven's motion to reconsider was harmless, where Bajo and Walter Bozovic each testified to witnessing the decedent sign the September 22, 2009, will in question. The circuit court here clearly believed their testimony while expressing doubts about Ms. Kaiden's qualifications regarding forensic document examination. The result here would have been the same even if the court had admitted Ms. Kaiden's testimony.

¶ 42 Finally, Steven argues in his reply brief that we should strike the appellee's brief because it does not comply with Illinois Supreme Court Rule 341(a) (Ill. S. Ct. R. 341(a) (eff. July 1, 2008)), which states: "Margins must be at least 1 ½ inch on the left side and 1 inch on the other three sides." Steven contends the appellee's brief measures one-inch margins on all four sides. Steven's motion to strike is denied.

¶ 43 For the foregoing reasons, we affirm the circuit court.

¶ 44 Affirmed.