

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 16th day of February, 2017.

Natalie E. Pomar,

Appellant,

against

Record No. 160473
Circuit Court No. 15-1311

James Larry Hash,

Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Arlington County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is no reversible error in the judgment of the Circuit Court of Arlington County.

Natalie Pomar filed a motion to admit to probate a document she claimed to be the will of Thomas James Hash. The proposed will lacked the subscription of a second witness, however, and on that basis the circuit court held that the will did not comply with Code § 64.2-403(C). The circuit court noted that while Code § 64.2-404(A) offers an exception that treats a document otherwise not in compliance with Code § 64.2-403 as a valid will, under Code § 64.2-404(B) this remedy is available only within one year of the decedent's date of death. Pomar's motion was filed on June 10, 2015, more than one year after the decedent's death on February 24, 2014. Finding the proposed will invalid under Code § 64.2-403 and disqualified from the statutory exception under Code § 64.2-404, the circuit court denied Pomar's motion to admit the will to probate, leading to this appeal.

In her first assignment of error, Pomar argues that the circuit court erroneously considered only whether the proposed will was valid under Code § 64.2-404, failing to additionally consider a judicial doctrine accepting as a valid will any document in "substantial compliance" with statutory requirements for execution of wills. In her second assignment of error, Pomar argues that the circuit court further erred in failing to hold that the proposed will substantially met the

requirements of Code § 64.2-403(C) and in failing to admit the will to probate on that basis.

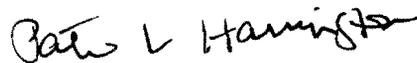
It is unnecessary for us to address Pomar's first assignment of error because we hold that the proposed will, wholly without the subscription of a second witness, does not substantially comply with Code § 64.2-403. *Cf. Hampton Rds. Seventh-Day Adventist Church v. Stevens*, 275 Va. 205, 211, 657 S.E.2d 80, 83 (2008) (statutory requirement of subscription satisfied where witnesses signed beneath signature of testator in self-proving affidavit); *Draper v. Pauley*, 253 Va. 78, 81, 480 S.E.2d 495, 496-97 (1997) (substantial compliance with statutory requirement of subscription where witness wrote name in body of will); *Robinson v. Ward*, 239 Va. 36, 44, 387 S.E.2d 735, 739-40 (1990) (same).

For these reasons, we affirm the judgment of the circuit court. The appellant shall pay to the appellee two hundred and fifty dollars damages.

This order shall be certified to the said circuit court.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read "Paul L. Hamington". The signature is written in a cursive, slightly slanted style.

Clerk