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Probate of a Will Photocopy — *Edmonds v Edmonds*, 772 S.E.2d 898, 2015 Va. LEXIS 78 (2015)

You took the time to put an estate plan in place. You left your attorney's office with a nice package of signed estate planning documents. Perhaps the documents were in an attractive notebook with your name on it. You took the documents home and made a photocopy of your Will and Powers of attorney for your children and sent those copies to them. You stored the original documents in your home.

At a later date, after your death, no one can locate the original signed will. However, a photocopy of your will is located. Can the photocopy of your will be admitted to probate? This is the issue addressed in a recent case — *Edmonds v Edmonds*.

When a testator dies and it can be demonstrated that he made a will and that the will was last in his possession, but it cannot be found upon his death there is a presumption that the testator destroyed the will with the intent to revoke it. The proponent of a lost will must overcome the legal presumption of revocation.

James A. Edmonds, Jr. signed a will and revocable trust agreement that left his assets to his wife and their daughter. Edmonds' son

from a prior marriage, James Christopher Edmonds ("Christopher"), was intentionally omitted as a beneficiary. The original estate planning documents were in the possession of Edmonds, but at his death in 2013, only copies of the documents were found in his papers.

The decedent's wife, Elizabeth Cashman Edmonds, petitioned to admit the copy of the decedent's Will to probate. The decedent's son, Christopher, opposed the petition arguing that Edmonds was presumed to have destroyed the will with the intent to revoke it and thus died intestate.

The trial court held for the decedent's wife, Elizabeth, and admitted the photocopy to probate.

On appeal, the Supreme Court of Virginia noted its task was to determine if the trial court applied the correct legal standard to rebut the presumption of revocation and whether the evidence presented by the decedent's wife was sufficient to demonstrate by clear and convincing evidence that Edmonds did not revoke his Will.

The Virginia Supreme Court held that the trial court applied the correct legal standard. If

the testator had access to the will, there is a presumption that the will was revoked by the testator. The proponent of the missing will has the burden of proof to present clear and convincing evidence demonstrating that:

1. the will existed in legal form;
2. the terms of the will — a copy of the will can be admitted to demonstrate the terms of the Will; and
3. the will has been lost or destroyed but not revoked by destruction on the part of the testator.

The evidence presented by a proponent of a missing instrument will take different forms depending on the facts and context of each individual case. In this case, the Supreme Court found that the decedent's wife had presented sufficient evidence to prove clearly and convincingly that Edmonds did not intend to revoke his Will. The court noted Edmonds' long marriage, his wife's complementary estate plan, Edmonds' repeated and consistent statements to his attorneys, friends and business associates about his estate planning goals, as well as his failure to remove the copy of the Will from his files and the inconsistency of intestacy with his estate plan.

How About You?

Don't have any estate plan? Now is the time to call to make an appointment for a complementary 30 minute consultation. You may have planning options of which you are unaware.

Can't find your documents? If you can't find your documents, it's time to make a new plan. Call for an appointment.

Can't find the original document(s)? If you don't have the signed original document, but you do have a photocopy or an unsigned copy of your estate planning documents, please call for an appointment to discuss recreating the terms of your old plan in new documents.

Located a very old document? Perhaps you located your original signed Last Will and Testament, but the document is 30 years old. Your kids are grown and you need to rethink your distribution plan and Executors. Give me a call.

Can't remember if you transferred assets to your revocable trust? Call for an appointment. We can review your statements with you to determine whether your assets are in your trust or not.