

No. 32506 – *Albert E. Ruble, Administrator C.T.A. of the Estate of Mary Alverta Green v. Albert E. Ruble, Betty Ruble, Jacob Mullett, Jeremy Potter, Mark Cappillini, Brenda Cappillini, Steven Brannon, Christine Brannon, Robert DeClerico, and Philip Richel c/o Herod Funeral Home, Maude Copeland, Donald Copeland, Kathryn Evans, Betty Lou Green, James Green, Mary M. Bishop, Raymond Abernathy, Mary Margaret Sullivan, Martha Lancaster, Inez Deeley, and all unknown heirs of the Estate of Mary Alverta Green*

FILED

July 13, 2005

released at 10:00 a.m.

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., dissenting:

The majority reversed this case by setting aside an experienced trial judge’s evidentiary ruling, when the judge was sitting as the trier of the facts. Judge Stone found that a questioned notation in Mary Alverta Green’s holographic will leaving the residuary of her estate to “Albert & Betty Ruble, 617 Elmina St, Morgantown” was Ms. Green’s handwriting and therefore a valid portion of her will. This Court should have given deference to Judge Stone’s years of experience as a trial judge, and not have reversed the case.

In this case, the trial judge compared the contested writing with writing to which the parties agreed as being that of Ms. Green. When a writing that has been admitted or proved to be that of the writer is available, it can be used as a standard of comparison by the trier of fact in making a determination of the authenticity of a contested writing, with or without the use of expert testimony. *Young v. Wheby*, 126 W.Va. 741, 30 S.E.2d 6 (1944). Ultimately, it is the trier of fact that determines the authenticity of disputed handwriting. *W.Va. Code*, 57-2-1 (1981).

The appellants failed to employ a handwriting expert during the proceedings below. The appellants allowed the trial judge to analyze the writing without the aid of an expert. Then, when receiving an adverse ruling, they appealed to this Court.

The majority opinion allows the appellants an undeserved second chance at making their case. Accordingly, I dissent.