

Dated: March 31, 2025
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:

Richard M. Eisenberg,
Debtor.

Case No.: 21-24045
Chapter 13

MEMORANDUM OPINION AND ORDER DENYING
PRO SE MOTION FOR PAYMENT OF UNCLAIMED FUNDS

This case came before the Court on Stacey Lucterhand's and Eric Eisenberg's (the "Applicants") amended *Pro Se Motion for Payment of Unclaimed Funds* ("Application") and supporting documents seeking surplus funds of \$3,402.21 from their late father's chapter 13 case. Upon review of the record and arguments from the parties, the Application is not approved for the reasons explained below.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Procedural Background

On December 7, 2021 (“Petition Date”), Richard M. Eisenberg (“Debtor” or “Mr. Eisenberg”) filed a voluntary petition commencing a case under chapter 13 of the Bankruptcy Code.¹ Debtor’s Schedule A/B listed one real property and one vehicle.² Debtor’s schedules showed Debtor’s real property located in Cordova, Tennessee, to be worth \$172,300.00, \$12,500.00 in exemptions, and approximately \$131,741.07 in secured claims.³ On December 21, 2021, Debtor filed its chapter 13 plan.⁴ On April 27, 2022, Debtor’s chapter 13 plan was confirmed.⁵

On February 16, 2023, Debtor filed an *Expedited Motion to Allow Debtor to Sell Real Property* (the Debtor’s home) to “use the proceeds to pay off his existing mortgage and other debts.”⁶ On March 13, 2023, PHH Mortgage Corporation (“PHH Mortgage”) filed its response to Debtor’s motion to sell (“Response”).⁷ PHH Mortgage did not oppose Debtor’s motion to sell on the condition that PHH Mortgage be “paid off in full.”⁸ On April 4, 2023, the *Order Granting*

¹ ECF No. 1.

² ECF No. 16, Schedule A/B. Debtor’s 2017 Nissan Frontier was worth \$9,500.00, \$1.00 in exemptions, and \$13,000.00 in secured claims.

³ ECF No. 16, Schedule A/B, Schedule C, and Schedule D. According to the Claims Register, three creditors held secured claims on Debtor’s real property. PHH Mortgage Corporation held \$98,510.76 in secured claims, the Shelby County Trustee held \$3,040.58 in secured claims, and the City of Memphis held \$2,594.95 in secured claims.

⁴ ECF No. 15.

⁵ ECF No. 39.

⁶ ECF No. 74.

⁷ ECF No. 84.

⁸ ECF No. 84. PHH Mortgage also asked that it be “permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale so that [PHH Mortgage’s claim was] paid in full at the time the sale of the [property was] finalized,” that PHH Mortgage “retain its [l]ien” on Debtor’s real property should the sale of the real property not take place, and that “the undisputed amount of [PHH Mortgage’s claim] be paid at the close of the sale and the sale and for the disputed amount of [PHH Mortgage’s] claim to be segregated in an interest bearing account with an additional \$10,000 in sale proceeds.”

Debtor's Expedited Motion to Allow Debtor to Sell Real Property and Granting Creditor's Response Thereto was entered.⁹

On May 9, 2023, an *Order on Completed Chapter 13 Case Without the Entry of a Discharge Combined with Notice of the Entry Thereof* was entered.¹⁰ On August 18, 2023, the order approving the chapter 13 trustee's final report and account, discharging the chapter 13 trustee and closing Debtor's chapter 13 case was entered.¹¹ On February 27, 2024, the chapter 13 trustee deposited the \$3,402.21 in surplus funds with the Clerk's office.

On April 4, 2024, Debtor's daughter, Ms. Stacey Lucterhand ("Ms. Lucterhand"), filed a *Pro Se Motion for Payment of Unclaimed Funds* ("Application") in the amount of \$3,402.21.¹² The request for payee information within the Application listed Mr. Eisenberg as the "payee" for the \$3,402.21, indicating that the funds were surplus funds to which the Debtor was entitled.¹³ That same day, Ms. Lucterhand filed additional documentation in support of her Application, which revealed that Mr. Eisenberg had passed away on June 17, 2023, in the State of Indiana ("Indiana").¹⁴ The additional documentation also contained "The Last Will and Testament of Richard Eisenberg" from March 14, 2018 (the "2018 Will").¹⁵ However, the Clerk's Office listed Debtor's Application as "deficient" because the 2018 Will was illegible.¹⁶ On May 16, 2024, Ms.

⁹ ECF No. 89.

¹⁰ ECF No. 92.

¹¹ ECF No. 97.

¹² ECF No. 101.

¹³ ECF No. 101.

¹⁴ ECF No. 102.

¹⁵ ECF No. 102.

¹⁶ ECF Nos. 101 and 103. The Clerk's entry also stated that "further information [was] required" and to "contact the Finance [Department]" for further information.

Lucerhand filed a second Application and additional documentation in support of her Application.¹⁷ On the additional documentation, Ms. Lucerhand filed a second “Last Will and Testament of Richard M. Eisenberg” from February 18, 2011 (the “2011 Will”).¹⁸

On July 16, 2024, at 10:00 a.m., the Court conducted an initial hearing on Ms. Lucerhand’s Application.¹⁹ Ms. Lucerhand represented herself, while Debtor’s attorney appeared on behalf of the late Debtor. The Court continued the matter to August 13, 2024, at 10:30 a.m. to allow Ms. Lucerhand additional time to file an amended Application that also listed her brother Eric Eisenberg (“Mr. Eric Eisenberg”) and provided a legible 2018 Will.²⁰ On August 13, 2024, Ms. Lucerhand informed the Court that the 2018 Will also listed Terry Ann Eisenberg (“Mrs. Eisenberg”) and William Charles Eisenberg (“Mr. William Eisenberg”).²¹ The Court continued the matter to September 24, 2024, at 10:30 a.m.²² On September 30, 2024, Ms. Lucerhand filed her third Application and additional documentation in support of her Application.²³ On October 8, 2024, at 10:30 a.m., Ms. Lucerhand claimed that Mrs. Eisenberg was “disqualified from [both the 2018 Will and the 2011 Will]” and the late Debtor’s attorney stated that he could introduce Ms. Lucerhand to a Wills and Estates lawyer.²⁴ The Court continued the matter to November 5, 2024, at 10:30 a.m., at which Ms. Lucerhand informed the

¹⁷ ECF Nos. 106, 107, and 108.

¹⁸ ECF No. 108.

¹⁹ ECF No. 109.

²⁰ Hearing on Jul. 16, 2024, at 10:57 a.m.

²¹ Hearing on Ms. Lucerhand’s Pro Se Motion for Payment of Unclaimed Funds on August 13, 2024 (“Hearing on Aug. 13, 2024”), at 10:36 a.m.

²² Hearing on Aug. 13, 2024, at 10:38 a.m.

²³ ECF No. 111 and 112.

²⁴ Hearing on Oct. 8, 2024, at 10:42 a.m. and 10:49 a.m.

Court that three Wills and Estate lawyers told her that the 2018 Will was “legally ineffective” because Debtor was not in Tennessee when he passed away.²⁵ The Court again continued the matter to December 17, 2024, at 10:30 a.m.,²⁶ at the conclusion of which the Court took the matter under advisement and gave Ms. Lucterhand twenty-one (21) days to submit any additional documents to the Court.²⁷ No post-hearing filings were submitted.

B. Factual Background

1. The Hearings

The hearing regarding Ms. Lucterhand’s Application was scheduled several times to allow Ms. Lucterhand to provide additional information regarding her entitlement to the surplus funds. The information provided at the hearings are outlined as follows. The chapter 13 trustee confirmed that the funds were “surplus funds” (from the sale of the real estate), and not “unclaimed funds.”²⁸ Ms. Lucterhand is the late Debtor’s daughter and believes that she is entitled to the \$3,402.21 of Debtor’s funds, based on the two separate wills submitted to the Court, which listed both herself and Mr. Eric Eisenberg as the beneficiaries.²⁹ Debtor’s attorney was not aware of the existence of the two wills.³⁰ The 2018 Will was not legible,³¹ and a legible version of the 2018 Will, which was ultimately provided.³² The 2018 Will listed the late Debtor’s

²⁵ Hearing on Ms. Lucterhand’s Pro Se Motion for Payment of Unclaimed Funds on November 5, 2024 (“Hearing on Nov. 5, 2024”), at 11:56 a.m.

²⁶ Hearing on Nov. 5, 2024, at 11:58 a.m.

²⁷ Hearing on Dec. 17, 2024, at 11:58 a.m.

²⁸ Hearing on Jul. 16, 2024, at 10:51 a.m.

²⁹ Hearing on Jul. 16, 2024, at 10:54 a.m.

³⁰ Hearing on Jul. 16, 2024, at 10:52 a.m.

³¹ Hearing on Jul. 16, 2024, at 10:55 a.m.

³² Hearing on Jul. 16, 2024, at 10:57 a.m.

spouse, Mrs. Eisenberg, as the executor of the 2018 Will, but also listed Mr. William Eisenberg (the late Debtor's brother) as the "successor executor" in Mrs. Eisenberg's absence.³³

Ms. Lucterhand took the position that there were "only two other people" mentioned in the 2018 Will, Mrs. Eisenberg and Mr. William Eisenberg.³⁴ Ms. Lucterhand was "not really sure" whether Mr. William Eisenberg was the executor of her late father's estate and that she believed Mrs. Eisenberg was "disqualified from [Debtor's wills]" because Mrs. Eisenberg was only married to her father (the late Debtor) for "less than one year."³⁵ The Court recommended that Ms. Lucterhand retain counsel familiar with the issues before the Court, but ultimately, she did not retain counsel.

2. Debtor's Wills

Ms. Lucterhand filed two separate wills to the Court, the 2018 Will and the 2011 Will.³⁶ The 2018 Will was the most recent will and the focus of the Court's inquiries during the hearings.³⁷ The 2018 Will was fifteen pages, with the first twelve pages being the actual will, page 13 being the "Attestation" page, page 14 being the "Self-Proving Affidavit" page, and page 15 being the "Statement of Interment, Cremation, and Wishes."³⁸ The first page stated that Mr. Eisenberg was "a resident of the state of Tennessee and county of Shelby" and that Mr. Eisenberg was "married to Terry Ann Eisenberg" "[a]t the time of executing this Will."³⁹ The

³³ ECF No. 112.

³⁴ Hearing on Oct. 8, 2024, at 10:41 a.m.

³⁵ Hearing on Oct. 8, 2024, at 10:41 a.m. and 10:42 a.m.

³⁶ ECF Nos. 108 and 112.

³⁷ ECF No. 112.

³⁸ ECF No. 112.

³⁹ ECF No. 112, at 1.

will also listed “Stacey Gail Lucterhand” and “Eric Charles Eisenberg” as Mr. Eisenberg’s “children.”⁴⁰

The “Principal Remainder Distribution” section on the second and third page stated, “If my spouse, Terry Ann Eisenberg, survives me, all of the rest, residue, and remainder of my property and estate . . . will be held in trust for Terry Ann Eisenberg’s lifetime. Terry Ann Eisenberg shall be the sole trustee of this trust.”⁴¹

The fourth page described any alternate beneficiaries should Mrs. Eisenberg not survive Mr. Eisenberg.⁴² The “Alternate Remainder Beneficiaries” section stated:

“If Terry Ann Eisenberg does not survive me, I divide all of the residue and remainder of my gross estate, real and personal . . . into as many equal shares as there are living children of mine[.] Each living child shall be given one share[.] Unless otherwise indicated in my Will, the shares allocated to my children . . . will be distributed to these beneficiaries, outright and free of trust.”⁴³

However, if all of Mr. Eisenberg’s beneficiaries were deceased, then “the remaining portion of my estate [would] then be distributed to my heirs determined according to the laws of intestate succession[.]”⁴⁴

The fifth page dictated the nomination of a trustee.⁴⁵ Mr. Eisenberg “nominate[d] Terry Ann Eisenberg as trustee of all trusts . . . to hold, administer, and distribute said trusts[.]”⁴⁶ Mr.

⁴⁰ ECF No. 112, at 1.

⁴¹ ECF No. 112, at 3.

⁴² ECF No. 112, at 4.

⁴³ ECF No. 112, at 4. The “Alternate Remainder Beneficiaries” section further defined that “[t]he terms ‘issue,’ ‘child,’ ‘children,’ include a person who has a parent-child relationship, as defined under applicable state law[.]”

⁴⁴ ECF No. 112, at 4.

⁴⁵ ECF No. 112, at 5.

⁴⁶ ECF No. 102, at 5. Page 5 was missing from the amended 2018 Will that Ms. Lucterhand filed on September 30, 2024. (ECF No. 112). This newly filed 2018 Will was the more legible will that the Court asked Ms. Lucterhand to file, because the initially filed 2018 Will was not legible. (ECF No. 102).

William Eisenberg was named the substitute trustee if Mrs. Eisenberg was “unable or unwilling to serve or continue to serve as trustee of the trust[s].”⁴⁷ If both Mrs. Eisenberg and Mr. William Eisenberg could not serve as trustee, then “the majority of beneficiaries of the trusts . . . shall nominate a successor trustee, subject to the approval of a court of competent jurisdiction.”⁴⁸

The ninth and tenth pages described executor nominations.⁴⁹ Under “Executor Nominations,” Mr. Eisenberg stated:

“I nominate my spouse, Terry Ann Eisenberg, to be the executor of this Will. If, for any reason, my first nominee executor is unable or unwilling to serve or to continue to serve as executor of this Will, I nominate my brother, William Charles Eisenberg, to be the successor executor. If none of the nominated executors are able . . . to serve . . . and the vacancy is not filled as set forth above, the majority of estate beneficiaries shall nominate a successor executor. If the majority of estate beneficiaries are unable to nominate a successor executor, the vacancy will be filled pursuant to a petition filed by the resigning executor or any person interested in the estate in a court of competent jurisdiction.”⁵⁰

Under “Miscellaneous Executor Provisions,” Mr. Eisenberg stated that “[m]y executor will have broad and reasonable discretion in the administration of my estate to exercise all of the powers permitted to be exercised by an executor under state law[.] I direct that my executor perform all acts and exercise all such rights and privileges, although not specifically mentioned in this Will, with relation to any such property, as if the absolute owner thereof[.]”⁵¹

⁴⁷ ECF No. 102, at 5.

⁴⁸ ECF No. 102, at 5. The will also outlined the general powers and duties of the trustee. The will stated that “[e]ach trustee of a trust created under this Will will have all of the powers deemed necessary and appropriate to administer that trust, including all powers granted under Tennessee law[.]” The eighth page stated “[i]f the trustee is required by this Will to divide any trust property into parts or shares or otherwise, the trustee is authorized, in the trustee’s sole discretion, to make that division and distribution in identical interests[.] For this purpose, the trustee may sell such trust property not specifically devised as the trustee deems necessary.” ECF No. 112, at 6.

⁴⁹ ECF No. 112, at 9.

⁵⁰ ECF No. 112, at 9.

⁵¹ ECF No. 112, at 9. The section further states, “If there are two co-executors serving, they shall act by unanimous agreement. If there are more than two co-executors serving, they shall act in accordance with the decision made by the majority of co-executors.”

The twelfth page contained Mr. Eisenberg's signature and that the will was signed on March 14, 2018.⁵² The thirteenth page contained the signature of Mrs. Eisenberg, who witnessed the execution of the will.⁵³ The fourteenth page contained the signature of Mr. Eisenberg confirming that he "signed and executed the attached . . . instrument as my last will and testament and that I signed it willingly . . . that I executed it as my free and voluntary act for the purposes expressed in that document[.]"⁵⁴ The page also contained the signatures of two witnesses, Cindy K. Bertchler and Tanya S. Watson, and the State of Tennessee Notary Public.⁵⁵

Additionally, Ms. Lucterhand provided Debtor's 2011 Will.⁵⁶ The 2011 Will was seven pages.⁵⁷ The first page named Mr. Eisenberg as the Testator and that he resided in Shelby County, Tennessee.⁵⁸ Mr. Eisenberg identified his two children as "Stacey Gail Eisenberg" and "Eric Charles Eisenberg."⁵⁹ Mr. Eisenberg also appointed his "brother, William Eisenberg" to serve as executor of his will and that if his brother failed to serve, Mr. Eisenberg appointed his own "attorney, Jon W. Smith" to serve as executor.⁶⁰ In addition to executor, Mr. Eisenberg also

⁵² The parties signed under the statement: "In witness whereof, I, the undersigned testator, declare that I sign and execute this instrument on the date written below as my last will and testament and further declare that I sign it willingly, that I execute it as my free and voluntary act for the purposes expressed in this document, and that I am eighteen years of age or older, of sound mind and memory, and under no constraint or undue influence." ECF No. 112, at 12-13.

⁵³ ECF No. 112, at 13.

⁵⁴ ECF No. 112, at 14.

⁵⁵ ECF No. 112, at 14. Because the signatures and names of the two witnesses were handwritten and photocopied, it was difficult to make out the spellings of the names.

⁵⁶ ECF No. 108.

⁵⁷ ECF No. 108. The 2011 Will was deficient on information because it was missing pages 2, 4, and 6.

⁵⁸ ECF No. 108, at 1.

⁵⁹ ECF No. 108, at 1.

⁶⁰ ECF No. 108, at 1.

appointed Mr. William Eisenberg as “trustee of all trusts created in [Debtor’s] will.”⁶¹ But if Mr. William Eisenberg failed to serve, then Mr. Eisenberg appointed Ms. Lucterhand to serve as the trustee and Mr. Eric Eisenberg as the substitute trustee, should Ms. Lucterhand be unable to serve.⁶² The third page stated that the executor was authorized to “make a loan” on behalf of a beneficiary if the beneficiary “requests funds from my executor for the health, education, maintenance or support of such beneficiary.”⁶³ The will stated, “I direct that all legally enforceable debts of my estate, the expenses of my last illness, any unpaid charitable pledges, my funeral expenses and all administration expenses be paid by my executor as soon as practicable after my death.”⁶⁴ The last page contained the signatures of Mr. Eisenberg, two witnesses, and the State of Tennessee Notary Public.⁶⁵ The will was signed on February 18, 2011.⁶⁶

II. LEGAL DISCUSSION

This Court must decide who is entitled to the surplus funds of \$3,402.21.

A. Validity of Debtor’s Wills Pursuant to Tennessee Code Annotated Section 32-1-104

Applicants supplied two wills to the Court—the 2018 Will and the 2011 Will.⁶⁷ Based on applicable Tennessee Law and the record, the Court finds the 2018 Will to be the operative will. Bankruptcy courts generally look to state law to determine property rights and the validity

⁶¹ ECF No. 108, at 1.

⁶² ECF No. 108, at 1.

⁶³ ECF No. 108, at 3.

⁶⁴ ECF No. 108, at 3.

⁶⁵ ECF No. 108, at 7.

⁶⁶ ECF No. 108, at 7.

⁶⁷ ECF Nos. 108 and 112.

of wills.⁶⁸ Here, the 2018 Will was signed by Mr. Eisenberg, three witnesses, and the State of Tennessee Notary Public.⁶⁹ Similarly, the 2011 Will was signed by Mr. Eisenberg, two witnesses, and the State of Tennessee Notary Public.⁷⁰ Tennessee law applies because Mr. Eisenberg executed both 2018 and 2011 Wills in the State of Tennessee (“Tennessee”).⁷¹ Tennessee Code Annotated section 32-1-104 (“Tenn. Code Ann. 32-1-104”) prescribes the way a will is properly executed, and provides, in part:

- (a) The execution of a will, other than a holographic or nuncupative will, must be by the signature of the testator and of at least two (2) witnesses as follows:
 - (1) The testator shall signify to the attesting witnesses that the instrument is the testator's will and either:
 - (A) The testator sign;
 - (B) Acknowledge the testator's signature already made; or
 - (C) At the testator's direction and in the testator's presence have someone else sign the testator's name; and
 - (D) In any of the above cases the act must be done in the presence of two (2) or more attesting witnesses;
 - (2) The attesting witnesses must sign:
 - (A) In the presence of the testator; and
 - (B) In the presence of each other.⁷²

Here, Mr. Eisenberg was the testator of the 2018 Will. Page 12 stated in its entirety:

I, the undersigned *testator*, declare that I sign and execute this instrument on the date written below as my last will and testament and further declare that I sign it willingly, that I execute it as my free and voluntary act for the purposes expressed

⁶⁸ See *In re Rodriguez*, 488 B.R. 675, 678 (Bankr. E.D. Cal. 2013) (explaining that property rights are often determined by state law); see also *Comerica Bank, N.A. v. U.S.*, 93 F.3d 225, 227-28 (1996) (explaining that Michigan law applied in determining the “clearest expression of a preference for delayed vesting.”) (citation omitted); *Voss v. Voss*, 621 F. Supp.3d 816, 823 (E.D. Mich. 2022) (finding that the state probate court could not distribute proceeds according to the codicil in a manner that named beneficiary sought to enforce it under Michigan law); *In re Creighton University v. Kleinfeld*, 919 F. Supp. 1421, 1423-24 (E.D. Cal. 1995) (stating that under California law, extrinsic evidence would be used in determining the testator's intent if the evidence rendered the will ambiguous).

⁶⁹ ECF No. 112, at 13-14.

⁷⁰ ECF No. 108, at 4.

⁷¹ ECF Nos. 102, 108, and 112.

⁷² TENN. CODE ANN. § 32-1-104(a)(1)-(2) (2024).

in this document, and that I am eighteen years of age or older, of sound mind and memory, and under no constraint or undue influence.⁷³

Similarly, the “Self-Proving Affidavit” page provided:

I, Richard Eisenberg, the undersigned *testator*, being first duly sworn, do declare to the undersigned authority that I signed and executed the attached or annexed instrument as my last will and testament and that I signed it willingly, or willingly directed another to sign for me, that I executed it as my free and voluntary act for the purposes expressed in that document, and that at the time I signed the document, I was eighteen years of age or older, of sound mind and memory, and under no constraint or undue influence.⁷⁴

Mr. Eisenberg’s signatures and initials on page 12 and the “Self-Proving Affidavit” page evidenced him to be testator pursuant to Tenn. Code Ann. section 32-1-104(a).⁷⁵

The 2018 Will also satisfies subsection 32-1-104(a)(1)-(2). Subsection 32-1-104(a)(1)-(2) governs the presence and signatures of witnesses in a will.⁷⁶ Specifically, subsection 32-1-104(a)(1)(D) requires the presence and signatures of two witnesses in a will.⁷⁷

Here, the 2018 Will was signed by three witnesses.⁷⁸ Mrs. Eisenberg was the sole witness on the “Attestation” page, and Cindy K. Bertchler and Tanya S. Watson signed as witnesses on the “Self-Proving Affidavit” page.⁷⁹ Mrs. Eisenberg signed under the following statement:

This last will and testament, which has been separately signed by Richard Eisenberg, the testator, was on the date indicated below signed and declared by the above named testator as his or her last will and testament in the presence of each of

⁷³ ECF No. 112, at 12 (emphasis added).

⁷⁴ ECF No. 112, at 14 (emphasis added).

⁷⁵ TENN. CODE ANN. § 32-1-104(a) (2024).

⁷⁶ TENN. CODE ANN. § 32-1-104(a)(1)-(2) (2024).

⁷⁷ TENN. CODE ANN. § 32-1-104(a)(1)(D) (2024).

⁷⁸ ECF No. 112, at 13 and 14.

⁷⁹ ECF No. 112, at 13 and 14. The “Attestation” page contained a handwritten note stating that Ms. Eisenberg was not a valid witness “because she [was] the trustee” of the will. However, neither the Tennessee Code nor case law contain any explicit statements that a trustee of a will cannot serve as a witness. *See, e.g., In re Estate of Stringfield*, 283 S.W.3d 832, 836-37 (Tenn Ct. App. 2008) (holding that the statutory requirement that witnesses sign a will was not satisfied where the witnesses initialed only the first two pages of the will but did not sign the last page of the will).

us. We, in the presence of the testator and each other, at the testator's request, under penalty of perjury, hereby subscribe our names as witnesses to the declaration, and execution of the last will and testament by the testator, and we declare that, to the best of our knowledge, said testator is eighteen years of age or older, of sound mind and memory and under no constraint or undue influence.⁸⁰

Similarly, Cindy K. Bertchlor and Tanya S. Watson signed under the following statement:

"We, the undersigned witnesses, being first duly sworn, do each declare to the undersigned authority" that "(1) the testator declared to each of us that the attached or annexed instrument is his or her last will and testament; (2) the testator executed the last will in our presence; (3) each of us, in the presence of the testator and in the presence of each other, and at the testator's request, signed the last will and testament as witnesses; and (4) to the best of our knowledge the testator was at that time eighteen years of age or older, of sound mind and memory, and under no constraint or undue influence."⁸¹

Because three witnesses signed the 2018 Will on the "Self-Proving Affidavit" page and Mr. Eisenberg's signature was on that same page, the witnesses signed the will in Mr. Eisenberg's presence pursuant to Tenn. Code Ann. 32-1-104(a)(1)(D).⁸² That the signatures of the witnesses and Mr. Eisenberg were made on March 14, 2018, further showed compliance with the Tennessee Code.⁸³

The 2011 Will is also valid. The validity of the 2011 Will is determined by a recent amendment made to the Tenn. Code Ann. 32-1-104. In 2016, subsection 32-1-104(b)(1) was added to the Tennessee Code.⁸⁴ The amendment rendered valid those wills executed prior to July

⁸⁰ ECF No. 112, at 13.

⁸¹ ECF No. 112, at 14.

⁸² ECF No. 112, at 14.

⁸³ TENN. CODE ANN. § 32-1-104(a)(2)(A)-(B) (2024); *see also Taylor v. Holt*, 134 S.W.3d 830, 832-34 (Tenn. Ct. App. 2003) (holding that a will was properly witnessed, where two witnesses observed the testator's computer-generated signature on his will); *In re Estate of Ross*, 969 S.W.2d 398, 401 (Tenn. Ct. App. 1997) (holding that the fact that the witness did not actually observe the testator sign the will did not render the will invalid).

⁸⁴ Josh A. McCreary, *Execution of Last Will and Testaments: Revisited*, 52 TENN. BAR J. 26, 27 (2016). *See also In re Estate of Stewart*, 545 S.W.3d 458, 463 (Tenn. Ct. App. 2017) (explaining the evolution of Tenn. Ann. Code 32-1-104 and the addition of subsection 32-1-104(b)(1) of the Code in April 2016).

1, 2016, that had “witness signatures affixed to an affidavit” to be deemed signatures of the will itself.⁸⁵ Subsection 32-1-104(a)(1)-(2) must be followed, and provides:

(b)(1) For wills executed prior to July 1, 2016, to the extent necessary for the will to be validly executed, witness signatures affixed to an affidavit meeting the requirements of § 32-2-110 shall be considered signatures to the will, provided that:

(A) The signatures are made at the same time as the testator signs the will and are made in accordance with subsection (a); and

(B) The affidavit contains language meeting all the requirements of subsection (a).

(2) If the witnesses signed the affidavit on the same day that the testator signed the will, it shall be presumed that the witnesses and the testator signed at the same time, unless rebutted by clear and convincing evidence. If, pursuant to this subsection (b), witness signatures on the affidavit are treated as signatures on the will, the affidavit shall not also serve as a self-proving affidavit under § 32-2-110. Nothing in this subsection (b) shall affect, eliminate, or relax the requirement in subsection (a) that the testator sign the will.

Here, the 2011 Will is also valid under subsection 32-1-104(a)(2)(A)-(B) because the “Signature Page and Affidavit of Witnesses” was signed by Mr. Eisenberg and the two witnesses on February 18, 2011.⁸⁶ The will is also valid under subsection 32-1-104(b)(1) because the will was executed prior to July 1, 2026, and the two witnesses signed under an affidavit of the will.⁸⁷

⁸⁵ TENN. CODE ANN. § 32-1-104(b)(1) (2024). *See also In re Estate of Stewart*, 545 S.W.3d at 463 (citing TENN. ANN. CODE 32-1-104(b)(1)).

⁸⁶ ECF No. 108, at 7; TENN. CODE ANN. § 32-1-104(a)(2)(A)-(B).

⁸⁷ ECF No. 108, at 7; TENN. CODE ANN. § 32-1-104(b)(1) (2024). *See Dobson v. Shortt*, 929 S.W.2d 347, 350 (Tenn. Ct. App. 1996) (holding that the proof of validity of signature of a testator and attesting witnesses generally raises the presumption that the witnesses signed the will in accordance with the Tenn. Code Ann. § 32-1-104); *In re Estate of Bradley*, 817 S.W.2d 320, 322 (Tenn. App. Ct. 1991) (explaining that “as a matter of law, it is not essential that an express request be made by the testator to the attesting witnesses that they witness the signing of his will.”); *Jackson v. Patton*, 952 S.W.2d 404, 407 (Tenn. 1997) (finding that testimony that the testator failed to signify to the witnesses to the will that the instrument was the testator’s will did not “overcome the presumption” of due execution of the will).

The 2018 Will is the operative will pursuant to Tenn. Code Ann. section 32-1-201 that governs the revocation of wills.⁸⁸ Mr. Eisenberg titled the 2018 Will “The Last Will and Testament of Richard Eisenberg,” two witnesses both signed and printed their names on the “Self-Proving Affidavit” page dated March 14, 2018, and Mr. Eisenberg signed his name on the same page on the same date.⁸⁹ Due to these “concrete actions,” the Court finds that Mr. Eisenberg intended to revoke the 2011 Will.⁹⁰

**B. Disbursement of Surplus Funds Pursuant to
28 U.S.C. § 2041, 28 U.S.C. § 2042, and Fed. R. Bankr. P. 3011**

Unclaimed funds are funds held by an individual or entity who is entitled to the money, but who has not yet claimed ownership of the funds.⁹¹ Under subsection 347(a) of the Bankruptcy Code, “[f]unds held by a court for an owner that has failed to claim the funds, failed to negotiate payment of the funds, or cannot be located, are typically identified as unclaimed funds. A trustee must treat the funds associated with any uncashed checks as unclaimed property under [section] 347, and deposit them with the court to be held in trust for the party entitled to be paid.”⁹²

⁸⁸ TENN. CODE ANN. § 32-1-201 provides in its entirety:

A will or any part thereof is revoked by:

- (1) A subsequent will, other than a nuncupative will, that revokes the prior will or part expressly or by inconsistency;
- (2) Document of revocation, executed with all the formalities of an attested will or a holographic will, but not a nuncupative will, that revokes the prior will or part expressly;
- (3) Being burned, torn, cancelled, obliterated or destroyed, with the intent and for the purpose of revoking it, by the testator or by another person in the testator's presence and by the testator's direction; or
- (4) Both the subsequent marriage and the birth of a child of the testator, but divorce or annulment of the subsequent marriage does not revive a prior will.

⁸⁹ ECF No. 112, at 1, 12-14.

⁹⁰ ECF No. 112, at 14-15. *See also In re Estate of Meade*, 156 S.W.3d at 845 (identifying the “concrete actions” that the testator took indicating that the testator intended to revoke her prior will).

⁹¹ *In re Edwards*, No. 19-28780, 2022 WL 22847219, at *1 (Bankr. W.D. Tenn. Nov. 18, 2022).

⁹² *Id.* (citations omitted).

In determining to whom the Clerk's Office should disburse a check of unclaimed funds to, the Court's first line of inquiry is whether the funds are unclaimed funds or surplus funds. "Surplus assets, as the name denotes, are assets left over after the payment of all allowed claims" and debtors may well be entitled to payment of such funds.⁹³ "Unclaimed funds, however, belong to a particular creditor, that has failed to collect or receive those funds."⁹⁴ Generally, debtors would be directly entitled to surplus funds.⁹⁵

Here, the funds are surplus funds because "[the funds] were from the sale of [Debtor's house] from the closing attorney" and that the City of Memphis Treasurer "refunded back in October [2023] an interest of \$467.04 and then a principal balance of \$2,594.95 to the [chapter 13 trustee]."⁹⁶ The Debtor passed away, and his adult children believe they are entitled to funds of \$3,402.21.⁹⁷ Having found that the funds are surplus funds, the Court's next line of inquiry is whether the claimants are the rightful owner of the funds.⁹⁸ Bankruptcy courts have a duty to ensure that any unclaimed funds are disbursed to the proper party.⁹⁹ Pursuant to 28 U.S.C. §§

⁹³ *In re Parsons*, No. 07-10113, 2023 Bankr. LEXIS 2753, at *12 (Bankr. W.D. Tenn. Nov. 9, 2023) (citations omitted).

⁹⁴ *Id.* (citation omitted).

⁹⁵ *See, e.g., In re Atkins*, 343 B.R. 283, 284 (Bankr. M.D. Fla. 2005) (explaining, "In the absence of any express statutory authority governing the disposition of surplus funds, bankruptcy courts have commonly recognized the debtor's right to recover surplus bankruptcy funds under general equitable principles.") (citing *In re Georgian Villa, Inc.*, 55 F.3d 1561, 1563 (11th Cir. 1995)).

⁹⁶ Hearing on Jul. 16, 2024, at 10:49 a.m. and 10:50 a.m.

⁹⁷ ECF Nos. 101, 106, and 111.

⁹⁸ *In re McDowell*, 578 B.R. 786, 789 (Bankr. M.D. Tenn. 2017) (stating that the bankruptcy court must determine the rightful owner of the funds).

⁹⁹ *See, e.g., In re Scott*, 346 B.R. 557, 558 (Bankr. N.D. Ga. 2006) (explaining that bankruptcy courts have a duty to make sure that unclaimed funds are disbursed to their "true owner.").

2041 and 2042,¹⁰⁰ unclaimed funds must remain in a bankruptcy court’s registry until the “rightful owner” with “full proof” of entitlement comes to claim them.¹⁰¹ The burden of proof is on the claimant that moved for payment of unclaimed funds to show that the claimant is the “rightful owner” of the funds sought.¹⁰² Courts have interpreted the meaning of “rightful owner” in various ways.¹⁰³ For example, in *Rodriguez*, the brother of a deceased debtor filed an application to claim \$659.20 in surplus funds of the deceased debtor.¹⁰⁴ The debtor’s brother filed an application pursuant to the Guidelines Pertaining to Applications for Payment of

¹⁰⁰ 28 U.S.C. § 2041 states in its entirety:

All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depositary, in the name and to the credit of such court.

This section shall not prevent the delivery of any such money to the *rightful owners* upon security, according to agreement of parties, under the direction of the court.

28 U.S.C. § 2041 (2025) (emphasis added).

Additionally, 28 U.S.C. § 2042 states in its entirety:

No money deposited under section 2041 of this title shall be withdrawn except by order of court. In every case in which the right to withdraw money deposited in court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and *full proof of the right thereto*, obtain an order directing payment to him.

28 U.S.C. § 2042 (2025) (emphasis added).

¹⁰¹ *In re Dubose*, 555 B.R. 41, 44 (Bankr. M.D. Ala. 2016) (outlining cases discussing “rightful owner” of unclaimed funds).

¹⁰² *In re Acker*, 275 B.R. 143, 144 (Bankr. D.C. 2002) (“The burden is on the Claimant to demonstrate that it is entitled to the funds sought.” (citing *Hansen v. United States*, 340 F.2d 142, 144 (8th Cir. 1965))).

¹⁰³ See *In re Dubose*, 555 B.R. at 44 (Bankr. M.D. Ala. 2016) (explaining that in a chapter 13 case, the rightful owner of unclaimed funds paid into the court’s registry pursuant to the bankruptcy statute was “the holder of the proof of claim on account of which the trustee made the distribution.”) (citation omitted); *In re Applications for Unclaimed Funds Submitted in Cases Listed in Exhibit A*, 341 B.R. 65, 69 (Bankr. N.D. Ga. 2005) (finding that in a chapter 11 case, the “rightful owner” of unclaimed funds is the entity itself and not the owners); *In re Acker*, 275 B.R. at 145 (Bankr. D.C. 2002) (stating that in a chapter 13 case, funds deposited into the United States Treasury may be paid only to “the rightful owners as determined by the court”) (citing *Hansen v. U.S.*, 340 F.2d 142, 144 (8th Cir. 1965)).

¹⁰⁴ *In re Rodriguez*, 488 B.R. at 676-77.

Unclaimed Funds, claiming that “(1) the [d]ebtor had passed away; (2) [the debtor] left no will; (3) [the debtor] had no children and was not married at the time of her death; and (4) [the debtor was] the only sibling and sole surviving heir of [the debtor’s] estate.”¹⁰⁵ The court held that the brother was not the “rightful owner” to the surplus funds because the brother failed to establish under California law that he was the debtor’s sole heir with the right to collect the surplus funds.¹⁰⁶

Although there is an operative will (the 2018 Will) in this case, like *Rodriguez*, Applicants here failed to prove that they were entitled to the surplus funds under the 2018 Will. The Court finds that pursuant to the Principal Remainder Distribution section of the 2018 Will, the principal remainder was to be “held in trust for” Mrs. Eisenberg.¹⁰⁷ The 2018 Will explicitly named Mrs. Eisenberg as “the sole trustee” and Mrs. Eisenberg to “serve as executor of this Will.”¹⁰⁸ The 2018 Will also named Mr. William Eisenberg as the “successor executor” should Mrs. Eisenberg be “unable or unwilling to serve or to continue to serve as executor of this Will.”¹⁰⁹ Because the 2018 Will clearly identified the trustees and executors of the will, Applicants’ access to Debtor’s estate was limited.¹¹⁰ In fact, Ms. Lucterhand and Mr. Eric

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 678-79.

¹⁰⁷ Hearing on Oct. 8, 2024, at 10:43 a.m. and 10:50 a.m.

¹⁰⁸ ECF No. 112, at 3 and 9.

¹⁰⁹ ECF No. 112, at 9. Although Ms. Lucterhand stated that she was “not really sure” that Mr. William Eisenberg was the substitute executor, the 2018 Will revealed otherwise. Hearing on Oct. 8, 2024, at 10:42 a.m.

¹¹⁰ See *Music Sales Corp. v. Morris*, 73 F. Supp. 2d 364, 373 (S.D.N.Y. 1999) (holding that the siblings “were not entitled” to inherit the rights of the compositions, where an executor was explicitly named in the will as the statutory successor); see also *In re Bentley*, 120 B.R. 712, 715-16 (Bankr. S.D.N.Y. 1990) (explaining that under New York Law, an executor takes “unqualified legal title to all of a decedent’s personal property not specifically bequeathed.”).

Eisenberg were only entitled to their later father's "2010 Ford Fusion or any car I have at the time" in specific bequests.¹¹¹

The Court finds that the "rightful owner[s]" of the \$3,402.21 in surplus funds is Terry Ann Eisenberg. The identity of the beneficiary who is entitled to the surplus funds is clear. The Court relies on the "Principal Remainder Distribution" on page 3 of the 2018 Will and the "Alternate Remainder Beneficiaries" section on page 4 of the 2018 Will.¹¹² The "Principal Remainder Distribution" section stated "If my spouse, Terry Ann Eisenberg, survives me, all of the rest, residue, and remainder of my property and estate . . . will be held in trust for Terry Ann Eisenberg's lifetime. Terry Ann Eisenberg shall be the sole trustee of this trust."¹¹³ The "Alternate Remainder Beneficiaries" section added that if Mrs. Eisenberg did not survive Mr. Eisenberg, Mr. Eisenberg's assets would be divided "into as many equal shares as there are living children of mine[.]"¹¹⁴ The 2018 Will clearly states that Applicants are not entitled to Debtor's assets, outside of the 2010 Ford Fusion.¹¹⁵

Accordingly, the Court determines that Mrs. Eisenberg is entitled to the surplus funds of \$3,402.21 in accordance with the 2018 Will.¹¹⁹

III. CONCLUSION AND ORDER

For the reasons explained in this Memorandum Opinion, the Court finds and concludes that:

1. Ms. Stacey Lucterhand's and Eric Eisenberg's *Pro Se Motion for Payment of Unclaimed Funds* is DENIED.
2. The 2018 Will is the valid will that effectively revokes the 2011 Will.
3. Terry Ann Eisenberg is entitled to the surplus funds of \$3,402.21 consistent with the 2018 Will.
4. The \$3,402.21 of surplus funds will remain with the Court until rightful owner

submits an application and supporting documents demonstrating entitlement to the proceeds.

Copy of Memorandum and Order to be served on:

Applicant Stacey Lucterhand
133 Ridge Road
Highland Park, IL 60035

Applicant Eric Eisenberg
8154 Carnegie Lane
Zionsville, IN 46077

Debtor's Attorney, J.W. Vaughan, Jr., Esq.
6244 Poplar Avenue, Suite 150
Memphis, TN 38119

Chapter 13 Trustee
United States Trustee
All Creditors on the Matrix

¹¹⁷ Hearing on Aug. 13, 2024, at 10:36 a.m.

¹¹⁸ Hearing on Jul. 16, 2024, at 10:57 a.m.; Hearing on Aug. 13, 2024, at 10:36 a.m.; Hearing on Oct. 24, 2024, at 10:42 a.m. *See also In re Rodriguez*, 488 B.R. at 679 (inferring that the heir of the deceased chapter 13 debtor needed to prove that he was entitled to the surplus funds in accordance with California probate laws).

¹¹⁹ Applicants are encouraged to inform Terry Ann Eisenberg of the surplus funds.