Estate of Alburn

This is a precedent for cases in which a will is either not available or multiple wills with unclear standing are available in states that do not have will revival.

Facts: The testator (Alburn), while living in Milwaukee, had a will drawn up leaving her estate to her husbandâ€™s relatives. She then moved to Kankakee and had a new will drawn up which specifically revoked the Milwaukee will. In the new will, there were several changes in her bequests, but the bulk of her estate was still left to the relatives of her deceased husband. She then revoked the second will in the mistaken belief that the revocation of the Kankakee will would revive the Milwaukee will. She then died.

 Procedural Posture: Her heirs alleged that she died intestate and both wills were offered to the probate court. The court found that the first will had been revoked and could not be admitted and found that the second will was valid under the doctrine of dependent relative revocation on the grounds that she had revoked it by mistake and she had not wanted to die intestate since all of her hers at law, one being a minor, had been given no bequests under her wills.

Issue: Where a will has been revoked on the mistaken belief that this would revive an earlier revoked will, may the doctrine of dependent revocation be applied? YES

Holding: The testator had a mistaken belief and the testamentary scheme under the second will is closer to her intent than if she died intestate. There is no showing that she wanted to die intestate or that any change in circumstances actually occurred. Affirmed. Cases related to the concepts raised in the Estate of Alburn

Hodel v. Irving

Shriners Hospital v. Zrillic

Shapira v. Union National Bank

Ogle v. Fuiten

Janus v. Tarasewicz

Hall v. Vallandingham

Carter v. First United Methodist Church