STATE OF MICHIGAN

COURT OF APPEALS

IN THE ESTATE OF WILLIAM E. KLEINE, DECEASED.

UNPUBLISHED

DAVID P. GRUNOW, as the Personal Representative of the Estate of William E. Kleine, and HALINA KLEINE,

Petitioners-Appellees,

v

No. 176131
LC No. 00004089-SE

WILLIAM L. KLEINE,

Respondent-Appellant.

Before: Michael J. Kelly, P.J., and Young and Holowka, *JJ.

Young, J. (CONCURRING)

I concur solely to express disagreement with the majority's conclusion that the note was not properly authenticated. Decedent's son identified his father's signature and testified that the note was typed on his father's German typewriter. He also testified that his brother (the claimant) did not know how to type. I believe this met the minimal threshold to authenticate the evidence under MRE 901.

> It must be noted, however, that authenticity is not to be classed as one of those preliminary questions of fact conditioning admissibility under technical evidentiary rules of competency or privilege. As to these latter, the trial judge will permit the adversary to introduce controverting proof on the preliminary issue in support of his objection, and the judge will decide this issue, without submission to the jury, as a basis for his ruling on admissibility. On the other hand, the authenticity of a writing or statement is not a question of the application of a technical rule of evidence. It goes to genuineness and relevance, as the jury can readily understand, and *if a prima facie showing is made,* the writing or statement comes in, with no

> opportunity then for evidence in denial. If evidence disputing genuineness is later given, the issue is for the jury. (Emphasis supplied.)

People v Stanley Mitchell, 37 Mich App 351, 355-356; 194 NW2d 514 (1971).

Nonetheless, the probate judge reconsidered his decision and concluded that if the note were admitted into evidence, it would carry no weight under the law. I concur with that conclusion. Accordingly, I would also affirm.

/s/ Robert J. Young, Jr.