

ANNA NICOLE SMITH AND ESTATE LITIGATION THE SAGA CONTINUES

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MARCH 21, 2008

In our April 17, 2007 Probate Litigation Newsletter Article ("Show Me the Money! -- Anna Nicole Smith and Probate Litigation"), we discussed several legal issues raised by the unique and tragic story of Anna Nicole Smith, the former television personality and wife of an 89 year old billionaire. Upon her untimely death in 2006, her sensational life continued through the press and the courts. Now, a California superior court Judge has issued the latest ruling regarding the future of Anna Nicole Smith's estate and the financial security of her daughter. On March 4, 2008, California Superior Court Judge Mitchell L. Beckloff issued an order, determining that Anna Nicole Smith's daughter, Dannielynn, is indeed the sole heir and beneficiary of Anna Nicole's Estate under a trust.

A brief review of the issues is warranted. At the time her Will was drafted in 2001, Anna Nicole Smith had only one child, Daniel. The Will places her entire estate into a trust to be held and distributed by Howard K. Stern. Daniel passed away in 2006. In addition, Anna Nicole Smith had a second child, Dannielynn, in 2006. However, Anna Nicole Smith never modified her Will to make any specific provisions for her young daughter. Furthermore, the Will specifically disinherits all of her children or future children, except for Daniel. The Will states: "I have intentionally omitted to provide for my spouse and other heirs, including future spouses and children and other decedents now living and those hereafter born. . . ." A plain reading of this language could lead one to believe that Anna Nicole Smith intended that her daughter Dannielynn would take nothing upon her death.

In order to resolve this issue, Howard Stern, the named executor over the estate, filed a petition with the California Superior Court seeking a determination that Dannielynn was in fact the sole heir at law and that the Will contemplated the creation of a trust for her benefit. The California Superior Court apparently considered evidence from the attorney who drafted the Will -- a declaration that indicated that although Anna Nicole

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did not expect to have any children in the future (after 2001), if she did, she wanted them to share equally in the trust created for Daniel under the specific provision in the Will. The Superior Court ruled that Dannielynn is indeed the sole heir. The court went further and established a trust for the benefit of Dannielynn, and named Howard Stern along with Larry Birkhead (the father of Dannielynn) as co-trustees to administer the trust for Dannielynn's benefit.

In this case, it is not difficult to imagine future conflicts arising between Howard Stern and Larry Birkhead regarding the administration of this trust. Indeed, both had at least some romantic relationship with Anna Nicole Smith. Shortly after Anna Nicole Smith's death, Howard Stern indicated that he was the father of Dannielynn. In fact, later DNA testing demonstrated that Larry Birkhead was the father. Presumably, Dannielynn will reside with Larry Birkhead such that decisions related to providing funds to Dannielynn will of course directly affect Larry Birkhead and his own standard of living.

In New Hampshire, trusts may be established nominating more than one individual to serve as co-trustees. Although there is nothing inherently improper about this practice, it could lead to conflict between the trustees. Such disputes may at times require judicial intervention to resolve the conflict. This same type of conflict may arise with the appointment of more than one executor named in a Will. Accordingly, it is important for anyone considering the appointment of executors or trustees of their own Will or trust documents to carefully consider the individuals appointed, their personalities, and their history with each other and with the named beneficiaries. One should also carefully consider the appointment of only one individual in an attempt to avoid such conflict. Alternatively, one can consider appointing an individual (who knows the beneficiaries) and a bank, trust company or other institution with trust powers (which can provide necessary financial assistance and an objective point of view).

Legal disputes over the estate of a loved one are difficult. Avoiding multiple executors or co-trustees may reduce the possibility of legal wrangling over your own assets upon your own death. Certainly, few would wish for the continued legal problems facing the Estate of Anna Nicole Smith.

Although this most recent ruling from the California Superior Court may bring closure for the moment to the Anna Nicole Smith story, stay tuned for future disputes between Howard Stern and Larry Birkhead.

The Devine, Millimet & Branch Probate Litigation Practice Group offers this free periodic newsletter service to provide information regarding probate litigation news and other probate-related topics. Our Probate Litigation Practice Group has broad litigation experience, as well as expertise in areas of trusts, guardianships, and powers of attorney. If you have any questions about this e-mail, or if you know of others who may be interested in receiving this newsletter, please send us an e-mail at probate@devinemillimet.com.

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