

The Estate Planning Advisor

Anna Nicole Smith's Disastrous Estate Plan

By Richard J. Shapiro, J.D.

Anna Nicole Smith was successful at marketing herself. She was apparently less successful, however, in managing her personal legal affairs. Ms. Smith's will, which was presented in a Florida court during the bizarre proceedings to determine custody of her remains, is a classic example of how *not* to plan one's estate.

At the time of execution of her will on July 30, 2001, Ms. Smith (her real name was Vicki Lynn Marshall) had one child, Daniel. In Article I of the will, Ms. Smith provided that she was intentionally disinheriting, "future spouses and children and other descendants now living and those hereafter born or adopted." As we know, Daniel died in late 2006, within days after the birth of Ms. Smith's daughter, Dannielynn. The quoted language would seemingly preclude Dannielynn from receiving any portion of her mother's estate.

Article II of the will leaves all of Ms. Smith's property to "my child," with Ms. Smith's attorney (later revealed as her lover), Howard Stern, to serve as Trustee. In an example of careless drafting, the very next clause provides that the trust assets are used, "such that *my children* are distributed sufficient sums for the health, education and support according to *their* accustomed manner of living" (emphasis added). Upon reaching the age of 25 staggered distributions of principal were to be made as follows: one-third at age 25, one-half of the remainder at age 30, and the balance at age 35. This provision goes on to say that if the trust is too small to administer efficiently, the trust corpus may be given to, "my *child* at once" (emphasis added).

Since Daniel predeceased his mother, and since the will appears to explicitly disinherit Dannielynn, what is the disposition of Anna Nicole's estate? California law provides that the "lapsed" gift to Daniel would pass first to his "issue" (there is none); second, it would pass to the contingent beneficiaries listed in the will (no contingent beneficiaries are named); third, the estate would pass to the residuary beneficiary specified in the will (there is none specified); fourth, the assets would pass under the rules of intestacy (i.e., as if no will were created) – which would mean everything should be distributed to Dannielynn!

It appears, then, that the estate is to be distributed under the rules of intestacy; accordingly, none of the trust provisions contained in the will are likely to apply. The court administering the estate would certainly need to appoint a guardian for Dannielynn's share and, depending upon the laws of the applicable jurisdiction, it is possible Dannielynn would have full control over the assets at the age of 18.

Obviously, this scenario presents quite a mess. Given the tens of millions of dollars at stake, there is almost sure to be years of costly litigation among those so “concerned” over Dannielynn’s well being (or realistically, her fortune).

The moral of this sad tale: make certain your estate plan is reviewed and updated on a regular basis, and seek out an experienced estate planning attorney to help you create an estate plan that actually carries out your goals and objectives.

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