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California Court Gives 'Rogue' Wills More Validity

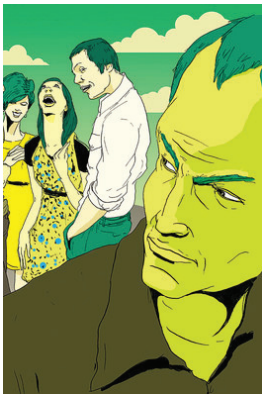
By Arden Dale – JUNE 20, 2011

Cutting somebody out of a will may just have gotten a little easier. (Or, depending on where you stand, contesting a will may just have gotten a little harder.)

Probate courts are full of cases centered on so-called rogue wills that come out of the blue, upsetting family members and friends who thought they knew what to expect when a loved one died. States have different rules on how to treat informal wills—typically a document drafted without the help of an attorney or other pro—but cases are often decided on whether certain formalities are followed.

But a California court backed an especially odd will earlier this year in a case that some estate-planning professionals say could make it harder for expectant heirs in some places to successfully challenge rogue documents—even if the testator failed to dot all of the i's and cross all of the t's.

Was It Fraud?



Michael Byers

Unless someone who fights a nonstandard will can convince the court that it was the "product of fraud or undue influence, it will be presumed valid," says Frayda Bruton, an estate-planning attorney in Sacramento, Calif.

The case is likely the first appellate case to test a so-called harmless error rule that California passed in 2008 to protect against challenges that focus on little procedural mistakes in form.

In the case, known as Estate of Stoker, the estate of Steven Wayne Stoker went to his two children, even though their names were misspelled on a will he dictated to a friend on the same night he burned a copy of an earlier will that favored an old girlfriend.

The new will read: "To Whom It May Concern: I, Steve Stoker revoke my 1997 trust as of August 28, 2005. Destiny Gularte and Judy Stoker to get nothing. Everything is to go to my kids Darin [sic] and Danene [sic] Stoker. Darin [sic] and Danene [sic] are to have power of attorney over everything I own."

The document wasn't signed by witnesses.

But the friend who penned the document testified that she wrote it word for word while Mr. Stoker dictated and that he looked at it and signed it. The daughter testified that her father had broken up with the girlfriend who benefited from the first will and challenged the second, and that he was afraid of her coming into his home and taking things. In the end, the court sided with the children.

While informal wills aren't always as dramatic as the Stoker one, they often contain errors that end up costing heirs time and money. That's why financial advisers still urge clients to get professional help if they want to change their estate plan.

Avoiding Expenses

The children of Mr. Stoker prevailed in the end, but could have avoided a lot of expense and delay if Mr. Stoker had executed "even simple formal documents" that showed clearly that he wanted to revoke the earlier will, says Julie K. Kwon, a partner at McDermott Will & Emery LLP in Menlo Park, Calif.

In the end, nothing can stop a parent from cutting off a child, or a man from deciding that he doesn't want to leave anything to a girlfriend after all. If "you are somebody who is expecting a bequest, all you have is expectation, you don't have any right to anything else," says Don R. Weigandt, managing director, Wealth Advisory, with J.P. Morgan Chase & Co.'s J.P. Morgan Private Bank in Los Angeles.