What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR

John Narron is a Board Certified Family Law Specialist and has been practicing law in North Carolina since 1977, with a practice concentration in all manner of civil disputes that frequently involve complex equitable distribution proceedings, alimony trials, will caveats, employment disputes, personal injury trials and negotiations, and a wide variety of commercial business disputes. John has served as a mediator in more than 200 family law disputes in Wake County, Franklin County, Johnston County, Wayne County, Guilford County, Forsyth County, and Pender County.

Will Caveats or "The Family Feud"

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The North Carolina Court of Appeals on December 20, 2016, issued an opinion in a case involving a Will Caveat that arose in Alamance County. The facts of this recent case illustrate very clearly the emotional and contentious nature of most Will Caveat proceedings.

This case involved an elderly man named James who had at least three children. He had one child by his first wife, another child by his second wife, and a third child by a woman he had never married. There is some indication in the opinion that he may well have had other illegitimate children.

On April 3, 2007, James signed a Will, and he died 30 days later on May 2, 2007. His daughter Diane was the sole devisee in the 2007 Will document, and she submitted that Will to probate. Another daughter, Mary then filed a caveat action, claiming that the 2007 Will document was not valid because James lacked the testamentary capacity to make a Will 30 days before he died. She claimed James was under the undue influence of his daughter Diane (who was the sole devisee of the 2007 Will) and the 2007 Will document was not properly executed under North Carolina law.

As the Caveat litigation progressed, it came to light that James' death certificate indicated that one of the causes of his death was dementia. That information on the death certificate was provided to the attending physician by Diane, who during the litigation contended that her father had not been suffering from dementia.

Diane submitted however that Mary had no interest in the 2007 Will because she also had no interest in James' prior Will, which was signed in 1993. Diane reasoned that if the 2007 Will didn't include Mary and the 1993 Will didn't include Mary, then Mary had no interest in the matter whatsoever since she was excluded from both Wills.

Mary, on the other hand, submitted evidence that she tried to visit her father many times, though Diane prevented her from doing so. She also provided evidence from friends of James that he was not close to Diane and in fact did not trust her, believing that she was trying to take all of his money.

With all of this conflicting evidence, the trial court ultimately concluded that the evidence

was so strong in favor of Diane who had cared for her father during his last few years that she should prevail in the Caveat by Summary Judgment. Mary did not accept that result and appealed it to the North Carolina Court of Appeals. The North Carolina Court of Appeals went through the evidence thoroughly and disagreed with the trial court ruling on December 20, 2016, that Summary Judgment was not appropriate and that the matter needed to be tried before a jury in Alamance County.

At this point, we do not know the outcome of this conflict as it is now headed back to the trial courts and hopefully for this family, it will be resolved sometime in 2017.

The lessons we take from such a family feud are easy to state but sometimes hard to follow.

1. First of all, it is never a good idea to sign a Will when a person is in declining health, especially when that Will substantially changes the disposition of a person's property in a significant way when compared to his or her prior Will.
2. If siblings do not get along before their parent dies, there is a better than 100 percent chance that they will continue not to get along after that parent dies.
3. Most potential Will Caveats can be avoided if a person making the Will (even one that disinherits some children) will proactively seek the advice of a competent will and estates attorney. Such an attorney will obtain medical documentation regarding the competency of the Testator, obtain witnesses to the Will who are independent who make an independent judgment as to the competency of the Testator, and preserve such documentation in the record in the event there is a contest about the Will after the Testator's death.

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