

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.

When Life Imitates Art

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- Will Caveats or "The Family Feud" Part 2 -

The North Carolina Court of Appeals continues to publish opinions in Will Caveat cases that could easily serve as a storyline from a daytime television series. One example is a case from December 30, 2016, out of Rockingham County: *Finks vs. Middleton*. The facts as related by the court might be considered shocking in some circles. Sylvia Middleton was the elderly mother of Marshelle Fink and her brother Colin Middleton. In 2009 Sylvia prepared a Will which left her estate equally to Colin, Marshelle, and a third child Lexa. However, that state of affairs with regard to Mom's assets did not last very long. In January of 2012, Colin took his mother Sylvia to a law firm for the purpose of substantially revising her estate plan. As a result, Sylvia created the Sylvia Middleton Revocable Trust naming herself as the initial Trustee and her son Colin as the successor Trustee. She also executed a new Power of Attorney naming Colin as her Attorney in Fact and Colin's wife (Davina) as successor to Colin. She also executed a 2012 Will that revoked all prior Wills and transferred at her death all of her property to the Trust she just created.

Things went downhill from there, at least from the standpoint of the two sisters. In February of 2012, Colin formed an LLC naming himself as manager and member along with his wife, his mother, and his mother's Trust. A month later, Colin brought his mother back to a law office where he had her sign four deeds conveying six parcels of real estate to the LLC. He also had her convey two additional parcels of real estate to herself as Trustee of her Trust. Finally, he had her convey 21.67 acres of real estate to him individually.

In June of 2012, Colin brought his mother to a different law firm where she executed additional deeds conveying additional land to the LLC.

Apparently, Sylvia's mental condition continued to deteriorate, and in April of 2013, she was placed in Countryside Manor Nursing Home where her attending physicians stated that she had memory problems and needed to remain there due to her progressive dementia. Colin failed to mention any of this to Marshelle who had to find out about her mother's dementia and admittance to Countryside from a cousin. When Marshelle then visited her mother in September 2013, she found that her mother could not remember anything from the prior three years and could not recall how she ended up at

Countryside. A good while later, Marshelle met with her mother's doctor who told her that her mother had been taking memory medication, went through a violent stage as a result of her advancing dementia, and had to be transferred to a memory unit at an adjoining facility in May of 2014.

While Marshelle was learning all this about her mother, her brother Colin moved his family from his mobile home into the larger lakefront home that belonged to his mother. On August 2, 2015, soon after his move, their mother died. Following the mom's death, Colin refused to even discuss her estate with his sister.

In October 2015, Marshelle sued her brother Colin alleging fraud, constructive fraud, conversion, and unjust enrichment, for which she was seeking punitive damages. She alleged all manner of misdeeds by Colin, not the least of which included taking her mother to multiple lawyers to sign documents that her mother could not understand.

While this lawsuit was pending, Colin submitted to probate the 2012 Will. That Will was received for probate and immediately thereafter Marshelle filed a separate Will Caveat action to set aside the 2012 Will. Colin then argued that the suit against him for fraud was now moot and the court had no jurisdiction over him in that suit since the same issues were to be resolved in the Will Caveat action. When Colin was unsuccessful in making this argument, he appealed that decision to the North Carolina Court of Appeals.

On December 30, 2016, the Court of Appeals spent a significant amount of time detailing the facts that I have discussed in this memo and had no trouble concluding that the case against Colin should not be dismissed and should proceed on for trial. However, the Court of Appeals did note that in order to avoid duplicate trials the Superior Court should hold in abeyance the trial on the Will Caveat case until the fraud case was completed.

Time will tell how this family dispute resolves itself. Unfortunately, this case represents a tragedy in the making of significant proportions. In 2009, Sylvia's estate was said to be worth \$800,000.00 and by the time she died in August 2015, her estate was valued at zero. Where those assets went and whether Colin improperly took those assets from his sisters will be determined by the courts in Rockingham County.

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