'Not in My Family': Will Disputes in North Carolina: Caveats, Testamentary Capacity, and Other Phrases You Should Know

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Almost everyone recognizes the importance of having properly prepared will and estate documents. Among other things, they ensure that your property and assets are distributed according to your wishes upon your death. However, few people consider the possibility that these important documents may become the subject of a substantial legal dispute when the time comes for them to perform their intended function. Oftentimes, such disputes are not driven by considerations of wealth but by "hurt feelings" because of misunderstandings by surviving family members and beneficiaries.

Disputes over the validity of wills can result in lawsuits called "caveats." Caveats are a peculiar species of litigation with unique (and sometimes archaic) legal bases, defenses, and procedures. During a caveat proceeding, a determination is made as to whether a document that purports to be a will should be treated as such in the eyes of the law. If the will does not withstand judicial challenge and no prior wills exist or remain effective, then the assets of the testator (the person who has died and whose will is at issue) are distributed in accordance with the North Carolina statutes rather than pursuant to a will. This article explains a few of the common grounds for will caveats in North Carolina and a common defense to these actions.

Lack of Testamentary Capacity

The most common basis for a legal dispute over a will is that the testator lacked "testamentary capacity." Testamentary capacity can be defined broadly to mean the level of mental competence that is sufficient to guarantee that the testator "knew what he was doing" when he signed his will. More specifically, North Carolina courts have established four issues for juries to consider in caveat trials in order to determine whether a testator had testamentary capacity:

1. *Did the testator understand the kind, nature, and extent of his or her property?* The jury must determine if the testator understood generally what property he or she owned at the time of the will's execution.

2. *Did the testator know the natural objects of his or her bounty?* This archaically worded issue asks the jury to determine whether the testator understood who naturally would be expected to receive his or her property at death. The "natural" person to receive these assets may be the next of kin, the closest child, or a caretaker of the testator. A number of factors can influence who would be the natural objects of a testator's bounty.

3. *Did the testator know the legal consequences of the will?* The jury must consider whether the testator

understood that he or she was executing a will. Did the testator understand that his or her property would pass to the designated beneficiaries at death?

4. *Did the testator understand the effect the act of making a will would have upon his or her estate?* The jury is asked to determine whether the testator understood how he or she was dividing up the estate. Did the testator understand that a daughter, for example, was receiving more than a son? Did the testator understand that he or she was excluding an important cousin, or even a child, from the will?[1]

In North Carolina, there is a presumption that every individual has the requisite capacity to make a will. Persons do not have to be "senile" to lack testamentary capacity. They may lack testamentary capacity based on the factors listed above even though they otherwise exhibit few signs of mental infirmity. Similarly, testators can exhibit signs of dementia and still have testamentary capacity under the law. Courts have held that testators' temporary or periodic memory loss and confusion does not eliminate the possibility that they had testamentary capacity at the time the will was executed. Most of the hotly contested caveat cases arise in the gray area between complete lucidity and clear incompetence.

Most often, mental faculties in aging individuals deteriorate at a steady, but inexact, pace. On the other hand, significant medical events such as strokes, heart attacks, and even falls or other injuries can result in major cognitive changes. Determining whether or not testamentary capacity existed at the time a will was executed can be difficult, depending on the facts and circumstances. The parties often rely on medical records of the testator or the medical opinion of the testator's physician to prove or disprove testamentary capacity. The testimony of witnesses present at the time of the execution of the will or of caretakers frequently in contact with the testator also may hold substantial weight in resolving the issue.

Undue Influence

Another common basis for a will caveat is that an individual exercised undue influence over the testator. Undue influence has been defined loosely in North Carolina to be an influence that "operates on the mind of the testator" at the time the will is made and that results in the execution of the will. In order to constitute undue influence, an individual's motives need not necessarily be malevolent; the focus is on whether the individual's conduct destroyed the free will of the testator and resulted in the testator's doing what he or she otherwise would not have done. Undue influence is more than mere persuasion: it is "the substitution of the mind of the person exercising the influence for the mind of the testator, causing him to make a will that he otherwise would not have made." [2]

The determination of whether undue influence exists often is very fact-specific and is determined by the jury after it hears evidence about detailed facts regarding the testator. To assist in evaluating the influence an individual has asserted over a testator, the North Carolina Supreme Court has listed several factors to consider:

1. the age and physical or mental weakness of the testator;
2. whether the person accused of undue influence was in the home of the testator at the time of the execution of the will and constantly supervised the testator;
3. whether others had the opportunity to see and associate with the testator;
4. the difference between the disputed will and any prior wills the testator may have had;
5. whether the disputed will favors individuals unrelated to the testator;
6. whether the disputed will disinherits the testator's close family or friends; and
7. whether the person accused of undue influence played some role in having the will drafted or executed.[3]

These factors are considered collectively in light of all the evidence. Because direct evidence of undue influence is rare, individuals challenging a will often must rely on the circumstances surrounding the execution of the will to prove their case.

Fraud

A caveat action also may be brought on the grounds that the will was executed as a result of fraud. Fraud, like undue influence and lack of testamentary capacity, is determined by a review of detailed facts about the testator's life and the execution of his or her will. In order to nullify a will for fraud in North Carolina, courts have held that a party specifically must prove:

1. that an individual made a misrepresentation to the testator or concealed an important fact from the testator that he or she had a duty to disclose;
2. that the misrepresentation or concealment was intended to deceive;
3. that the misrepresentation or concealment was reasonably relied upon by the testator;
4. that the misrepresentation or concealment did, in fact, deceive the testator; and
5. that the party bringing the caveat was damaged, financially or otherwise, as a result.

While fraud may arise in the context of will executions in a variety of circumstances, it most often is found when the testator is induced to sign the will as a result of a significant misrepresentation (e.g., "You will lose the farm unless you sign this document," or "This document leaves everything to your children equally," when in fact it leaves everything to one child). In this situation, the testator is being led astray, and a person who would have inherited from the testator if not for the fraud may bring a caveat action to nullify the will.

***In Terrorem Clauses* - To Challenge or Not to Challenge?**

Often a first line of defense to caveats is a will provision that provides that any individual who brings a caveat or otherwise challenges the will forfeits any inheritance under the will. These provisions, called "in terrorem clauses," are intended to "terrify" beneficiaries away from caveats and are enforceable in North Carolina. While they can be powerful deterrents to caveats, they do not necessarily make a will immune to all challenges. In fact, any basis that can be used to challenge a will in North Carolina also can be used to challenge a will with an in terrorem clause.

A party bringing a caveat against a will that contains an in terrorem clause must weigh carefully the legitimacy of the challenge. If a court concludes that the caveat proceeding was brought in good faith and with probable cause, the court will not enforce the clause and the party will not forfeit his or her inheritance under the will. Courts have held that this "good faith exception" to the enforceability of in terrorem clauses is necessary to ensure that allegations of undue influence, fraud, or other improper conduct are brought to the courts' attention and not concealed for fear of disinheritance. On the other hand, if a court determines that a caveat is not brought in good faith or with a reasonable factual basis, it will enforce the in terrorem clause to discourage "vexatious litigation."

Conclusion

Numerous other grounds for and defenses to caveat actions exist in North Carolina, and the circumstances in which will disputes arise are as varied as the individuals whose estates are in issue. While many families and beneficiaries are able to resolve their concerns over a will's validity without formal litigation, it certainly is preferable to be aware of the reasons will disputes may arise so efforts can be taken to avoid such disputes before they begin.

For further information regarding the issues described above, please contact Jenna Fruechtenicht Butler,

Alexander C. Dale, Donalt J. Eglinton, E. Bradley Evans, John M. Martin, Michael J. Parrish, Ryal W. Tayloe, or Amy P. Wang. For further information regarding the Trusts & Estates issues described above, please contact a member of the Trusts & Estates practice: Virginia Carter, Eldridge Dodson, Zac Lamb, Gregory Peacock, John Sloan, Matt Thompson, or Peter von Stein.

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