

Undue Influence – So What Will You To Do About It?

In my years of handling will contest cases, I have noticed a number of things. First, no two cases are exactly the same. Second, the facts are often so unusual that you just can't make this stuff up.

In one case, after his wife's death, a stepfather appears to have taken up "housekeeping" with his housekeeper. He quit taking Alzheimer's medication and started taking Viagra. The housekeeper took him to an attorney and sat in on the appointment while he explained a new will he wanted drafted. She then took him back to sign the will on the way to the hospital for admission after tests established that he had lung cancer. The new will dropped the stepchild and left the bulk of his estate to his "housekeeper."

Like most will contest cases, there were two sides to this story. The point is that even without knowing all of the lurid details; the stepdaughter had a pretty strong feeling of something being amiss.

Very few events are more stressful for families than the administration of an estate which passes assets from one generation to the next. This is especially true where the estate plan has not been communicated to the family, and where the family is nontraditional. This article is not intended to encourage such disputes,



Law

but to answer several common questions encountered when concerns or suspicions arise.

In most situations, an examination of the will or trust document reveals little about its ultimate validity. If someone is inclined to steal, they try to do it in a way that they will not be caught. Most such efforts occur "behind closed doors" by family, friends, neighbors, acquaintances, employees or others who pressure, threaten or trick someone into changing, modifying or preparing a new will, codicil or other testamentary document (deed, trust or power of attorney). It may take a detailed examination of the will by an experienced attorney to discover the facts and circumstances behind the preparation and execution of the document.

One of the more upsetting circumstances is that of a child being omitted from a will. If a parent is competent, an adult child may be removed from a will. That is not to say that such an omission



By Mark D. Obenshain

might not be so unusual as to raise concerns or suspicions that something improper has occurred. If a child is not even mentioned in the will, it may be a mistake and grounds may exist for a will contest.

Another unhappy development is a will which makes no provision for a surviving spouse. Virginia law, however, provides that in the absence of valid prenuptial agreement, the surviving spouse is entitled to an "elective share" of the estate.

In instances where a will might be viewed as unconventional or unfair — disproportionate shares or omitted children, or large bequests to unrelated per-

sons or organizations — all involved should exercise great caution. One planning the division of an estate should take actions to demonstrate independent action and the exercise of free will. This may be accomplished by having the will professionally prepared and sharing the estate plan with someone in addition to the lawyer.

The lines between helping a person and coercing them often become blurred in a fight over estate assets. Seemingly harmless assistance to a mother or father can be viewed as deceitful or dishonest behavior, especially if the person rendering the help is significantly better off under the new will or trust.

Of course, sometimes seemingly harmless assistance is deceitful or dishonest behavior. Beneficiaries should be alert. If things don't feel right, there might be a reason.

—Mark D. Obenshain is a member of the law firm of Keeler Obenshain PC, Harrisonburg.