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ESTATE PLANNING DOCUMENTS *Being Complete & Correct Helps*

A recent Surrogate's Court case from Kings County, *In re: Sponholz*, N.Y.L.J. June 16, 2014, pg. 28, is another reminder that being detailed and precise in estate plan documents will help ward off a challenge and expensive litigation.

In the Sponholz case, Mrs. Sponholz had married Mr. Sponholz, who had three daughters from a prior marriage. Mrs. Sponholz did not have any children of her own. Mr. Sponholz predeceased Mrs. Sponholz. In her Will, Mrs. Sponholz had left everything to her husband, if he survived and in the event he predeceased, her residuary estate was to be distributed to her "living issue, per stirpes." Mrs. Sponholz had also appointed her husband as her primary executor and her "daughter," one of the three stepdaughters, as a successor executor.

After Mrs. Sponholz's Will was admitted to probate, the stepdaughter executor petitioned the court for a construction of Article Third of the Will to permit distribution of the estate to the decedent's three stepdaughters. Objections to the application were filed by the executor of Mr. Sponholz's father's estate (he had survived Mrs. Sponholz). The petitioning stepdaughter alleged that the decedent's use of the term "issue" in Article Third, coupled with her use of the term "daughter" to refer to the executor-stepdaughter in Article Sixth created a latent ambiguity regarding the identity of the contingent beneficiaries. Thus, this would necessitate extrinsic evidence to be entered in the case in order to determine the actual beneficiaries of the residuary estate.

The objectant maintained that the use of the term "issue" was quite unambiguous and required no construction, since the term was defined by statute to mean the natural or adopted decedents of the decedent. Consequently, the objectant argued that the decedent's estate passed in accordance with the laws of intestacy, which meant it would not go to the stepdaughters.

The Court held that a latent ambiguity arises when the language employed in a Will, though on its face seems to have just one single interpretation, requires reference to some extrinsic fact or circumstance for interpretation. Applying this principal, the Court found that Mrs. Sponholz's use of the term "daughter" in reference to the executor-petitioner and her use of the term "issue" in Article Third, while not seemingly in conflict, created a latent ambiguity in the Will, which required consideration of extrinsic facts to determine Mrs. Sponholz's true intention, since she had no biological children. The problem arises here because having no children, the bequest to her "living issue, per stirpes" would seem to be meaningless.

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Free Workshops

August 20, 2015

Gowanda Community Alliance
with Andersen Cuddihy, Inc.
6:30 to 8:30 p.m.

September 1, 2015

Wellsville Country Club with
Kevin Gildner,
Community Investments
6:30 to 8:30 p.m.

September 15, 2015

Ellicottville Inn at
Holiday Valley
6:30 to 8:30 p.m.

Estate Planning Documents cont'd.

Upon review of external evidence, including the attorney-drafter's notes as well as the reciprocal provisions in her Will and her husband's Will, lead the court to conclude that her true intention was to benefit her stepdaughters and not her distant relatives by statute.

THE TAKEAWAY - If Mrs. Sponholz had been very clear in the terms of her Will that she intended to benefit her stepdaughters, then no ambiguity would have been created and there would be no need to spend time and thousands of dollars in attorney's fees to make that determination. For couples with blended families, details like defining who the beneficiaries are in the estate plan documents becomes that much more important.

Continuing Community Care Contracts Beware!

There is a proliferation of Continuing Care Community (CCC) projects around the country. The appeal for a CCC is quite apparent. First, one moves to a CCC in independent living, perhaps a townhouse or even garden home, complete with one or two car garage. Later, as a resident's health deteriorates, he or she can move from the independent living side of the CCC to the assisted living facility side. Then, if health continues to deteriorate and skilled nursing is necessary, the CCC has a skilled nursing facility which the resident can then move into. One of the advantages of a CCC is once you are there, you have priority to go to the next level care facility when needed. You are already on the campus, so the transition from independent living to assisted living to skilled nursing is fairly easy.

The problem with this arrangement is that a resident signs a contract upon admission to a CCC and now has contract liabilities to the CCC that may prohibit the resident from otherwise engaging in asset protection planning. A recent New York case points this out: *Good Shepherd Village at Endwell v. Yezzi* (N.Y. Sup. Ct., No. 2013-2189, Dec. 22, 2014). The Trial Court ruled that the residents of the CCC breached their contract when they applied for Medicaid before spending down

their assets. When Mr. & Mrs. Yezzi moved into the CCC, they had signed a contract which bound them to spend down their resources on their care at the CCC before applying for Medicaid. At some point, Mrs. Yezzi had to move to the CCC's nursing home unit and when she did so, she transferred some of her resources to her husband and applied for Medicaid, an asset preservation technique.

The CCC refused to accept the Medicaid payments and sued the Yezzis, arguing breach of contract and fraudulent transfer. The Yezzis countered that they had the legal right to apply for Medicaid.

The Court in Broome County granted summary judgment in favor of the CCC, holding that while the Yezzis did have the legal right to do the gifting and apply for Medicaid, the exercise of that right violated a valid contract with the CCC. As part of the decision, the Judge noted that to "allow the Yezzis to breach their agreement [the CCC], would upend the financial model upon which [the CCC] was created and authorized." The Judge also found that the transfer from Mrs. Yezzi to Mr. Yezzi was a fraudulent conveyance and the assets must be returned to Mrs. Yezzi's estate.

Unless this case is appealed and overturned, this will continue to be a problem to CCC residents. The issue is really the application of two separate laws. Yes, the Yezzis had the right to engage in what amounts amount to Medicaid planning by Mrs. Yezzi transferring her assets to Mr. Yezzi and then qualifying for Medicaid. However, on the other hand, they had signed a valid contract with the CCC essentially stating that they would not engage in any type of Medicaid planning, at least as far as the CCC was concerned.

SUMMARY - Before entering into any CCC contract, it would be best to be sure you understand all of the terms of the contract and seek competent legal advice as to the consequence of the contract.

"Long ago, when men cursed and beat the ground with sticks, it was called witchcrafttoday it's called golf." - Will Rogers