

THE DAUGHTER'S NIGHTMARE: A COMMENTARY

By *SHAUN D. MULLEN*

There are lessons to be learned from the daughter's experience:

-- No-contest clauses in wills are not required in New Jersey. They should be.

-- Lawyers who let unprofessional conduct by their lawyer adversaries go unchallenged further diminish the reputation of a profession the public already holds in low regard.

-- Less than 4 percent of grievances filed with New Jersey's attorney ethics system result in formal charges being brought against a lawyer. Since disciplinary matters are kept secret unless officials file a formal complaint, over 96 percent of grievances remain confidential forever.

-- The system's stringent confidentiality provisions are at odds with widely accepted constitutional safeguards and are applied so indiscriminately that they enable unscrupulous lawyers to forestall and sometimes prevent action against them.

-- The system is unaccountable to the public and the Legislature, while the officials who run it have rejected calls for reforms. The public cannot be expected to have confidence in a system that it can't even see operate. This needs to change.

-- Shaun D. Mullen

She was strikingly beautiful and had a great sense of humor. She was a hostess extraordinaire who had filled her New Jersey home with furnishings that she and her husband brought back from their world travels. But by the time she died, she was a virtual hostage of her alcohol- and drug-addicted son and his ex-convict girlfriend. The scent of fresh cut flowers had been replaced by the stench of crack cocaine.

Under her original will, her son and daughter were to share equally in her estate. Then, four months before her death, she went to a lawyer in the small town where she lived and asked her to write a new will because of the son's unwillingness to deal with his problems. Although well aware of these problems, the lawyer failed to include a no-contest clause that

might discourage the son from suing the estate and daughter, whom she had designated as executrix in both her wills, when he found out that his inheritance had been reduced.

Under her new will, the son and daughter still would equally divide liquid assets such as IRAs and insurance policies, while the daughter would get her house and car, as well as most of the modestly valued farmland that the mother had inherited from her husband.

Following the mother's death, the son cloistered himself in her house, her car disappeared and he began stealing her most valuable possessions, including family heirlooms and even her own wedding photograph album. The son retained a lawyer from a nearby town who filed a lawsuit in a court with a probate judge who had a close professional relationship with one of the lawyer's parents. The lawsuit falsely charged that the mother was incompetent and unduly influenced by the daughter when she rewrote her will.

The son's lawyer refused to respond to requests to help get the son out of the house and stop the looting, while repeatedly asserting that the daughter was hiding estate assets. The daughter, of course, was unable to inventory the estate because she couldn't get into the house. The son's lawyer was to use this perversely effective passive-aggressive strategy throughout the case.

A no-contest clause is not an absolute bar to litigation. But the failure of the mother's lawyer to include one triggered a nightmarish series of events for the daughter that says much about the destructive power of an unscrupulous lawyer adept at playing ineffective defense lawyers, a compliant judge and New Jersey's attorney ethics system.

The daughter first retained the mother's lawyer, but she was in over her head and incapable of even getting the police to address the missing car and looting. The daughter was left to visit pawnshops to buy back her mother's possessions.

Her second lawyer was a fee churner who ran up his bill, then claimed that she was too demanding and fired himself.

Her third lawyer was able to get the son evicted from the house, but was worn down by the tactics of the son's lawyer and also quit.

In the meantime, the daughter had written the son's lawyer a big check for money to be used by the son to pay for a new place to live. But the lawyer held onto the money until after the son was evicted, then gave only part of it to him and kept the rest.

The son's lawyer sent the ex-convict girlfriend to the house. The girlfriend falsely claimed that the daughter hit her and filed an assault charge. The daughter was found guilty in a municipal court, but the verdict was overturned by an appeals court judge who ruled that the confrontation was an obvious effort to embarrass the estate. The girlfriend later went back to the house, where she placed a Bible and a box with her name on it in a trash container in a clumsy effort to prove that the daughter was disposing of things that did not belong to her.

The son's lawyer bullied the mother's best friend, who was in ill health. He told her that she had the choice of being deposed or testifying at the then-pending trial on the lawsuit. The neighbor said she would like to be deposed. She was deposed. The lawyer later asserted that he had never offered her a choice and suggested she get an attorney because he would cite her for contempt if she refused to testify.

The son's lawyer, true to form, withdrew one of the two allegations from the lawsuit. He gave no reason. Then, on the day the lawsuit was to go to trial, he withdrew the other allegation. He again gave no reason, although it was clear that he had no case. The subsequent dismissal of the lawsuit should have been the end of the daughter's nightmare, but it was only the beginning.

The third lawyer told the son's lawyer that the estate was interested in paying for drug and alcohol rehabilitation for his client in connection with resolving the case. Calling his client a hopeless drunk, he rejected the offer out of hand.

The fourth lawyer came on board. He understood that only by fighting back could he hope to level the playing field. Even then, the case dragged on for another 18 months.

The new lawyer hadn't even had a chance to review the case file when the son's lawyer again went on the attack, claiming that the estate was hiding a parcel of farmland from the son. Informed that no such parcel existed, he then asserted that the son and daughter were to share a parcel that did exist, although the new will had stipulated no such thing. He demanded that a hearing be held. The probate judge complied.

The daughter, desperate for relief from the attacks, filed a grievance with the state attorney ethics system. The executive secretary of the district committee in her county docketed the grievance and assigned an attorney to investigate it. For the first time in three years, the daughter dared to hope that the nightmare soon would be over.

It was not to be. The investigator went missing for three months, then repeatedly lied about why he had not contacted the daughter.

One week before the deadline to complete his investigation, the investigator finally met the daughter at his law offices. The interview lasted five hours. She was not allowed to take breaks, let alone have a drink of water. She had to simultaneously answer questions, pull documents from her personal files and take notes because of a constitutionally dubious rule that she could not have assistance of any kind, even from a lawyer or trusted associate, because the name of the son's lawyer had to be kept confidential. The investigator told the daughter that he already had interviewed the son's lawyer and repeatedly made excuses for and defended the lawyer's conduct.

The daughter felt like she had been raped. She challenged the investigator's ability to conduct an impartial investigation in a letter to the executive secretary of the district committee. This prompted a fiery response from the investigator, who asserted that the daughter was a troublemaker and liar. Nearly two weeks after the investigator was to have completed his work, the daughter was informed by the district secretary that her grievance had been dismissed because there was pending litigation. In a classic Catch 22, her quest for relief would have to wait until *after* the estate case was over.

Meanwhile, the daughter's fourth lawyer filed pleadings with the probate judge in anticipation of a hearing on the farmland property dispute.

True to form, the son's lawyer didn't respond after having originally insisted that the matter be litigated. Instead of holding a hearing, the probate judge issued a ruling. He sided with the son although he had nothing from his lawyer on which to base a ruling. The daughter's lawyer appealed the ruling. Again, the son's lawyer didn't respond. A panel of appeals judges overturned the ruling and ordered the probate judge to hold a hearing.

Then, for the fifth time in four years, the son's lawyer tried to have the daughter removed as executrix. It had become obvious that he was prolonging the case to forestall the redocketing of her ethics grievance. The daughter, facing a hearing on the property dispute and being slowly suffocated by legal fees, instructed her lawyer to make a settlement offer.

The case was settled, but the son's lawyer had done damage even to his own client. The son's share of liquid assets was reduced by about half, while the estate and daughter incurred over \$100,000 in legal fees and related expenses, completely wiping out her share of the liquid assets. The emotional toll on the daughter is incalculable.

Why would the son's lawyer fabricate out of thin air a case that he then dragged out for four years? Why would he repeatedly attack the estate and daughter long after the lawsuit was dismissed? Why would he manipulate the legal system in the manner he did? Collecting hefty fees couldn't have been his motivation since his own attacks had drained the estate of cash. Why then did he do all of these things? The answer is obvious: Because he believed he could get away with it.

When the daughter recently asked the Office of Attorney Ethics where she should send her grievance for redocketing, she was told to go back to the same district secretary who had abetted the investigator's conduct and dismissed her grievance. When she brought this obvious conflict of interest to the attention of the officials who supervise the OAE, they said they were powerless to intervene.

Four years later, her nightmare still is not over.

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