Woman's Efforts to Change Will Without Professional Assistance Backfire

Just as making a will without the help of a qualified attorney can be dangerous, trying to change an existing will on your own can fail as well. A recent court decision in Minnesota serves as a cautionary reminder to anyone thinking of altering their estate plan on their own.

Esther Sullivan executed a will in 2006, that gave half of her property to a former employee of hers, Tara Jean Johnson. The grandson of Ms. Sullivan, Joseph VanHale, received a lesser share. Two years later, in 2008, Ms. Sullivan allegedly attempted to change her 2006 will by marking up a photocopy of it and writing her initials next to each change and signing and dating the bottom of each page. She allegedly wrote on top of the 2008 photocopy, "[t]he Will dated January 19, 2006 is void and to be replace[d] with this and all written in changes." Among the changes was that Mr. VanHale would replace Ms. Johnson as the beneficiary of half her estate. In 2010, Ms. Sullivan allegedly attempted to execute another will using a form she downloaded from the Internet. This document named Mr. VanHale as her only beneficiary.

After Ms. Sullivan's death in 2013, the probate court had to decide which of the three wills should be followed. Mr. VanHale contended that the 2010 document was a valid will, while Ms. Johnson argued for the 2006 will. The probate court ruled that the 2008 photocopy and the 2010 downloaded document were invalid because they did not comply with the state's requirements for a valid will, which include that the will must be signed by at least two witnesses. The court held that although Ms. Sullivan probably intended to revoke the 2006 will, she did not do so successfully. Mr. VanHale appealed,

arguing that Ms. Sullivan clearly intended to revoke the 2006 will and that the 2010 document was valid.

On August 17, 2015, the Court of Appeals of Minnesota agreed with the lower court that the 2006 will should be the one admitted to probate. The court ruled that only an original will, not a photocopy, can be revoked. The court also agreed with the lower court that the 2010 document had not been validly executed.

If Ms. Sullivan did change her mind and decide that she wanted her grandson to inherit her estate, the fact that she didn't do it properly meant that far from helping her grandson, she cost him a tidy sum in legal fees. People change their minds, and circumstances can change as well – marriage, divorce, the birth of children – and estate plans need to be revised along with these changes.

To read the court's decision in the case, *In re the Estate of Sullivan* (Minn. Ct. App., No. A14– 2112, Aug. 17, 2015), click here.

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