

Undue Influence To Disabled Woman In Her Estate Trust Decisions Results In \$3.75 Million Settlement

Sam and Susan Smith, (not their real names) were husband and wife.

They had three children, Tom, Betsy, and Sam, Jr. Sam Smith, Sr., bought substantial pieces of real estate in Arkansas and Florida. He farmed his property in Florida and operated a mobile home park in Arkansas.

In January 1988, Sam Smith, Sr. and Susan Smith executed reciprocal Last Wills and Testaments leaving all their personal and real property to the surviving spouse. At the death of the surviving spouse, all of the personal and real property would be distributed in equal shares to Tom, Betsy, and Sam, Jr.

In 1993, Susan Smith, then eighty years old and legally blind, had already suffered from three light strokes and several heart attacks. After another stroke in 1994, Susan Smith underwent a CT scan of her brain which showed severe damage which impaired her ability to understand both verbal and written communication.

In April 1997, Sam Smith, Sr. died.

In July 1997, Susan Smith signed a new Last Will and Testament and Revocable Trust Agreement. Tom and his daughter, Terri, were appointed co-trustees of the Trust. The Last Will devised all of Susan Smith's property to Tom Smith and Terri Smith as co-trustees of the Revocable Trust. After some specific distributions were made, the Revocable Trust created two separate shares: (a) grandchildren's shares; and (b) children's shares. Of the children's shares, Tom received 44.75%, Betsy received 44.75%, Sam, Jr. received 10.10%, and 0.40% was received by Bruce Jones, a former hairdresser and now caretaker of Susan Smith. The Revocable Trust also gave Tom the mobile home park in Arkansas and substantial real property in Florida.

In January 1998, Susan Smith signed the First Amendment to the Revocable Trust Agreement. Of the children's shares, Tom received 44.75%, Betsy received 14.75%, Sam, Jr. received 10.10%, and Bruce Jones received 30.40%.

Susan Smith died on September 30, 2005.



Mr. and Mrs. Smith had executed Last Wills and Testaments to direct the distribution of their considerable assets at death. The entire estate was to go to the surviving spouse. At the death of the surviving spouse, the estate would be distributed in equal shares to the Smith's three adult children. When Mr. Smith died, Mrs. Smith, then 80 years old, was legally blind and her ability to comprehend was impaired. Shortly after Mr. Smith's death, Mrs. Smith signed a new will and revocable trust agreement that appointed one son and a granddaughter as co-trustees and substantially reduced the shares to be distributed to the other two children. After Mrs. Smith's death, the new will was challenged by SDSBS attorneys who successfully argued that Mrs. Smith lacked capacity when she signed the new documents. After mediation, a settlement was reached; the two petitioners will receive a total of \$3.75 million from their parents' estate.

Greg Barnhart and David J. White filed a Petition to Revoke the Last Will, Revocable Trust, and First Amendment to Trust based upon the following: Susan Smith lacked testamentary capacity when she signed these documents; and Tom Smith, Terri Smith, Bruce Jones, et al, procured the execution of these documents by undue influence.

Trial was scheduled to begin in June 2007.

Mediation occurred on February 19, 2007. Settlement negotiations continued and a settlement was reached on February 21, 2007. The judge approved the settlement on March 23, 2007. Betsy Smith and Sam Smith, Jr. will be paid a total of \$3.75 million. The settlement payment will be made free of federal estate taxes. ■