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Disability Planning Gone Wrong: California Appellate Court Grants Damages Totaling Two Million Dollars in Sister Versus Sister Lawsuit

by Edward "Ted" H. Miller, Esq.

Many families face hard questions as they decide how to manage the needs of their disabled child after death. Often, during the parents' lives, a disabled child's siblings can hold the mantle of responsibility, especially as the parents grow into their golden years. However, this harmonious family dynamic is likely to change after the death of the parents. While many caretaker siblings feel a sense of duty while their parents are alive, and express this sense of duty through the proper care and oversight of the disabled child, this sense of duty often ends when the parents are no longer in the picture. A generation ago, it was common to leave assets to the caretaker sibling in a family in order for that caretaker sibling to see that the needs of the disabled child are met. In fact, this technique was standard practice. However, with so many options available within the realm of modern estate planning, it is somewhat risky to give away assets directly under a moral obligation. One family in California recently experienced the downside of what can occur after the death of a parent.

The Kalfin family had two daughters: Diane was disabled, and Jackie was a prominent businesswoman. At first, it made perfect sense to believe that Jackie would be a trustworthy caretaker when their father died, but circumstances changed. Jackie, who received 4 million dollars outright, as opposed to in trust, decided that the money was entirely hers to do with as she wished - even though she had been told by her father to look after her disabled sister. Diane ended up suing Jackie, her own sister. The theory of her lawsuit, though, was unusual. Rather than arguing that Jackie had unduly influenced their father, she sued for breach of contract. Her theory: Jackie had promised to take care of her, and it would take about \$2 million over her lifetime to do that. She also claimed that Jackie had taken advantage of both their father (a vulnerable adult) and Diane (a dependent adult).

In *Kalfin vs. Kalfin*, Diane eventually won a settlement of 1.4 million dollars;

Disability Planning Gone Wrong: California Appellate Court Grants Damages Totaling Two Million Dollars in Sister Versus Sister Lawsuit (con't)

however, the family inheritance was destroyed by the legal process and the actions of the allegedly trustworthy sister. The California Court of Appeals upheld the lower verdict, ruling Jackie's promise to take care of her sister was an enforceable contract.

There are many lessons from this story, but the foremost of these lessons is that disinheriting a child with disabilities and relying on another child to "take care of" them is not a reliable way to handle an estate. It might work, but there are real risks — and the cost and family disharmony resulting from litigation is almost certainly worse than what would be involved in simply setting up a trust for the child with a disability. Do you have a child with a disability? A complicated estate? Talk to the team at the Hook Law Center.



Baby Raccoons & More

Hook Law Center: Kit Kat, what should someone do who finds an injured, baby raccoon?

Kit Kat: Well, I guess that depends where you live. A recent article highlighted a difference of opinion that is occurring in Alabama right now. The state conservation agency sent out a letter in September 2013 instructing various groups in the state and individuals who rescue wild animals to stop helping raccoons, feral pigs, coyotes, bats, and foxes. Ray Metzler, assistant chief of wildlife for the Alabama Department of Conservation and Natural Resources, says, "People need to learn to let nature take its course." It's not meant to be unfeeling, but these particular animals can be carriers of rabies. Rabbits, deer and squirrels were not on the list, and can still be rescued. The state feels it's all part of natural selection, and the strongest are the ones who should survive without extra special efforts.

On the other side of the issue is what Alabamians call "rehabbers." These people are devoted to rescuing animals in distress, and then releasing them back into the wild. Baby raccoons are especially vulnerable in areas where land has recently been cleared to make room for houses or highways. "A Ford truck is not nature taking its course," said April Russ, who is a rehabber along with her husband, John.

So we'll have to see how this all plays out. Both sides have the public welfare as their main priority. An appeal has been made to the governor to rescind the policy. Stay tuned for further developments on the issue.

(<http://www.nytimes.com/2013/09/20/us/dont-help-injured-baby-raccoons-alabama-edict-angers-those-who-love-them>)

Upcoming Events

- Hook Law Center will be presenting a webinar on the Affordable Care Act and Elder Law and Special Needs Planning on **December 4, 2013**. This webinar will be hosted by Interactive Legal.
- Shannon Laymon-Pecoraro, Esq. will speak at the Parkinson's and Caregivers Coffee Break on medical/legal issues concerning elders and those with significant health issues. The coffee break will take place at St. Andrew's United Methodist Church, 717 Tucson Rd., Virginia Beach, VA 23462 on February 5, 2014 from 10AM-12:00PM.
- Hook Law Center is a sponsor of the American Heart Association Ball which will take place on March 8, 2014 at the Norfolk Botanical Gardens. For event information, contact Stephanie Phipps at 757-628-2608
- Hook Law Center will be presenting a live webinar on POAs, AMDs and the Ethics of It All in Charlottesville, VA on **April 10, 2014**. This webinar will be hosted by Virginia Continuing Legal Education.
- Shannon Laymon-Pecoraro, an attorney at Hook Law Center, is a member of the advisory board of the Hampton Roads Chapter of the American Parkinson Disease Association. Please visit our website if you have any questions about this event on April 12, 2014.

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