

Recent Developments

Probate and Trust

by A. Paul Firuz – Miller Nash Graham & Dunn LLP and Kristina M. Ash – Smith & Zuccarini, P.S.

Court Declines to Invalidate Disproportionate Distribution of Tangible Property under Theories of Undue Influence and Interference with a Right to Inherit. *In Re Estate of Lowe*, 2015 WL 6940143, (Wash. Ct. App. Nov. 10, 2015)

This is a rather bizarre case involving hidden treasure, feuding brothers and some strange estate planning. The story begins with Donald and Betty Lowe, married for approximately 60 years. Donald was a bit eccentric. He hid silver bars and coins in the flume of his fireplace and various other places throughout his home. He also left a will leaving his residuary estate to his Personal Representative. He nominated his son Aaron as the Personal Representative, with Aaron's ex-wife, then son Lonnie as the alternates. He also left a letter to his three sons, explaining that he wanted Aaron to take care of Betty, then to divide everything else among the boys. Interestingly, the last line of the letter was "I hope you can get along with each other." Alas, Don's hope was not realized.

Betty filed a petition to be appointed administrator. She also challenged Donald's residuary bequest to the Personal Representative, and sought to have the estate distributed according to the laws of intestacy. The court granted her request, and presumably the entire estate passed to Betty.

Shortly thereafter, Betty and grandson Lonnie dismantled the fireplace and found the silver. She gave much of the silver to Lonnie for safekeeping, and directed him to sell portions to pay for various expenses, such as a new roof. Betty executed her own will, which provided that 80 percent of her estate would pass equally to her three sons and the remaining 20 percent would be distributed among grandchildren. She named Lonnie, not Aaron, as her Personal Representative. The will also had a fairly standard tangible personal property clause, allowing such property

to be distributed according to a separate writing. Betty later drafted some instructions for the silver bars and coins and gave them to her estate planning lawyer, who formalized the instructions leaving "to Lonnie O. Lowe any and all silver coins and bars to distribute as he shall determine or to retain for himself."

Betty died a few years later, and Lonnie filed a petition for an order admitting Betty's will to probate. Betty's estate was worth approximately \$600,000. The silver bars and coins were worth approximately \$430,000, of which Lonnie distributed \$260,000 to himself. The remaining silver had not been distributed. Aaron, undoubtedly angered by the disproportionate distribution, filed suit under a number of theories, but neither the trial court nor the appellate court offered any relief.

Most notable among the theories was that the silver bars and coins were currency that could not be administered under a separate writing for tangible personal property. The court held that the silver coins were "precious coins rather than normal currency" and could pass by written instruction.

Another interesting theory was that Lonnie tortuously interfered with Aaron's right to inherit, a tort that other Washington courts declined to recognize. The court held that even if the tort were to be recognized in Washington, Aaron had failed to prove the basic elements of his claim (i.e. that Lonnie acted with an improper purpose or used improper means).

The case never mentions the third brother or what he thought of this family feud. The lesson here may be that if you grant one child discretion to distribute assets, don't assume that he will distribute them evenly or that a court will intervene if he does not.