



Should You Invite Your Attorney To Your Next Wedding?

NORWALK PROBATE CASE HIGHLIGHTS IMPORTANCE OF UPDATING WILLS

By **RICHARD J. POBER**

Before 1996, if an individual obtained a divorce and then remarried and did not create a new will, the prior will was automatically revoked. The fact that this undermined the testator's intent and left family members unprovided for was irrelevant.

When the Connecticut General Assembly enacted Section 45a-257a in 1996 to address this issue, a question left largely unanswered was what would occur with a will if an individual remarried after a divorce but did not identify the new spouse in his or her will.

Must an attorney be invited to the wedding to change and update the premarital will to reflect that the client is now remarried? Or can an attorney create a will a month before a contemplated wedding to set forth the client's intention to marry?

And, if in fact the client does get married without updating the will, how does one ensure that the new spouse cannot challenge the will and seek one-half of the estate by claiming that because he or she was not listed as the decedent's spouse, he or she should receive an intestate share of the estate?

The 1996 legislation did not address whether the decedent needed to have contemplated his or her marriage at the time the last will was executed in order to provide for his spouse.

Imagine if your client was living with his or her significant other, who is listed as a friend under the premarital will. Some

years later the client marries and does not update the will to state that the friend is now the spouse, and dies without amending the will.

Did the client intend to keep all the terms of the premarital will in effect when the client got married? Did the client forget to provide for the spouse, or was the client planning to update the will in the future?

These and other related issues were considered in the Norwalk Probate Court by Judge Anthony DePanfilis, in a case concerning a decedent who died after his second marriage, without amending his will or executing a new will that provided for his new wife. (*Editor's note: The author represented the beneficiary of the decedent's estate in this case.*)

In this case, the decedent named his girlfriend in his will five years before his death – and before he contemplated their marriage. He later married her and did not update his will, then died shortly thereafter.

His surviving spouse claimed that she was entitled to one half of the decedent's estate on the theory that because she was not listed as his spouse and he had not contemplated marrying her when he executed his last will, his estate should be considered intestate.

Connecticut law has not addressed whether a decedent must have contemplated marriage when he listed his current spouse as a "friend" under his will. Judge DePanfilis ruled on April 1, 2010, that because the decedent made provision for her outside of his will, his surviving spouse will not receive an intestate share.

Omitted Spouse

Connecticut General Statutes Section 45a-257 addresses the failure of a testator

to provide for a surviving spouse who married the testator after his or her will was executed. The Norwalk case is significant because the issue of an omitted spouse has been addressed by the

Uniform Probate Code, and Connecticut amended its law to distinguish between an "omitted" spouse and a "surviving" spouse.

Under Section 2-301 of the Uniform Probate Code, the issue of a spouse not provided for in a will is addressed. The Connecticut legislature did not adopt the language of Section 2-301 of the Uniform Probate Code but instead stated that Section 45a-257 would address providing for a "surviving spouse."

Connecticut General Statutes Section 45a-257a does provide two exceptions against a surviving spouse receiving an intestate share: The representative of the testator might show that the testator provided for the spouse by a transfer outside of the will with the intent that the transfer be in lieu of a testator provision. The other exception is if the will clearly showed that the decedent purposely omitted the spouse.

The issue is a very subtle and complicated matter that will continue to come up in many other cases. Most people are unaware of the problems that can arise after a second marriage if they have not discussed their estate planning wishes with an attorney.



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ney. The difficulty is proving the intent of the decedent.

The question that the Norwalk Probate Court addressed was this: If the will was created at a time that the testator had no contemplation of marriage, should his spouse be allowed to claim that she was not provided for “as a spouse” and thus obtain an intestate share?

In the case at hand, the decedent provided for his girlfriend, who eventually became his wife. The decedent created a trust for her during a time that she and the decedent did not contemplate marriage. The court found that the decedent had provided for the new spouse. The court, considering all

the evidence, found that the decedent was providing for his spouse during her lifetime and therefore found that a statutory interpretation requiring a “contemplation of

marriage” is not reasonable under Section 45a-257a.

An attorney need not require a client to execute a new will or codicil when the client gets married as long as it can be shown that the client has provided for his new spouse,

either outside the will, or as a friend provided for in the estate documents.

Judge DePanfilis’ decision protects the intent of the decedent.

FAMILY LAW

That being said, it is always a good idea that a person update their estate plan after remarriage or when a first child is born, to address tax planning, new powers of attorney and to update beneficiary designation. ■