Disinheriting A Child - A Parent's Agony

By Geoffrey N. Taylor

INTRODUCTION

For some it is unthinkable. For others it is seemingly necessary. Many who do it are completely heartbroken.

I've counseled many clients on the issue of disinheriting a child. Those who choose to disinherit have varied reasons. "My daughter has not spoken to me in 25 years." "I hate my son-in-law so much I couldn't live with myself knowing he would benefit from my daughter's inheritance." "My son threatened my life!"

Can one disinherit a child under Michigan law? Until recently, most practitioners believed the answer was yes. Now the answer might not be so clear

THE STATUTE

Michigan's exempt property statute, MCL 700.2404, gives a decedent's surviving spouse the right to receive up to $15,000 (as adjusted for inflation) worth of the decedent's household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children have that right. If the value of those assets is insufficient, other estate assets can be selected to make up the deficiency. This right is in addition to a share passing by the decedent's will "unless otherwise provided."

THE CASE

In October, 2015, a three member Michigan Court of Appeals panel unanimously held language in an unmarried decedent's will disinheriting the decedent's child did not preclude the child from receiving exempt property. In the case of *In re Estate of Shelby Jean Jajuga*, the panel affirmed the decision of the Clare County Probate Court and acknowledged the decedent clearly wished to disinherit her daughter and the importance of ascertaining the decedent's intent when interpreting a will. However, the panel noted they were also required to interpret

the exempt property statute.

Carefully focusing on words and phrases such as “entitled” and “in addition to a … share passing by will,” the opinion stated “we conclude that petitioner has a right to exempt property under MCL 700.2404 that was not eliminated by the disinheriting language in decedent’s will.” Interestingly, and perhaps instructively, the panel also noted the decedent’s will “included no expression of intent as to petitioner’s statutory right to exempt property.” Was the Court hinting that the decedent could have eliminated the child’s right to exempt property by, for example, specifically referencing the exempt property statute?

WHAT NOW?

This is a published opinion, which one of Maddin Hauser’s many talented litigators told me means it is legally binding in all future matters in Michigan courts. They also said given the small dollar amount involved, there likely will not be an appeal to the Michigan Supreme Court.

Arguably one should be free to do what one wants with one’s property, including disinheriting a child. The decision to disinherit can involve highly personal and philosophical questions. “Do I want to leave a message that I am punishing my child economically for personal issues?” “Am I setting up a scenario for my disinherited child to challenge my will in court, which will almost certainly end in an airing of a family’s dirty laundry and permanent damage to family relationships?”

If the conclusion is to disinherit, this intention should be expressed clearly in the decedent’s will/trust. I do not believe motives should be stated, such as “for reasons he well knows,” lest the child say “I don’t know the reasons or the reasons are insufficient so pay me.”

The method to disinherit a child has been left somewhat cloudy as a result of the *Jajuga* decision. I and other Maddin Hauser attorneys frequently advise clients on strategies for estate distribution where one or more natural objects of a decedent’s bounty are omitted as beneficiaries. We are available to counsel clients through these difficult decisions.