Legal Matters®

Family Law
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Learning from the Larry King estate battle

If you follow celebrity news, you've probably heard about the inheritance battle going on between the children of longtime TV talk show host Larry King and his widow, Shawn King. Here's the case in a nutshell: In 2019, King executed a handwritten will while recuperating from a heart attack. The will purported to replace an estate plan he drew up in 2015, dividing up his $2 million estate between his five children (two of whom predeceased him) while disinheriting his seventh wife Shawn, whom he had been married for more than 22 years. At the time of King's death (and at the time he executed the will), he was separated from Shawn and had filed for divorce, although he had not taken steps to finalize the split.

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The case offers some useful lessons on how to avoid needless inheritance disputes.

While $2 million sounds like a small sum for a TV personality of King's profile, he is also believed to have left behind between $50 million and $150 million in "non-probate" assets (in other words, assets that are not passed on through a will, like jointly-owned property, retirement accounts with designated beneficiaries, life insurance policies, transfer-on-death accounts and money in trusts). Still, Shawn filed suit challenging the will, arguing that it was executed under questionable circumstances and that the elderly and infirm King was vulnerable to others' undue influence.

The case offers some useful lessons on how to avoid needless inheritance disputes.

One takeaway is that if you are considering writing a will or changing one, you should consult with an attorney. King's handwritten will is very likely to be accepted by the probate court under the laws of California, where it was created. Two people apparently witnessed the will signing and it was drafted in King's own hand. But a handwritten will can create suspicion among disappointed heirs and it is more vulnerable to challenge than more formal wills. That makes it important to seek counsel from a good lawyer who can help ensure a will is written and executed in a manner that will

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Can a 'savings' component be added to alimony?

Typically when a court is determining whether to order a spouse to pay alimony and how much that spouse should have to pay, it will consider factors like the age, physical condition and financial condition of each spouse, the recipient spouse's needs, the length of the marriage, the standard of living the couple enjoyed during the marriage and the ability of the paying spouse to support himself or herself while helping support the recipient.

But what if a couple had a uniquely frugal lifestyle during marriage because it was important for them to build savings? Does this mean the payor spouse pays less alimony because the recipient is used to getting by on less? Or will the recipient's saving habit be considered as a factor in an alimony order? A recent decision from New Jersey suggests that courts can include a "savings" component in an alimony award.

The New Jersey couple at issue generated more than $8 million worth of assets over the course of their marriage. Meanwhile, the husband's income as a pharmaceuticals executive had fluctuated between $1 million and $600,000 per year over the seven years leading up to their split. Throughout the marriage, the couple maintained a frugal lifestyle where the wife sewed their drapes and bought clothes for herself at the Salvation Army. They vacationed off-season or in connection with the husband's work travel and drove either company cars or modest Fords bought with the husband's father's executive discount.

When the couple divorced, the trial judge determined that their lifestyle averaged out to about $10,500 in spending per month with savings of approximately $19,000 each month.

In his alimony award, the judge accounted for this part of the couple's lifestyle by including $5,000 per month as a savings component in his 11-year, limited duration alimony award.

The husband appealed, challenging the inclusion of a savings component. But the New Jersey Appellate Division affirmed the award, calling it "reasonable under the circumstances," given how the couple's savings were integrated into their lifestyle.

Of course, this decision only applies in New Jersey. Every state has their own alimony laws and the law could be different where you live. Consult with a local family lawyer to learn more.

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How title affects property in divorce

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Many people assume that if a valuable piece of property like a car, home or bank account is titled in their name and their name only, they'll get to keep it in the event of a divorce. But this is not a safe assumption. A divorce judge will look to various factors in determining whether an asset will be considered part of the marital estate and divided between spouses accordingly.

If you're divorcing in an "equitable distribution" state (which is a majority of states), courts divide property by looking at factors like the length of the marriage, each spouse's needs going forward and the financial contributions each spouse made to the marriage with the goal of coming up with a fair split. When determining whether an asset, including an asset titled in one spouse's name, is subject to division, the judge will consider when the asset was obtained. If it was acquired during the marriage, it will likely be part of the marital estate regardless of who holds title, particularly if it was acquired with marital funds. On the other hand, if one spouse brought a particular asset into the marriage, that spouse will likely keep that asset in the divorce.

In "community property" states, property that either spouse acquires during marriage becomes a marital asset, with each spouse owning a 50-percent share, though this likely wouldn't apply to gifts and inheritances that specifically go to one spouse. That means if you are married and buy a house, your spouse will own half, even if you are the only one with your name on the deed. If you keep the house, your spouse will be compensated with other assets. If the house is sold, your spouse will likely get half the proceeds.

Of course, this is just the tip of the iceberg. The unique laws of each state and the complexities of each couple's situation can complicate the situation. If you have questions, talk to an attorney where you live.

Court may award ‘grandparenting’ time in some cases

Historically, grandparents had no right to demand visitation with their grandchildren in the event of the separation, divorce or death of a parent. This meant that if a parent or guardian sought to prevent their child from having further contact with grandparents after such an event, the grandparent would generally have no recourse. Today, however, every state has a grandparent visitation law that gives grandparents the right to petition for visitation. While a court is not obligated to honor the grandparents’ wishes, grandparents can and do prevail under the right circumstances.

Take, for example, a recent Indiana case. The mother of an 18-month old child, “J.I.,” agreed that the child’s maternal aunt could adopt her after child welfare authorities deemed the baby a “child in need of services” because of the mother’s drug problems. J.I.’s paternal grandparents intervened, petitioning for a visitation order. A trial court judge denied the petition, finding that any decision regarding grandparent visitation was up to the aunt to make.

But the Indiana Court of Appeals reversed, pointing out that no adoption had occurred yet, meaning that the aunt had no legal right to restrict visitation at that point, and that the child had already formed meaningful bonds with the grandparents and depriving her of contact with them would not be in her best interest.

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Similarly, the Michigan Court of Appeals recently ruled that a deceased father’s parents were entitled to grandparenting time with his minor daughter. In that instance, the court found that the child’s mother, who was denying the grandparents access to the child, was herself an unfit parent based on her inability to provide for the child’s material and emotional needs following the father’s death. Accordingly, the court found that the immediate loss of contact with the child’s paternal grandparents posed a “substantial likelihood” of future emotional and mental harm.

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Another takeaway from the case is that only a small percentage of King’s assets appear to be at issue in this dispute. That’s because most of his assets are not subject to probate. This is advantageous for several reasons. First, the disposition of non-probate assets does not become a matter of public record, so curious people can’t go poking around. Additionally, non-probate assets can be transferred to the beneficiary almost immediately rather than being subject to a lengthy legal process. Furthermore, having assets passed along outside of probate can reduce associated costs, like court costs, administrator fees and even attorney fees.

A third thing to note from this case is that King had filed for divorce shortly before drafting his new will. When you file for divorce, it is absolutely critical that you update your will and your beneficiaries to ensure that your property will be passed on the way you want it to be. King should have consulted with an attorney to ensure that that his new will adhered to all the formalities.

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Dogs and divorces: Do you need a 'petnup'?


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Pet custody can become as contentious in a divorce as the custody of children. That's why in some states, like Alaska, California and Illinois, courts consider the pet's best interests, similar to how they resolve child custody issues. In most states, however, pets are considered property, which means a divorce judge may well decide who gets the family dog the same way he or she decides who gets the house, the car, the living room sofa, the wedding china or any other asset that's part of the marital estate.

But a dog or cat has physical and emotional needs that a pool table or patio set doesn't have, so you may not want to risk your pet being equitably distributed like an inanimate object. To address this concern, "petnup" agreements between partners or spouses that lay out what happens if the couple breaks up have become increasingly popular.

The key consideration in a petnup is custody. Joint custody seems like it would make sense if both spouses are equally close to the pet. But many pet experts say this isn't a great idea since the instability of shuttling between homes can cause behavioral issues in animals. Instead, primary custody with one spouse with visitation rights for the other might be a better option.

Another consideration in creating a petnup is whether you have kids and if they're attached to the pet. If so, it may be in the kids' own best interest for the pet to reside in the place of primary physical custody.

Either way, you shouldn't draft a petnup on your own. If the pet truly matters, you should make sure the agreement is written in a way that will carry out your wishes and hold up in court. A family law attorney can help you with that.