

**Steve Leimberg's Estate Planning Email Newsletter - Archive Message #1168**

**Date:** 06-Sep-07  
**From:** Steve Leimberg's Estate Planning Newsletter  
**Subject:** Barber and Benoit - State Slayer Statutes Making Headlines

**Jeffrey A. Baskies** is a founding partner of the new law firm – **Katz Baskies LLC** – located in Boca Raton, Florida where he concentrates on trusts and estates, tax and business law. Jeff serves as counsel to several local and national charities in trust and estate matters. A frequent lecturer for local and national groups, Jeff speaks for the American Bar Association and for charity groups throughout the country.

**EXECUTIVE SUMMARY:**

Two high-profile cases (Barber and Benoit) have brought state slayer statutes into national news headlines. These cases highlight that the United States has a long common law tradition disinheriting those who feloniously murder from benefiting from such actions, and that every state has its own common law and statutory guidelines for dealing with slayers. These cases are interesting in their own right, but they also provide important reminders of several fundamental estate administration topics.

**FACTS:****BARBER V. PARISH**

In the case of Barber v. Parish, Florida's 1<sup>st</sup> District Court of Appeal just held that Justin Barber could not inherit a \$2.3 million life insurance policy on his wife April's life. This murder case made national news and was a common subject on Court TV.

On September 15, 2006, Barber was convicted of the August 17, 2002 murder of his wife. The case garnered national attention for various reasons, including:

- the defendant's allegation there was a mugger who committed the crime,
- his being shot "superficially" 4 times,
- his mistress taking the stand, and
- the use in trial against him of Barber's on-line activities (allegedly he purchased body armor on-line, and
- six months before the crime he allegedly searched the internet for information on "medical trauma" and "gunshot wounds").

After the jury found him guilty of first degree murder, the jury deliberated for only an hour before recommending the death sentence; however, the Judge set aside the jury's recommendation of the death sentence and instead imposed a sentence of life in prison.

After the trial, his attorneys alleged the jury was inappropriately impacted by watching Court TV and possibly seeing inadmissible evidence.

And Barber appealed the conviction.

Regardless of his arguments that the state slayer statute should not be applied while his appeal was pending, first the trial court could and then the appellate court both determined Barber could not receive the proceeds of the \$2.3 million life insurance policy on his wife's life.

Under Florida law, a "final judgment of conviction of murder in any degree is conclusive for purposes of" the slayer statute. F.S. 732.802.

The appellate court agreed with the trial court that the adjudication at trial was sufficient to meet the statutory standard and the fact of an appeal did not override the intent of the law.

### **CHRIS BENOIT**

As published in the AP and in the Atlanta Journal-Constitution, on August 28, 2007 there was a hearing in the probate dispute regarding the estate of former WWE star Chris Benoit.

The double-murder, suicide case, highlights not only the impact of the state slayer-statute, but also the complications of "order of death" in this case.

Neither Chris Benoit, nor his wife, Nancy, had a Will and thus Georgia's intestacy statutes will apply, and the order of deaths could be determinative of who inherits his estimated \$5 million + estate.

It is not disputed that in late June of 2007, Chris Benoit killed his wife, Nancy, and 7-year-old son, Daniel, before taking his own life.

What's not agreed is who he killed first and whether he had the capacity to commit "murder."

One argument presented by attorneys for Chris' father, Michael Benoit, was that Chris had to be mentally incapacitated at the time of the acts. Perhaps as a result of elevated testosterone from anabolic steroids (according to the Journal-Constitution article, a toxicology report showed Benoit had extremely elevated levels of testosterone in his body – perhaps 10x normal levels - but no other illicit drugs or alcohol), they argue, he must have been mentally incapacitated, as the man they knew could never have committed these acts, they argued.

If successful, the argument by Chris' father could mean that Georgia's slayer statute (which like those in other states prohibits a killer or his heirs from profiting from the crime) should not be applied, as the crimes would not constitute murder (would not have been unlawful and intentional).

If such argument is ultimately successful, that would mean Chris would be the survivor in the family and thus all of the assets will pass via Chris' estate. Thus the intestacy rules applied to Chris' estate would govern the passage of the inheritance and it would all pass to his two children from a prior marriage. Apparently, Chris Benoit had two children, David (14) and Megan (10), from a previous marriage to Martina Benoit of Alberta, Canada.

If that argument is not successful, and if the state slayer statute applies, then the order of death is essential in determining the heirs. Nancy's mother, Maureen Toffoloni, now appointed administrator of Nancy's estate, contends that the order of deaths has not been conclusively established and it is possible Chris killed Daniel first and/or that the order of deaths will be impossible to establish. If Chris killed Daniel first and then killed Nancy, then the estate

should pass as follows:

- a. As a result of the slayer statute, Chris is treated as predeceasing both of them, and his estate passes primarily to his wife via rights of survivorship in joint property and the balance under the intestacy statute.
- b. Daniel dies and his share of the estate passes to his mother.
- c. Nancy dies without a spouse or child surviving and thus her estate passes to her family.

On the other hand, if the order of death was Nancy first and then Daniel, as has been reported to date, then the estate passes entirely to Chris' two children as follows:

- a. As a result of the slayer statute, Chris is treated as predeceasing both of them, and his estate passes primarily to his wife via rights of survivorship in joint property and the balance under the intestacy statute.
- b. Nancy dies and leaves all her assets and whatever she received from Chris to Daniel.
- c. Daniel dies intestate and the estate passes to his half-siblings.

As you can see, the issue of the impact of the slayer statute in conjunction with the dispute over the order of death will ultimately be determinative of the passage of millions of dollars.

## **COMMENT:**

### **THE FLORIDA CASE:**

The Barber case examines the timing of the application of state slayer statutes. In particular, that Florida case highlights the importance of the timing of a hearing to apply the statute.

Reading the decision, it appears if you are handling a case of a murdered decedent, you may have a duty to go to court and seek to remove the slayer's rights before an appeal is resolved. In Florida, at least, this would be the case. Indeed, it might be malpractice to wait for the appeal.

I personally handled a case years ago where we did remove a husband's inheritance/standing in the probate after his conviction of murdering his wife in a high-profile case in Palm Beach.

Ultimately, the husband not only appealed his conviction but his appeal was successful and the state decided not to re-try him.

However, the probate court's decision rescinding his rights was already final and the standard of proof (the greater weight of the evidence showed the killing was unlawful and intentional) was less than that needed for a criminal conviction (beyond any reasonable doubt).

### **THE GEORGIA CASE:**

Next, the Georgia case is a reminder that you should review your state slayer statute for the types of crimes and quantum of evidence relevant for the statute.

For example, a conviction of murder might trigger the statute, but manslaughter might not. That's how the state of mind and his mental capacity (in the Benoit case, the state of mind and potential incapacity of the murder) may become relevant.

Further, even if a criminal conviction cannot be obtained, I believe in most states there will be a lower standard of proof in your probate to remove the killer's rights.

These issues should not be overlooked if you are handling one of these cases; a conviction may create a presumption you can rely on, but the lack of a conviction should not cause the executor to give up.

Another estate administration issue highlighted by the Benoit case is how disputes over the timing and order of death can completely alter the beneficiaries of an estate. Obviously, this case involves intestacy, so there was no planning involved, but as planners, we should consider our own drafting on the order of deaths. And when administering estates where the order of death is not clear, the Benoit case will likely create a public road-map on how to investigate and what proof is necessary to distinguish order of death.

#### CONCLUSION:

These two high-profile cases provide a reminder to those administering probates that in less-high-profile cases, issues like the state slayer statute and/or disputes regarding the order of death can be interesting and vitally important to our work.

**Hope this helps you help others make a *positive* difference**

## Jeff Baskies

Edited by Steve Leimberg

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"Steve Leimberg's Estate Planning Newsletter # 1168 (September 6, 2007) at <http://www.leimbergservices.com>"

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Barber v. Parish (2007 WL 2384521 – Fla. 1<sup>st</sup> DCA 8/23/07) (Case just released)

Prudential Insurance Company of America, Inc. v. Baitinger, 452 So. 2d 140, 141 (Fla. 3d DCA 1984). This case was cited to and relied upon by the court in Barber.



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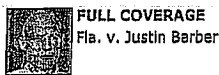
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1 | 2 | 3 Jury to decide if wife's beachfront murder was husband's plot

Barber said he tried to carry his wife to their car, but was hobbled by his injuries. He told detectives that he managed to drag her 100 yards to the walkway over the dunes, but then continued on alone to his vehicle.



He said he drove north, trying to wave cars over, but it was 10 miles before he caught the attention of another motorist.



Barber said that, because of the darkness and the speed of the attack, he did not get a good look at the attacker. While he was being treated in the hospital, sheriff's officers used helicopters, dogs and foot patrols to scour the park for the assailant and the murder weapon. They found nothing.



Justin and April Barber were married in 1999.

Two-home marriage

As they worked the case, detectives pieced together a picture of April and Justin Barber and their three-year marriage. The couple, who earned bachelor's and graduate degrees at

Oklahoma State University, lived together in southern Georgia until the year before the murder. Justin Barber moved to Jacksonville to take a job as a business analyst and management trainee with Rayonier, a timber products company.

Story continues

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His wife stayed behind to continue her work at a cancer treatment center where she was a dosimetrist, a technician who helps gauge and administer the proper amount of radiation for patients. Her own mother had died from lung cancer while April was in high school, and family members later said April, a bright young woman who had been salutatorian of her class, felt called to work with those

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suffering from the disease.

April Barber drove from Georgia to her husband's condominium in Jacksonville each weekend, and on the surface, it appeared the Barbers were succeeding at their long-distance marriage.

The crime scene, though, raised questions about Justin Barber's account. Detectives interviewed Barber repeatedly about the incident. At one point, they returned with him to the beach and asked him to reenact the crime while they videotaped. Almost immediately, investigators felt his story was suspicious. April Barber had suffered a single, fatal gunshot wound from a .22-caliber gun, a relatively small weapon. By contrast, Barber was shot four times, but none of the wounds were serious enough to require surgery and some officers felt they were superficial. If the killer had fired some of the shots while Barber was unconscious on the sand, why didn't he aim for the head?

There was also the matter of the dried blood on April Barber's face. Her husband recounted dragging and carrying her 100 feet, even throwing her over his shoulder at one point, but the blood stained only one side of her face, suggesting, authorities felt, that she had not been moved after she was shot. If she wasn't moved, detectives thought, she must have been shot near the crosswalk where she was found and not by a mugger 100 feet away on the beach.

The medical examiner concluded that April Barber was "incapacitated" by being "nearly drowned" and then moved to the location where she was shot.

With their suspicions raised, investigators began looking for a motive. They soon found life insurance policies totalling \$2.3 million, including one \$2.1 million policy April Barber bought the year before the murder.

Investigators delved into Justin Barber's finances and determined he had serious money troubles. His wife's aunt, a county judge in Oklahoma, told police that when Barber arrived for the funeral, he said he couldn't afford to pay for the burial, headstone or flowers. According to court papers, he told the judge that he would reimburse her once the insurance policy paid out. Later, Barber tried to collect the money, but his wife's siblings and aunt successfully filed suit to block the payout, arguing that he was still a suspect in the crime.

Detectives also found evidence that Justin Barber was a serial philanderer who had affairs with three women in Georgia, one in Florida and another in New Zealand. He saw one of the women just days before the murder.

#### Web of suspicion

Searches of his computer hard drive uncovered suspicious Internet activity, according to court papers. On Valentine's Day, about six months before the murder, someone used a search engine on Barber's computer to query "trauma cases gunshot right chest." A week later, the computer was used to search for "medical trauma gunshot chest."

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IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

JUSTIN M. BARBER,

Appellant,

v.

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FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D06-5968

PATRICIA G. PARRISH,

Appellee.

\_\_\_\_\_/

Opinion filed August 23, 2007.

An appeal from the Circuit Court for Duval County.

Bernard Nachman, Judge.

Robert Stuart Willis of Willis, Ferebee & Hutton, Jacksonville, for Appellant.

Henry M. Coxe, III, R.H. Farnell, II, and Kevin B. Cook of Bedell, Dittmar, DeVault,  
Pillans & Coxe, P.A., Jacksonville, for Appellee.

PER CURIAM.

Appellant, Justin Barber, appeals a final judgment which orders the  
disbursement of insurance proceeds to Appellee. Because we agree that the trial

○ court's adjudication of Appellant's guilt of first-degree murder was final pursuant to section 732.802(5), Florida Statutes (2003), we affirm.

At the time of her death, April Barber had a life insurance policy that named Appellant, her husband, as the primary beneficiary, and her aunt, Appellee, as the contingency beneficiary. Both parties submitted a claim for the insurance proceeds. When he filed his claim, Appellant was under investigation for his wife's murder. The insurance company filed an interpleader complaint against Appellant and Appellee. Pursuant to a court order, the insurance company deposited the proceeds into a bank account pending the court's determination of whether Appellant should be denied entitlement to the proceeds under section 732.802(3), Florida Statutes (2003). This statute expressly provides:

A named beneficiary of a bond, life insurance policy, or other contractual arrangement who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement; and it becomes payable as though the killer had predeceased the decedent.

§ 732.802(3), Florida Statutes (2003).

Thereafter on September 15, 2006, Appellant was adjudicated guilty of the first-degree murder of his wife and was sentenced to life imprisonment. Appellee moved for summary judgment pursuant to section 732.802(5), Florida Statutes (2003), which

states that “[a] final judgment of conviction of murder in any degree is conclusive for the purposes of this section.” The trial court found that Appellant’s conviction was final for the purposes of the statute even though an appeal was pending, granted Appellee’s motion for summary judgment, and entered a final judgment directing the proceeds of the insurance policy to be distributed to Appellee. On appeal, Appellant argues that the trial court erred in granting summary judgment because his conviction cannot be considered final before he has exhausted his appellate rights. This argument has previously been rejected. In Prudential Insurance Company of America, Inc. v. Baitinger, 452 So. 2d 140, 141 (Fla. 3d DCA 1984), the insured’s husband, who was the primary beneficiary of a life insurance policy, was found guilty of the insured’s murder. The probate court entered an order directing the insurance company to pay the policy proceeds to the personal representatives of the insured’s estate. Id. The insurance company appealed the order arguing that the husband’s conviction could not be considered final due to a pending appeal. Id. at 142. The Third District Court of Appeal examined the legislative intent behind section 732.802 and determined that amendments to the statute demonstrated the Legislature’s intent to make it more difficult for a killer to receive a financial benefit for his wrongdoing. Id. at 142-43. It concluded that the term “final judgment of conviction” meant an adjudication of guilt by the trial court, and it affirmed the trial court’s order directing the insurance

company to pay the proceeds to the personal representatives. Id. at 143. See also Cohen v. Cohen, 567 So. 2d 1015, 1016 (Fla. 3d DCA 1990) (holding that irreparable harm would not occur to a primary beneficiary, even if her conviction was reversed on appeal, if the estate was distributed to the remaining beneficiaries because she would be able to seek money damages from those beneficiaries).

We agree with the reasoning of the Third District in its finding that the Legislature intended a trial court's adjudication of guilt to be final for purposes of section 732.802, even if appellate remedies have not been exhausted. We, therefore, conclude that the trial court properly granted summary judgment in favor of Appellee and accordingly affirm the judgment.

AFFIRMED.

BARFIELD, DAVIS, and LEWIS, JJ., CONCUR.

The father of pro wrestler Chris Benoit questioned Benoit's mental state when he killed his wife and son before killing himself, suggesting he may have had "diminished capacity."

During a Tuesday estate hearing, attorneys for Michael Benoit said that would mean the state's "slayer's statute" \_ which keeps a killer or their heirs from profiting from the crime \_ would not apply.

Chris Benoit killed his wife, Nancy, and 7-year-old son, Daniel, in June before hanging himself in their Fayetteville home, authorities said.

"Chris' actions in doing this are wholly at odds with the person I knew him to be and everybody else who knew Chris," said Cary Ichter, one of two Atlanta attorneys representing Michael Benoit at the probate court hearing. "He was the model father. He was the model husband. He was a great guy, as nice a person as you'd ever want to meet."

A toxicology report showed Chris Benoit had extremely elevated levels of testosterone in his body but no other illicit drugs or alcohol.

In another development, Judge Martha Stephenson designated Michael Benoit as the permanent administrator to Chris Benoit's estate, while Nancy Benoit's mother, Maureen Toffoloni, assumes that same role for the estates of Nancy Benoit and Daniel.

The decision could help defuse tension between the families, who had objected to one another as estate administrators. Neither Chris Benoit nor his wife had wills.

It could be months before the court determines the issue of heirs. Whether Nancy Benoit died before Daniel will determine whether control of millions of dollars goes to Chris Benoit's two children from a previous marriage or to the Toffoloni family.

If Nancy Benoit died first, as authorities have said, then her estate would flow to Daniel's. His subsequent death would then mean his two half-siblings would be next in the line of inheritance per Georgia law.

But if Daniel died first, then the estate would have flowed to Nancy Benoit before her death. In that case, her family stands to get the inheritance.

Officials have said Chris Benoit killed Nancy Benoit before Daniel. Her family has contested that finding.

As part of Tuesday's agreement, neither side is allowed to spend any estate assets without court order or without the consent of all the parties involved. All sides also agreed to refrain from further legal actions without court permission.

Remember Chris Benoit? He killed his wife, then his kid, then himself. Or did he? None of the three had a will. Benoit was worth upwards of \$5M, and those assets have to go somewhere.

Reports are that Benoit killed his wife, then his kid, then himself. By that progression, when he killed his wife he inherited his wife's property. When he killed his kid he inherited his son's property. When he killed himself, next of kin got everything. Next of kin is two children Benoit has from a former marriage.

But wait, there's more! Every state has a "slayer statute", which basically prevents someone from benefiting through inheritance if they murder someone. Think Eric and Lyle Menendez. In Georgia, and in all states I'm familiar with, the slayer statute pretends that Benoit predeceased (died first mouthbreathers) his wife and son.

So now the progression is Benoit "dies", then asphyxiates the wife, then smothers the kid. So Benoit's money went to his wife, then temporarily to the kid, and then to Benoit's next of kin, the prior marriage children.

But wait, there's more! Benoit's wife's estate is contending that the kid was killed before the wife, or in the alternative that Benoit killed both of them simultaneously in different rooms of the house. If that were true, Benoit "dies", then kills his kid giving the wife everything. Then he kills the wife and the wife's family gets the \$5M windfall.

And you didn't think murder suicide could be fun? If you really want to be entertained, the foremost case on simultaneous death involves a newly married couple who both took cyanide tainted Tylenol AT THEIR WEDDING RECEPTION. One brain died first, the other died first. The families both wanted a piece. Check out the opinion here: Janus v. Tarasewicz, 135 Ill.App.3d 936, 482 N.E.2d 418, 90 Ill.Dec. 599 (Ill.App. 1 Dist. 1985).



# Fight Over Wrestler Chris Benoit's Estate Hinges on Order of Deaths

Wednesday, August 15, 2007

Associated Press

The future of pro wrestler Chris Benoit's millions could come down to the timing of a horrible crime: Did Benoit — having taken high doses of steroids — strangle his wife and then their young son before killing himself, or did the boy die first?

Lawyers for Benoit's mother-in-law, Maureen Toffoloni, filed a petition last week asking a court to determine the order of the deaths, which could affect whether she gets any of the estate.

Neither Benoit nor his wife left a will, so the death order could mean the difference in whether Toffoloni or Benoit's children from a previous marriage inherit the two homes, several bank and investment accounts and other assets estimated to be worth millions. Lawyers in the case declined Wednesday to provide an exact value.

Investigators have repeatedly said that Benoit killed his wife, then their son and himself during the weekend of June 22.

District Attorney Scott Ballard has said the wrestler used a cord to strangle his wife, then killed his son with a choke hold, then placed Bibles next to the bodies and hanged himself on a piece of exercise equipment.

Under that scenario, the estate would pass to Benoit's surviving two children, who live in Canada with their mother, said Cary Ichter, an attorney for Benoit's father, Michael.

But if the boy was killed first and then the wife, under Georgia law at least some of the estate would pass to Toffoloni, lawyers in the case said.

That's because of a forfeiture statute that takes into account the fact that Benoit was the killer. As such, the law for purposes of estate distribution would consider Benoit to have died before his wife and son.

Ichter said that if the boy was killed first, the estate would pass to the wife and, since she was killed, it would then pass to her family. But he noted that police don't believe that is how it happened.

Richard Decker, an attorney for Toffoloni, of Daytona Beach, Fla., said he doesn't believe the order of deaths is clear. He said he is asking the Fayette County court to make a determination based on the law "and not what we hear on TV."

Investigators have not given a motive for the killings, but the question of whether steroids played a role has lingered. Anabolic steroids were found in Benoit's home, and tests showed Benoit had roughly 10 times the normal level of testosterone in his system when he died.

Besides the Fayetteville home, estimated to be worth \$1.5 million to \$3.5 million, the Benois had a home in nearby Peachtree City, which was for sale for \$400,000 at the time of the killings, according to Decker. The house was not sold and has since been taken off the market, he said.

A probate court hearing over the appointment of estate administrators is scheduled for Aug. 28, Ichter said.

Ballard did not return a call Wednesday seeking comment. A spokesman for the Georgia Bureau of Investigation declined to comment.

The order of the deaths will determine whether Chris Benoit's two children from a previous relationship or Maureen Toffoloni inherit two houses, investment accounts, bank accounts and other assets that are worth millions of dollars. Neither Chris Benoit or Nancy Benoit left a will directing how the estate should be distributed.

The home in which the Benoit family died is worth an estimated \$1.5 to \$3.5 million. The couple also owned another home in Georgia which was on the market for \$400,000 at the time of their deaths. That home has not been sold and was taken off the market.

If the timeline of deaths that investigators have released is correct, the assets of the estate would be inherited by Chris Benoit's two living children. The children live in Canada with their mother. District Attorney Scott Ballard has said he believes the investigators' scenario and explanation of the order of the deaths to be correct.

Georgia's "slayer statute", a forfeiture statute, takes into consideration that Chris Benoit murdered his family. Under the statute, for purposes of distributing the estate, he will be considered to have died before his wife and son. Without the "slayer statute" the estate would have been distributed among Chris Benoit's surviving family members because he actually died last.

So, considering the law in Georgia, if Chris Benoit killed his wife first and then his son, the estate would go to the two surviving children. However, if Benoit murdered his son first and then killed his wife, Toffoloni would then be entitled to some of the estate as a survivor of Nancy Benoit.

One of Toffoloni's attorneys, Richard Decker, has said that he does not believe the order of events is clear. He is asking that the Fayette County court clarify the order of the deaths based on Georgia law, and not what has been widely portrayed in the media.

Tests revealed that Chris Benoit had roughly 10 times the normal level of testosterone in his system when he died. Police investigators have not said what the motive was for the murders, but there has been some question about steroid abuse and whether or not that played a part in the murders. There have been reports of anabolic steroids found in the Benoit home during the investigation. The WWE has said in their press releases that Chris Benoit tested negative for steroids during the last drug test they conducted on him and that they do not believe that "roid rage" played a part in the murders.

Congress has become involved with the investigation into drug and steroid abuse among WWE wrestlers since Benoit's death. The House Oversight and Government Reform Committee has asked WWE to submit a detailed copy of its drug policy, as well as to surrender relevant documents regarding steroid usage among its athletes, including any injuries, illnesses or deaths that might have been caused by steroid use.

There have been reports in the media alleging that Chris Benoit had a history of domestic violence. Nancy Benoit had filed for divorce at one point during the marriage, but later reconciled with Benoit and withdrew her divorce petition.

On August 28th there will be a probate court hearing over the appointment of estate administrators for the Benoit estate.

Reported aug. 30

The father of pro wrestler Chris Benoit questioned Benoit's mental state when he killed his wife and son before killing himself, suggesting he may have had "diminished capacity."

During a Tuesday estate hearing, attorneys for Michael Benoit said that would mean the state's "slayer's statute" — which keeps a killer or their heirs from profiting from the crime — would not apply.

Chris Benoit killed his wife, Nancy, and 7-year-old son, Daniel, in June before hanging himself in their Fayetteville home, authorities said.

"Chris' actions in doing this are wholly at odds with the person I knew him to be and everybody else who knew Chris," said Cary Ichter, one of two Atlanta attorneys representing Michael Benoit at the probate court hearing. "He was the model father. He was the model husband. He was a great guy, as nice a person as you'd ever want to meet."

A toxicology report showed Chris Benoit had extremely elevated levels of testosterone in his body but no other illicit drugs or alcohol.

In another development, Judge Martha Stephenson designated Michael Benoit as the permanent administrator to Chris Benoit's estate, while Nancy Benoit's mother, Maureen Toffoloni, assumes that same role for the estates of Nancy Benoit and Daniel.

The decision could help defuse tension between the families, who had objected to one another as estate administrators. Neither Chris Benoit nor his wife had wills.

It could be months before the court determines the issue of heirs. Whether Nancy Benoit died before Daniel will determine whether control of millions of dollars goes to Chris Benoit's two children from a previous marriage or to the Toffoloni family.

If Nancy Benoit died first, as authorities have said, then her estate would flow to Daniel's. His subsequent death would then mean his two half-siblings would be next in the line of inheritance per Georgia law.

But if Daniel died first, then the estate would have flowed to Nancy Benoit before her death. In that case, her family stands to get the inheritance.

Officials have said Chris Benoit killed Nancy Benoit before Daniel. Her family has contested that finding.

As part of Tuesday's agreement, neither side is allowed to spend any estate assets without court order or without the consent of all the parties involved. All sides also agreed to refrain from further legal actions without court permission.

Benoit's mental state questioned at estate hearing

By JOHN HOLLIS

The Atlanta Journal-Constitution

Published on: 08/28/07

The father of professional wrestler Chris Benoit could be trying to make sure two grandchildren inherit his son's estate, suggesting Tuesday that Benoit had "diminished capacity" when he murdered his family and took his own life at their Fayetteville home.

Attorneys for Michael Benoit said that would mean that Georgia's "slayer's statute" that prohibits a killer or his heirs from profiting from the crime would not apply in this case.

"Chris' actions in doing this are wholly at odds with the person I knew him to be and everybody else who knew Chris," said Cary Ichter, one of the two Atlanta-based attorneys representing Michael Benoit at Tuesday's probate court hearing at the Fayette County Judicial Center. "He was the model father. He was the model husband. He was a great guy, as nice a person as you'd ever want to meet."

Chris Benoit killed his wife, Nancy, and 7-year-old son, Daniel, before taking his own life in late June.

A toxicology report showed Benoit had extremely elevated levels of testosterone in his body but no other illicit drugs or alcohol.

In another development, Judge Martha Stephenson designated Michael Benoit as the permanent administrator to Chris Benoit's estate, while Nancy's mother, Maureen Toffoloni, assumes that same role with regards to the estates of Daniel and Nancy.

Stephenson's decision could help defuse rising tensions between the families, who had objected to one another as estate administrators. Neither Chris nor Nancy Benoit had wills.

It could be months before the Fayette County Superior Court determines the issue of heirs. Whether Nancy Benoit died before Daniel will determine whether control of millions of dollars goes to Chris Benoit's two children from a previous marriage or to the Toffoloni family.

As part of Tuesday's agreement, neither side is allowed to spend any estate assets without court order or without the consent of all the parties involved.

Additionally, all sides have agreed to refrain from further legal actions without court permission.

"This is what's appropriate, preserving the assets for the benefit of the two children," said Craig Frankel, the other Atlanta lawyer for Michael Benoit. "Our primary goal is to protect the estate for the benefit of Chris' kids so they can try to go through the mourning process as the Toffolonis are going through the mourning process. It's a tragedy for everybody."

Both Paul and Maureen Toffoloni attended the hearing but declined to comment.

Their Atlanta-based attorney, Richard Decker, was pleased with the outcome.

"We got what we wanted," he said, "and that was her permanent appointment as a personal representative of the estate. That's what we came here to do."

Chris Benoit had two children, 14-year-old David and 10-year-old Megan, from a previous marriage to Martina Benoit of Alberta.

If Nancy died first, as authorities have said, then her estate would flow into Daniel's. His subsequent death would then mean his two half-siblings would be next in the line of inheritance per a Georgia law that stipulates that half-brothers and sisters are treated as equals with full siblings.

But if Daniel died first, then the estate would have flowed to Nancy before her death. In that case, her family stands to reap the inheritance.

Officials have said Benoit killed Nancy before Daniel. Her family has contested that finding.