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From: Steve Leimberg's Estate Planning Newsletter
Subject: Jeff Baskies & Jenna Rubin on Aldrich v. Basile: Do It Yourself Will Does It Again

Time and again we hear the phrase "penny wise and pound foolish" but seldom do we hear it used by a state supreme court justice to describe a testatrix/decedent. Yet that's what happened recently in Florida where a woman used an "E-Z Legal Form" will to dispose of her entire estate (literally disposing of every asset she owned by listing them with particularity, but failing to contemplate after-acquired property and failing to include a residuary clause).

In her concurring opinion in Aldrich v. Basile, Florida Supreme Court Justice Barbara Pariente wrote:

> While I appreciate that there are many individuals in this state who might have difficulty affording a lawyer, this case does remind me of the old adage "penny-wise and pound-foolish." Obviously, the cost of drafting a will through the use of a pre-printed form is likely substantially lower than the cost of hiring a knowledgeable lawyer. However, as illustrated by this case, the ultimate cost of utilizing such a form to draft one's will has the potential to far surpass the cost of hiring a lawyer at the outset. In a case such as this, which involved a substantial sum of money, the time, effort, and expense of extensive litigation undertaken in order to prove a testator's true intent after the testator's death can necessitate the expenditure of much more substantial amounts in attorney's fees than was avoided during the testator's life by the use of a pre-printed form.

As **Jeff Baskies** and **Jenna Rubin** point out in their commentary, the lessons in Aldrich are simple and should be shared widely**.**

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Here is their commentary:

EXECUTIVE SUMMARY:

Twice, Ms. Ann Aldrich attempted to take the law into her own hands and twice did her attempts ends in apparent disaster.

First, she drafted her own will using a preprinted form which listed her assets with excruciating particularity (to a higher level of particularity than lawyer/drafters would reach); failing, however, to dispose of the residue of her estate.

Second, after the death of her primary beneficiary (her sister) she hand-wrote a codicil to confirm her intent to leave all of her worldly possessions to her brother; failing, however, to execute it with the formalities needed to create a will or codicil under Florida law.

Only after both of these botched attempts at "do it yourself" lawyering did Ms. Aldrich, on the eve of her passing, think to contact a lawyer to draft a will for her; failing, however, to live long enough to execute the draft her lawyer had prepared.

After her death, of course, there were assets that she "after-acquired" and did not specifically devise in her preprinted will. Her brother argued her intent was for him to receive those assets. Her nieces argued her intent was irrelevant, since the four-corners of the will are all that matters, and thus those assets must pass via intestacy.

Some of the key lessons from this case are obvious: (i) don't draft your own

estate planning documents, (ii) don't draft a will or trust to dispose of all of your assets with 100% particularity and forget that your assets may change in the future and (iii) don't assume that saving a few dollars by avoiding hiring a lawyer today won't cost your estate 100x as much in probate litigation some day in the future.

FACTS:

Ms. Ann Aldrich wrote her will on an "E-Z Legal Form" on April 5, 2004. She handwrote onto the preprinted form very specific directions that "all of the following possessions listed should go to [her] sister, Mary Jane Eaton" and listed her house (with the address), Fidelity Rollover IRA (with the account number and a phone number to call), United Defense Life Insurance (with a phone number), Chevy Tracker (with the VIN number) and all of her bank accounts at M & S Bank (with account numbers and a telephone number). She also wrote that "[i]f Mary Jane Eaton dies before I do, I leave all listed to James Michael Aldrich." The will had no other dispositive provisions – most importantly it failed to include a residuary clause. Then Ms. Aldrich duly signed and witnessed the will.

In other words, Ms. Aldrich was very clear and very detailed in drafting and executing her will, but her "E-Z Legal Form" apparently failed to provide for after-acquired property by omitting a residuary clause.

As is often the case in litigated probates, the unexpected happened. In 2007, Ms. Eaton died before Ms. Aldrich and named Ms. Aldrich the beneficiary of her estate, which included land and cash. Those assets were distributed to Ms. Aldrich (who deposited the assets in a separate account at Fidelity, rather than in the M & S Bank accounts listed in the will) and the probate was closed in July 2008.

Later in 2008, Ms. Aldrich apparently attempted to draft a codicil to her will, as a November 18, 2008 note was found with the will. The note said: "This is an addendum to my will dated April 5, 2004. Since my sister Mary Jean Eaton has passed away, I reiterate that all my worldly possessions pass to my brother James Michael Aldrich…." Although she signed the "addendum," there was only one other signature on the note (that of Mr. Aldrich's daughter, Sheila Schuh); therefore, the note was not a valid "will" or "codicil" under Florida law.

On October 9, 2009, Ms. Aldrich died, never having revised her will to include the inherited assets she received from her sister.

Mr. Aldrich was appointed personal representative of Ms. Aldrich's estate and sought to have a court determine who should inherit the after-acquired property. At that time, Ms. Aldrich's two nieces from a predeceased brother, Laurie Basile and Leanne Krajewski, asserted a claim to a share of the assets as Ms. Aldrich's intestate heirs.

In the will construction litigation, Mr. Aldrich argued that Ms. Aldrich intended for her entire estate, including whatever she acquired from her sister, to pass to him. In support of his position, Mr. Aldrich noted that the will named only Ms. Eaton and him as beneficiaries and of course at the time the will was executed it disposed of all the property then-owned by Ms. Aldrich. He also cited to statutory (Florida Statutes § 732.6005(2)) and common law provisions favoring disposition by will and disfavoring intestacy.

On the other hand, the nieces argued that without a residuary clause, the will failed to dispose of the after-acquired property (or any other property not specifically devised by the will). Thus for the balance of her assets (the real property and the liquid, non-IRA assets at Fidelity), Ms. Aldrich died intestate.

The trial court entered summary judgment for Mr. Aldrich. The First District Court of Appeals reversed the trial court's decision and directed it to enter summary judgment in favor of the nieces. The case made it to the Florida Supreme Court which confirmed the First District's opinion and found in favor of the nieces.

COMMENT:

This case highlights the importance of proper drafting. Had the will been appropriately drafted, it seems likely this litigation never would have happened, as it seems clear that Ms. Aldrich intended to leave her estate to her brother.

It also highlights the importance of proper document execution, as the handwritten (and witnessed – but only by one person) note/document could have "saved the day" if only it had been executed properly (in the presence of

two witnesses, who sign in the presence of each other and the testator).

Moreover, it serves as a reminder that although the probate courts may be courts of equity, they cannot just re-write wills even if the intent of the testator is apparent. Even though extrinsic evidence made the testator's intent clear, the court found that the conclusion that Ms. Aldrich wanted to leave her entire estate to Mr. Aldrich was "simply not supported by the four corners of the document."

The opinion also stated: "The will in the instant case does not result in a contradiction or ambiguous language….. Without the use of the extrinsic evidence, the testator's will is clear as to its meaning and needs no interpretation in order to be implemented…. Ms. Aldrich's will is not ambiguous. There are no provisions in the will that are 'difficult to reconcile.'… The will is not ambiguous as to the question of whether Ms. Aldrich intended to dispose of after-acquired property. The will did not have a residuary clause or any general devises which could be interpreted as disposing of any of the inherited property. This court cannot infer from the four corners of the will, without adding words to the document, that in making provision for the property she owned on that day that she also intended to make provision for any property that she stood to gain in the future."

Justice Pariente really hits the nail on the head in her concurring opinion stating that Ms. Aldrich's failure to draft a will with a residuary clause compels the result of this opinion; however, the Justice surmises that this result unfortunately does not effectuate Ms. Aldrich's true intent. Justice Pariente laments that the court was unable to legally consider Ms. Aldrich's unenforceable handwritten note that "clearly demonstrates that Ms. Aldrich's true intent was to pass all of her 'worldly possessions' to her brother, James Michael Aldrich."

She calls this result unfortunate, but notes that it generates from the decedent's own failures. "This unfortunate result stems not from this Court's interpretation of Florida's probate law, but from the fact that Ms. Aldrich wrote her will using a commercially available form, an 'E-Z Legal Form,' which did not adequately address her specific needs—apparently without obtaining any legal assistance."

Moreover, Justice Pariente took the unusual step of using this case as a teaching opportunity from the bench, when she stated: "I therefore take this

opportunity to highlight a cautionary tale of the potential dangers of utilizing pre-printed forms and drafting a will without legal assistance. As this case illustrates, that decision can ultimately result in the frustration of the testator's intent, in addition to the payment of extensive attorney's fees—the precise results the testator sought to avoid in the first place."

Conclusion

The lessons in this case are simple and should be shared widely. Estate planning documents impact significant amounts of wealth and should not be attempted without the help of expert advisors. Too much is at stake and too much can be lost if the process is handled by amateurs or forms.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Jeff Baskies

Jenna Rubin

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Aldrich v. Basile, SC11-2147, March 27, 2014