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DO IT YOURSELF?

Sometimes I do my own plumbing and electrical work. Oftentimes it works. When it doesn't work, I know the plumber/electrician pads his bill to straighten up the mess I made of things. So, when a person plans their own estate, it should not surprise us, nor should the family be surprised, when the result is not what they thought it would be and costs more to clean up.

In Estate of Griswold 2001 DJDAR 6305 (CAL 2001), the California Supreme Court ruled that half-siblings who did not know the decedent, and whom the decedent did not know, will share the decedent's estate with his wife. The decedent was born out of wedlock. Dad moved away, and the half-siblings were Dad's kids. The court indicated it was an unhappy result and one the legislature should consider.

Mr. Griswold and his wife kept their assets separate apparently in case one of them needed eventual nursing home care. That was mistake number 1. Mistake number 2 was that Mr. Griswold not only did not get professional estate-planning advice, he did not even have one of the State Bar's poorly devised estate plans (Will or Living Trust) that he might have filled in (by chance) correctly. Mistake number 3: he died.

An heir search firm contacted the half-siblings, and, to the wife's dismay, they share in the estate. Had Mr. Griswold left a Will, we might know of his intentions. No one kept him from having a Will. The estate plan he did leave is set forth in Probate Code sections 6452 and 6401(c)(2)(B).

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Section 6452 sets forth the basis for a parent of a child born out of wedlock sharing in the child's estate: "(a) The parent must acknowledge the child and, (b) the parent must have contributed to the child's care or support." Our decedent's absentee father acknowledged the child in an Ohio "bastardy complaint" (as paternity cases were referred to in 1941), and was ordered to pay $5 per week in support to the clerk of the Ohio juvenile court. He did so for 18 years.

Section 6401 at (c)(2)(B) sets forth the split of the estate by intestacy where there is a spouse, no issue, but parents or (in this case) issue of parents.

So, with regrets, the Supreme Court approved one-half of the estate to go to the surviving spouse and one-half to the previously unknown siblings subject to a fee to the heir search firm without whom none of this would have occurred.

The bottom line is that, regardless of what the court, the legislature or opposing counsel feel about the outcome of the case or the heir search firm, had Mr. Griswold formalized a Will or Living Trust, his wife could have inherited 100%. He has only himself to blame. That doesn't help Mrs. Griswold, but, it should be a warning to all who are living and can take action.