

The Elderlaw Forum: Stress of Divorce Can Kill

by Professor Michael Myers

At what moment is a divorce final? When the judge signs the order of dissolution? When notice of the order is served upon one of the parties? When notice of the order is served upon both parties?

The answer to that question will determine the disposition of assets owned by a man who died six days after the court entered a decree of divorce and two days after his wife received notice of the order, but prior to his receiving notice of the order. The question was posed by the man's widow, who called the USD Senior Legal Helpline.

The answer: Her divorce became final and legally binding when the court entered the order of dissolution. That means she will not inherit from the man to whom she was married for 16 years and had two children. But what about the children; will they inherit from their father, even though their mother was granted legal custody?

The answer: Since he died intestate "without a will" the two children will receive all of their father's property.

The caller said her ex-father-in-law contends that since his son was not married at the time of his death, and died without a will, that under the laws of intestacy he and his wife, as parents, are entitled to inherit all of their son's property. He acted upon that belief by removing his son's guns, keys, and other property from his son's home.

The son lived in one house, the caller in another house on the same property.

The caller said she had been told by a county official that since her children were under the age of 18 they could not inherit their father's property and that her ex-father-in-law was entitled to take possession of his

deceased son's property.

The county official is wrong. The caller, as the surviving parent, may be appointed as the trustee or manager of the property inherited by her children until they attain majority at the age of 18.

Lessons to be learned from this case: (1) A divorce is final upon the entry of a legally-binding decree by the court; (2) When a person dies without a will, the state's intestacy statute controls inheritance; (3) The caller's ex-father-in-law committed criminal trespass, and (4) The children will inherit all of their father's property.

And a collateral lesson: Divorce produces stress. Stress kills. When it kills can, as in this instance, determine who inherits from the deceased.

(Pro bono legal information and advice is available to persons 55 and older through the USD Senior Legal Helpline, 1-800-747-1895)