

The Elderlaw Forum: Caregiver Displaces Daughter's Inheritance

by Professor Michael Myers

Blood may be thicker than water; but don't count on it. Lawyers can be contracted on a contingency fee basis; but don't count on it.

Those lessons were learned by an Arizona woman who called the USD Senior Legal Helpline. Her 86-year-old mother recently died in California, leaving an estate valued at \$800,000, consisting of a house worth \$490,000, and the balance in stocks and bonds. The property had been held in a trust, with the caller, her mother's only child, as trustee and beneficiary.

About 18 months ago, her mother asked the caller to sell her house to an immigrant domestic who had become her mother's caregiver and friend. The daughter refused to sell the house. Her mother retaliated by engaging an attorney, removing the daughter as trustee, and designating the caregiver as the exclusive beneficiary under both her trust and will.

Believing her mother must have lacked capacity when redirecting her assets from her only daughter to an immigrant whose mother lived across the alley, the caller engaged a California attorney, on a contingency basis, to have the rewritten trust and will set aside. The attorney pursued the case through its deposition phase, during which two physicians testified that the mother had full mental capacity at all times related to the litigation.

At the completion of the depositions, the lawyer withdrew from the case, stating "I do not litigate cases I cannot win." That was, I advised the caller, a business decision on the part of her now ex-lawyer. Her remedy: search for a lawyer willing to invest time and money in her case. It is improbable she will find a second attorney willing to continue the case on a contingency arrangement.

This is a case where friendship displaced family ties; a case where generosity and compassion bestowed upon an elderly woman in frail health was rewarded. It is also an example of good lawyering; where the attorney who drafted the second trust and will was able to successfully defend against a challenge from a family member.

The caller believed her sole-daughter status created an entitlement to her mother's estate. She was wrong. Mother-daughter relationships are often complex; they need to be nourished, particular near the end of life's journey. In this case, a domestic caregiver provided late-life nourishment. And for that she was materially recognized.

Pro bono legal information and advice are available to persons 55 and older through the USD Senior Legal Helpline; 1-800-747-1895; mmyers@usd.edu .

Note: Opinions are solely those of Professor Myers and not the University of South Dakota.

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