

Contest a Will: a Challenging Process

By Greg T. Rinckey

Q:

Shortly before my father passed away, my sister talked him into leaving me out of a trust he initially created for both of us. What can I do so I don't get left with nothing?

A:

When there are suspicions that someone took advantage of a person who executes a trust, referred to as a "grantor," the important question is whether undue influence was involved. People with a vested interest in the trust or who are beneficiaries could challenge the validity of a trust that a deceased grantor made during his or her life, known as an "inter vivos" trust. In some cases, interested parties could also initiate trust contest proceedings.

For many who have been left out of a will or trust, undue influence can be an elusive act to prove in court. Circumstantial evidence is used to prove it. New York's highest court long ago laid out the criteria for undue influence. In the 1877 New York Court of Appeals case of *Children's Aid Soc. v. Loveridge*, the court said undue influence "amounted to a moral coercion, which restrained independent action and destroyed free agency." Ultimately, a grantor or testator is forced "to do that which was against his free will and desire, but which he was unable to refuse or too weak to resist."

It would not necessarily be an act of asserting undue influence if someone tried to evoke feelings of affection in a grantor or to remind him or her of past acts of kindness or camaraderie. The line is crossed, however, when there is "a coercion produced by importunity, or by a silent resistless power." In either case "the strong will often exercises over the weak and infirm." The Court of Appeals added that the motive behind exercising undue influence is "tantamount to force or fear."

Key to proving undue influence will be testimony and other evidence attesting to the mental capacity of the grantor at the time the trust was created or amended. Medical records may also be helpful in this regard. It is crucial to determine the exact extent of the grantor's mental alertness and whether any factors, such as medication, might have impaired his or her ability to resist undue influence. As the Court of Appeals noted in another classic case, *Rollwagon v. Rollwagon*, from 1876, "The amount of influence which will be held sufficient to invalidate a will is dependent upon the strength or weakness of the mind of the testator." A party's motive for unduly influencing a grantor should also be detailed.

Anyone interested in contesting a trust or who believes a trustee is abusing his or her fiduciary duties should consult with an estate planning attorney.

Greg T. Rinckey, Esq., is the managing partner at Tully Rinckey PLLC, a full-service law firm located in Albany. If you would like your legal question or topic answered in the next issue,

contact Greg Rinckey at 518-218-7100 or grinckey@1888law4life

“He took on this case with vigor and ZERO FEAR of the government!”

"LITERALLY THE BEST MONEY I EVER SPENT!!!! The USAF charged my son with Article 92, Violate General Order and Article 128, Simple Assault. I spoke to many attorneys who said to me, "Your son will be convicted of the Simple Assault because putting lotion on someone's face is considered an assault as it is an unwanted touch." They all wanted me to work on a plea deal with the government that ended with my son being discharged, spending time in the brig and having a federal conviction for the rest of his life. Knowing that this just didn't warrant a federal conviction, bad conduct discharge and time in the brig, I was on a search to find an attorney who would look at this case for what it was: a couple of 19-21 year-old immature young men horse playing. I was looking for someone who would say something different; someone who would be able to look at the case from more than one view. When I spoke to Mr. Rinckey, I thought I was going to get the same ole speech, but to my surprise, I IMMEDIATELY felt at ease and I knew right then that he was going to be my attorney (not sure if he knew it at this time). He took on this case with vigor and ZERO FEAR of the government! He wanted them to know that this was NOT going to go away with any plea deal! And he went to work! Then, LITERALLY 2 DAYS BEFORE trail the government added an additional charge, which was Article 134, Unlawful Entry. Mr. Rinckey stayed focused, developed a plan, and off to trail we went. He was so prepared, calm and at ease. I remember him saying to me, "I am ready to try this case." And yesterday – 14 APR 2016 – my son was found NOT GUILTY on ALL CHARGES AND SPECIFICATIONS!!! Yesss!!! You know, it's always hard to find money for an attorney, but I learned one thing with this case. Although I thought we couldn't afford an attorney, the truth of the matter was that we couldn't afford NOT TO HAVE an attorney. I only wish I had found Mr. Rinckey sooner, but that's okay. I have found my ATTORNEY for life," Y.W. on Founding Partner on Greg Rinckey, Esq.

Prior results do not guarantee similar outcomes.

"Well Informed Legal Advice" – G.C.

Received sound and well informed legal advice. Responses were timely and extremely relevant. – G.C. on client relations attorney Derrick T. Hogan

“Great Service” – E.S.

I want to thank you all for the great service rendered [to] myself and family. - E.S. on Client Relations Attorney Derrick Hogan

"High Regard" – R.E.M.

"Your firm held my best interests with high regard... I thank you for your efforts." - R.E.M.

“Prompt and Efficient” – K.B.

"Prompt and efficient in processing claim, all correspondence handled in prompt and efficient manner." – K.B.

“Impressed” – W.W.

"As a retired heavy user of attorneys, I'm impressed with your concerns and your efforts to stay in touch with your clients. Its damned good management aligned with top notch expertise." – W.W.

"Excellent Service" – J.R.

"Excellent service, very professional, and understanding and considerate of clients needs. Attorney was very approachable and there was a very good comfort level." – J.R.

"Full Service" – K.M.

"I like the fact the office is close enough to where I work and live and that it is a full service practice, not just estate planning." – K.M.

"Professional and Informative" – J.H.

"Professional and informative... I was pleased with the handling of the case. I was treated as a person, and kept abreast of all aspects of the case. Thank you all." – J.H.

"Thanks So Much" – J.D.

"Without your firm, I would not have known of my claim. Thanks so much!" – J.D.

"Gets Results" – F.P.

"Most certainly – The firm gets results!" – F.P.

"Outstanding" – M.P.

"Results are outstanding." – M.P.

"Quite Satisfied" – R.W.

"I am quite satisfied with the services your office has provided." – R.W.

“Exceptional Legal Services” – A.S.

“Your firm, Tully Rinckey, has provided and continues to provide me with prompt, keen, exceptional legal services. After the initial consult, I felt relieved that I had the representation from Tully Rinckey... I have found a new found hope with Tully Rinckey...” – A.S.

“Absolute Best” – R.H.

“My attorney was the absolute best I could ever have hoped for. A pure professional in every sense of the word. She was very mindful of my financial expenditure and still was able to represent me very well in my court case.” – R.H.

“Outstanding Service” – A.R.

“Outstanding service, true professional.” – A.R.

“Top Notch” – V.W.

“My attorney was top notch. Very pleasant and helpful.” – V.W.

“Very Thankful” – C.P.

“Very thankful for the help and guidance I received from your law firm. Because of your law firm I was able to return to work with all my back benefits.” – C.P.

“Ideal Choice” – D.H.

“My attorney knew exactly the approach to take and was the ideal choice. She was extremely responsive. She was clear, balanced, and open to our views and feelings. She made it clear she was there for us and ready to answer questions.” – D.H.

“Very Satisfied” – D.D.

“I was very satisfied with the services provided which were completed in a very timely and professional manner.” – D.D.

“Excellent” – B.M.

“Your firm provides excellent & free service to federal workers and NG/USAR members.” – B.M.