ACTEC Law Journal

Volume 43 | Number 2 Article 16

12-1-2018

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First, we want to thank Professor David Horton, Mr. James Pressly, and Mr. J. Grier Pressly for their thoughtful comments on our paper. Their comments and critiques were spot on. In response, we will focus on how to address some of their comments in the next iteration of this project and where we need to do further research to find the best outcomes. This is an ambitious project and we cannot make broad conclusions or recommendations for change without as much data as possible. Already working toward that end, we have reviewed intestate estates for the same period as the testate estates to compare the populations by race, class, and gender. This is not the place to detail those conclusions but, not surprisingly, the data show that African-Americans and Latinos died testate in lower proportions than Whites. And the size of intestate estates tended to be marginally smaller than testate estates although, as already indicated in our paper, data on the size of the estate are particularly unreliable. One set of issues we plan to address in future articles are the barriers to good estate planning for different populations. From that we hope to be able to recommend statutory changes that can minimize the costs that might flow disproportionately to those who do not have access to good estate planning. But even for those who had estate plans in place at their death, we saw trends that, with further research, can inform future statutory reforms.

Professor Horton identified three points for further consideration: 1) whether we can draw conclusions about intestacy from testate plans, 2) whether we can draw general conclusions only from wills that mention a stepchild, when stepchildren may not be mentioned in many more estate plans, and 3) whether pour-over wills indicate that good estate planning was done. Taking them in order, of course there is a legitimate concern that using wills may not tell us enough about what the intestacy laws should do because wills only reflect a portion of most decedents' estate plans. With the nonprobate revolution, many people may have significant property that passes outside probate, perhaps to the same

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beneficiaries and perhaps not. Professor Horton cautions us to be careful and not assume that the wills accurately tell us who are the primary recipients of the decedent's bounty.

There are a number of ways to look at this problem, however. First, we certainly recognize that we have limited information when we look only at probated wills, and for that reason we hope to follow-up with the surviving family members or their lawyers to determine the basic contours of revocable trusts that were used in the case of the pour-overs, as well as details about the existence of other nonprobate instruments. This is the perfect situation in which we can try to gain additional information through interviews, surveys, or phone calls to see if we can get a clearer picture about the decedents' intentions. However, it is clear from many of the wills we examined that these were modest estates and it is unlikely there would be a sizable nonprobate estate. Moreover, there was a noticeable difference between the wills that left all to a spouse, but if that spouse predeceased, then all to the children equally and the wills that spelled out particular items of property for a variety of family members. To the extent we can draw conclusions from any estate plan, we do believe that there are ways to dig deeper into many of the wills we reviewed, even if they dispose of only a portion of a decedent's property. If someone bothered to make a will naming individual beneficiaries, it is likely those people were important to the decedent.

Second, Professor Horton is certainly correct to remind us that it is difficult to interpret silence. There may have been many decedents who had stepchildren and failed to mention them. Thus, we can never be entirely accurate in catching the wishes of all decedents with stepchildren. On the other hand, there are ways to glean additional information about non-traditional family relationships that lend greater accuracy to our interpretation. Besides the interviews noted above, we can ask the families of these decedents how stepchildren came into the decedents' lives and what roles they played. While it makes no sense to do phone interviews for all the decedents, it is certainly feasible to do so for any decedent who left property to stepchildren, to see if there are any patterns in the stepchild/parent relationship that can inform further research and proposals for reform.

Finally, we disagree that probating pour-over wills is a sign of an estate plan's failure. The pour-over is designed to have the dispositive provisions outlined in the trust, not the will, and an estate plan focused on probate avoidance would not need to probate the pour-over if the trust was properly funded. But a pour-over is designed to capture any after-acquired property and dispose of any and all property that was not put into the trust, thereby allowing the decedent full control until death. For that purpose, simple probate makes sense, even if the dispositive

provisions are outlined in a separate trust document. What the existence of a pour-over does tell us is that a sizable minority of decedents have gone one step beyond the basic will to create a trust. We take this to imply that these decedents at least have taken advantage of the opportunity to do more comprehensive estate planning than those who died just with a will and those who died intestate. Understanding the demographics of this population is useful when comparing the demographics of the intestate population. All three of Professor Horton's comments are incredibly useful as we go forward with our research.

Messrs. James and J. Grier Pressly focused their comments on the blended family which, we agree, is likely to represent the majority of non-traditional families in our study and in society at large. Their comments are particularly helpful because they are active in the bar and work with legislative committees to effect statutory changes, as well as with clients engaged in estate planning. Consequently, their insights about the likelihood of statutory changes, and their most likely trajectories, are particularly useful to us as we consider possible reform recommendations. They correctly question whether lawmakers or clients would be comfortable moving stepchildren ahead of collateral blood relatives in the intestacy priorities, but recognize that the data indicate at least some disconnect between the current intestacy laws and decedents' apparent intentions.

Messrs. Pressley took three common scenarios for the blended family and discussed likely approaches and possible resistance toward reform. In the case where there is no surviving spouse and no natural children, but there are surviving stepchildren, they agree that moving the stepchildren higher in intestate priority might make sense. Most likely, this would place them before collateral relatives. More importantly, they support the idea that intestate priorities could differ based on objective circumstances that indicate likely intent. These objective measures could give stepchildren a share of a functional parent's estate if they were minors when they entered the home, if the marriage of the parents was suitably long, or if, as we posit, the functional parent took the stepchild as a dependent for income tax purposes. These objective measures could provide better ways to tailor intestacy priorities to fit the functional relationships that many people are forming, especially when the stepchild had a long parent/child relationship with the decedent.

Messrs. Pressley are less enthusiastic about giving stepchildren priorities when there are also natural children, despite the fact that our data seemed to indicate that many decedents gave at least some property to their stepchildren in addition to their natural children. Using

their own experience in estate planning with clients who treat natural children differently from stepchildren, they caution against an intestacy scheme that would automatically give stepchildren inheritance rights. This is a much more complicated issue than at first appears, and is one in which any default rule is likely to provide a poor fit. Parents and their children have complex and varied relationships. But if anything jumped out from our data, it was that many testators used their wills to treat their natural children differently from each other; some were omitted altogether, some were given certain items in preference to an equal distribution, and many gave stepchildren specific items in addition or to the exclusion of their natural children. With such diversity, it is nearly impossible to create a default rule that will fit well with most people's intentions.

However, denying stepchildren any inheritance because high wealth clients tend to exclude them in their estate plans is not necessarily the right approach. In the first place, high wealth clients are very unlikely to die intestate, so their clear desire to keep wealth in the family may be less instructive than the apparent intentions of decedents with less wealth. While we agree that most estate planning for the blended family provides for the natural children of each spouse separately, and most likely keeps wealth in the bloodlines, that is precisely what does not happen under intestacy. So if we imagine a late-in-life remarriage between a widow and a widower, each with his or her own natural children and each bringing sufficient wealth to the union, a sound estate plan would probably entail a Q-tip or elective share trust to give the surviving spouse only a life estate in a portion of the decedent's estate, while the rest passes to the children, either immediately or at the death of the surviving spouse. Under intestacy, however, even in this scenario, the surviving spouse would take at least half of the decedent's estate, which would then pass to that spouse's natural children, rather than back to the children of the first spouse to die. Ironically, intestacy may result in stepchildren taking more than decedents would want, while standard will and trust norms would result in them taking less.

We posited one possible solution that Messrs. Pressley find intriguing: building a life estate feature into the spousal share of a second or subsequent spouse, thus channeling the remainder to the natural children. This solution would benefit the natural children vis-à-vis the spouse, but would completely disinherit stepchildren altogether, which goes against our data. The current intestacy law probably channels too much wealth to the stepchildren at the expense of the natural children, while a life estate feature would channel too much away from stepchildren. This means we need to think about different groups of stepchildren. The stepchildren from a late-in-life remarriage who are suitably provided for by their natural parents probably do not need any inheri-

tance from their natural parent's spouse. But the stepchild who enters the home as a minor, and for whom the parents' marriage is of longer duration, especially if the parents subsequently have natural children together, should probably be given some favorable treatment. The life estate feature does not do that well. But that simply brings us back to the objective measures discussed earlier: that under certain circumstances that would indicate a long-term relationship with a stepchild, the default rule could be that the stepchild takes a share, and high wealth individuals who are more likely to do estate plans can draft around the default to keep the wealth within the bloodline.

Finally, we agree with Messrs. Pressley that a sliding scale in the surviving spouse's share under intestacy would make a lot of sense, as it would in the elective share. Both commentators point out the difficulty of drafting any kind of one-size-fits-all default rule for a population that is anything but one-size. However, objective measures to identify stepchildren who have formed long-term relationships with stepparents, and a sliding scale for the surviving spouse, are both fairly simple solutions that would make our intestacy laws conform more to probable intent. The fact that academics and practitioners can come together on the possible solutions shows precisely how dialogue between these different groups can move us closer to good legal reforms.