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Verdict

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JOANNA L. GROSSMAN

The End of the Road: The Late Anna Nicole Smith's Quest to Inherit Is Over

Twenty years. Five times the length of the human relationship. Almost twenty times the length of the marriage. That's the duration of the litigation about whether Anna Nicole Smith should share in the estate of her husband J. Howard Marshall II. The parties are long dead—J. Howard's death at age 90 in 1995 gave rise to the estate and litigation over it; Anna Nicole died of a drug overdose at 39 in 2007; and J. Howard's son (and Anna Nicole's nemesis), Pierce Marshall, died at age 67 in 2006. Yet the litigation waged seven years after all the parties were dead, and it came to an end just this past month. As the federal district court that issued the last ruling wrote, quoting Charles Dickens's *Bleak House*, "it is time for this suit to no longer 'drag[] its weary length before the Court.'"

In this column, I'll chronicle the story from beginning to end—and explain why, after twenty years of litigation, Anna Nicole (or, more practically, the surviving daughter who inherited her estate) came up empty handed.



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Humble Beginnings: Guess Model Seeks Share of a Billionaire Husband's Estate

Anna Nicole Smith met J. Howard Marshall II in 1991 at a strip club. He had transformed himself from a law school professor into an oil tycoon, and she from an unknown into, eventually, a Guess jeans model and then a reality star. But along the way, she was a strip club dancer who was relegated to the dayshift because she was “big-boned”; and he, in his very late eighties, frequented strip clubs at lunch because he would doze off too early in the evenings.

They married in 1994. Fourteen months later, J. Howard died, but even before he passed away, Anna Nicole had filed an action in probate court to challenge his son Pierce's alleged interference with J. Howard's handling of his plentiful assets. Central to her claim in that lawsuit (as well as a competing lawsuit that would later be litigated in federal court in California) was that when J. Howard asked Anna Nicole to marry him, he promised her half of his estate. But Pierce, resentful that his very aged father would give that kind of

money to a woman barely more than a quarter his age, took steps to prevent the promise from being fulfilled. And the steps he took, Anna Nicole alleged, were fraudulent and perhaps criminal—but effective to deprive her of any share of her late husband’s estate.

Before J. Howard met Anna Nicole, he had established a living trust into which he had put the bulk of his money. This “testamentary substitute” allows a person to retain as many of the benefits of ownership as he wants during life, and then to pass the property to named beneficiaries at death without the need for probate. Pierce’s interference, according to Anna Nicole, was that he forced his father to convert the trust to an irrevocable one, which deprived him of the ability to amend it to add her as a beneficiary, terminate it to free up the assets and make her a lifetime gift, or make a bequest to her of the amount allegedly promised. This conversion, then, froze in time—perhaps against his will—his estate planning desires expressed before he met his new wife.

Across State Lines: Court Battles in Texas and California

With her probate claim still underway in Texas, Anna Nicole filed for voluntary bankruptcy in California in 1996, necessitated by an \$850,000 default judgment against her in a sexual harassment suit filed by her former nanny. In what would prove to be a grave tactical error, Pierce filed a claim on Anna Nicole’s bankruptcy estate, as a potential creditor. He claimed that she had defamed him by accusing him of forgery, fraud, and false imprisonment in connection with her probate claim, and he wanted to make sure any damages he might be entitled to would not be discharged because of the bankruptcy. Anna Nicole argued the truth as her defense—that he was not a potential creditor because there had been no defamation. She also filed a counterclaim, alleging that Pierce had wrongfully interfered with J. Howard’s promise of a substantial gift to Anna Nicole. Thus, the question whether Pierce had wrongfully interfered with his father’s estate planning became an issue to be resolved by the bankruptcy court.

The rest of the story all revolves around one thing: different results in dueling lawsuits. In December 2000, the bankruptcy court ruled that Pierce had, indeed—as Anna Nicole had contended—wrongfully interfered with Anna Nicole’s possible inheritance and was liable to her for \$474 million. But in March 2001, a Texas jury reached the opposite conclusion—Pierce, that jury found, had done nothing wrong; he was entitled to keep his inheritance, and Anna Nicole was entitled to nothing.

The federal district court in California, where bankruptcy court appeals goes next, upheld the court’s findings, but reduced the damages to a mere \$88 million. The question, then, was whether Anna Nicole should get that amount, per the California court, or nothing, per the Texas court. Fourteen years and two trips to the U.S. Supreme Court later, it seems as if the final answer is “nothing”.

Which Ruling Gets Priority? Complicated Questions about Jurisdiction

Anna Nicole did not appeal the Texas ruling—mistakenly thinking her California judgment was secure—but Pierce did appeal the California federal bankruptcy court ruling. And that appeal has had a long life of its own—tasked with deciding which of the dueling judgments should control the outcome.

The first time through the appellate process, the focus was on jurisdiction. Pierce had successfully argued, before the U.S. Court of Appeals for the Ninth Circuit, that the federal bankruptcy court had never had jurisdiction to consider Anna Nicole's claim of tortious interference in the first place, rendering its judgment void. He relied on the so-called “probate exception” to federal court jurisdiction. But Anna Nicole successfully appealed this ruling to the U.S. Supreme Court.

For centuries, the Supreme Court has recognized a “probate exception” (as well as a “domestic relations exception”) to the exercise of federal “diversity” jurisdiction. This means, in effect, that even when the usual criteria for federal diversity jurisdiction are met—that is, when a case involves citizens of different states, and there is a sufficiently high amount in controversy—federal courts still cannot hear cases involving the probate of wills.

In ***Marshall v. Marshall*** (<http://supreme.justia.com/us/547/04-1544/opinion.html>) (2006), the Supreme Court ruled that whatever the scope of the probate exception, it was not implicated in this case. Justice Ginsburg's majority opinion noted the “misty understandings of English legal history” relating to the exception, but ultimately concluded that the exception is limited to cases where the bankruptcy court probates or annuls a will or other testamentary instrument; assumes *in rem* jurisdiction over a particular piece of property; disposes of property already in the custody of a probate court; or otherwise directly interferes with the work of a probate court. None of these circumstances was applicable, so the bankruptcy court was not only free to have heard the case—but implored to exercise jurisdiction, which is not a matter of right but of obligation.

The question then shifted from jurisdiction to timing: which ruling came first, Texas's or California's? But that seemingly simple question of dates devolved into another set of complicated legal questions. The Supreme Court remanded the case to the Ninth Circuit for “proceedings consistent with this opinion,” an often simplistic command to just implement the Court's decision. But, here, the Ninth Circuit had to reach a legal question it had deferred—whether the December 2001 decision from the bankruptcy court was “final,” and thus entitled to precedence over the Texas ruling that came three months later. The first ruling would have preclusive effect on the second, but a ruling is “first”

only if it is final, and only if it is issued by a court with the power to issue such a judgment.

Whether the bankruptcy court had the authority to issue a final judgment on the state-law tortious interference claim turned on whether it was deemed a “core” or “non-core” proceeding, with respect to her filing for bankruptcy. (Under the Bankruptcy Act, federal bankruptcy courts have the authority to issue final judgments on core claims, but only proposed findings on non-core claims. Proposed findings must be approved and made final by a federal district court, which stands above a federal bankruptcy court.) The core/non-core distinction was crucial because of the importance of timing—the bankruptcy court’s ruling was before the Texas jury’s verdict, but the federal district court’s affirmance was afterwards.

The district court took the view that the ruling on Anna Nicole’s counterclaim was non-core, which led it to conduct an independent review of the claim and, though it agreed that she was entitled to a judgment in her favor, to rely on an entirely different measure of damages. But the core/non-core issue was not considered on appeal, because the Ninth Circuit ruled instead on the basis of the probate exception, discussed above. After being rebuked by the Supreme Court on the applicability of the probate exception, the Ninth Circuit then reached the question of whether Anna Nicole’s counterclaim was a core or non-core proceeding. In that ruling, the court held that a bankruptcy court may only issue a final judgment if the matter both “meets Congress’ definition of a core proceeding” and “arises under or arises in” the bankruptcy code. It concluded that counterclaims cannot be finally determined by a bankruptcy court unless they are “so closely related to [a creditor’s] proof of claim that the resolution of the counterclaim is necessary to resolve the allowance or disallowance of the claim itself.” Anna Nicole’s counterclaim against Pierce, according to the Ninth Circuit, did not meet this test.

The U.S. Supreme Court again granted review in the case and ruled Anna Nicole’s counterclaim was “core” under the relevant bankruptcy code provision, but held that the statutory designation of such claims as “core” was an unconstitutional usurpation of the power of Article III courts (federal courts comprised of judges with life tenure and salary protection). Congress cannot withdraw jurisdiction from Article III courts willy-nilly, since their very existence is one of the touchstones of separation of powers and the checks and balances that preserve democratic rule. After a lengthy and technical analysis of conflicting precedents, the Supreme Court thus concluded, in a 5-4 ruling in *Stern v. Marshall*, that Anna Nicole’s counterclaim was one that could not constitutionally be relegated to bankruptcy court. Even then, three years ago, Chief Justice John Roberts began the majority opinion with his own quotes from *Bleak House*—noting that the original parties had “died out of it,” and the “suit has, in course of time, become so

complicated, that . . . no two . . . lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises.”

The Aftermath: What Could Be Left to Fight About?

After Anna Nicole’s loss on her second (post-mortem) trip to the Supreme Court, the case was remanded yet again. Because of that second ruling, the ruling in Texas was deemed first to the punch—and thus the binding determination of the facts. As a matter of law, then, Pierce did not tortiously interfere with his father’s estate planning. But her survivors did not give up. On remand, her lawyer, Howard Stern (not the Howard Stern) moved for sanctions against Pierce’s estate for alleged litigation wrongdoing—everything from intentional delay to manipulation of a federal judge to backdating and destroying documents. The damages for this behavior, Stern claimed, amounted to over \$44 million. The basic theory underlying the motion was that but for the delay tactics and wrongful behavior, the bankruptcy ruling would have been affirmed by the federal district court earlier—and, more importantly, before the Texas jury verdict in 2001. The alleged delays, in other words, destroyed Anna Nicole’s case because of the unusual importance of timing.

Litigation over the sanctions motion went on for almost three years. During much of that time, the court was insisting that Howard Stern provide more detail about the alleged misconduct and the actual harm it caused. Stern demurred many times, insisting that all would be revealed at an evidentiary hearing. But in the end, the judge was not satisfied with the proffered evidence.

Although the judge seemed satisfied that Pierce’s lawyer, Edwin Hunter, had behaved in ways that merited sanctions—his conduct was described as “perjurious, obfuscating, and execrable”—Anna Nicole’s estate had entered into a private settlement agreement with Hunter. Thus, it was only Pierce’s conduct at stake in the sanctions proceeding. With respect to him, the court announced “an impasse.” Although Pierce had not presented any dispositive basis for dismissing the motion for sanctions, Stern had not successfully established the facts that would justify sanctions in any amount, much less more than \$44 million. (Even if those facts were established, the court doubted it could impose sanctions in that amount without converting them from civil to criminal sanctions and triggering due process protections.)

Conclusion

In the end, though this court was “not immune to the equitable pleas from [Anna Nicole’s] estate,” it declined to follow “one’s heart or one’s conscience,” and instead dismissed the motion for sanctions. The case for sanctions hadn’t been made, and it is

“neither reasonable nor practical to go forward.” Thus spells the end of a story of a short marriage, both timely and untimely deaths, and an inexorably long fight.



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