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# Verdict

February 5, 2013

Joanna L. Grossman and Lawrence M. Friedman

## **“Mama’s in the Graveyard, Papa’s in the Pen”:** Why the Children of a Slaying Spouse Cannot Inherit



The trip to Tortola, in the British Virgin Islands, ended in tragedy. Shelley Tyre and David Swain, a couple in their sixth year of marriage, went there on a scuba-diving vacation, but Shelley never made it back. She drowned while diving down to a shipwreck at a site called Twin Tugs.

Shelley’s death was at first ruled an accident by Caribbean authorities. David flew back to the U.S. with her body, and told her parents that she had died during a dive. He insisted that he didn’t know what happened; that, although they generally dive as a pair, he had left her and surfaced alone. Her body was later found floating 80 feet below the surface, near the shipwreck. When she was brought to the surface, David attempted CPR, but it was futile.

David, the father of two teenagers from a prior marriage, returned to his life as the owner of a dive shop in Rhode Island. Shelley’s parents never believed his story and eventually brought a civil wrongful death lawsuit, alleging that David intentionally tore Shelley’s mask off, which cut off her air supply and caused her to drown. A jury agreed with them, finding David guilty of causing Shelley’s death and awarding damages of \$3.5 million.

The civil verdict, and surrounding publicity, awakened the Caribbean authorities. They, too, began to consider the possibility that Shelley had been murdered. And, ten years after her death, David was convicted in a Tortola court of murder and sentenced to life in prison.

### **A Motive for Murder?**

The Tortola jury heard testimony that David Swain was a two-timer, romancing a chiropractor on the side while he was married to Shelley. They heard that Shelley’s mask was damaged, her mouthpiece was missing, and one of her flippers was stuck in a sandbar— damning evidence of a violent underwater confrontation. They also heard testimony of Shelley’s substantial net worth; of a prenuptial agreement that would have prevented him from sharing her considerable assets in the event of divorce; and that her will named David as primary beneficiary.

David's two children stood by his side during the three-week murder trial and insisted to reporters that he was innocent. And David, for his part, tried to convince the jury that Shelley had drunk too much the night before, and had panicked in the water. Nonetheless, David was convicted, and sentenced, and began serving his term in a Tortola prison.

### **Who Inherits a Murder Victim's Estate? Not the Slayer**

Meanwhile, back in Rhode Island, another dispute was brewing: Who should inherit Shelley's estate? In anticipation of her marriage, Shelley had a new will making him the sole beneficiary of her estate, as long as he survived her by thirty days. His children, Jennifer and Jeremy, were to inherit if David died before Shelley.

David is alive and well today (and out of prison, since his murder conviction was reversed, because of faulty jury instructions, on appeal in 2012). But for inheritance purposes, the law treats David as if he had died before Shelley. A "slayer"—someone who intentionally and feloniously causes the death of another—cannot inherit from the victim's estate. But that raises an interesting question: Who determines whether David is a "slayer"?

Initially, when Shelley's will was offered for probate after she died, David was named the executor—that is, the personal representative who gathers up assets, pays debts, and implements the terms of the will. But when Shelley's parents first filed a wrongful-death claim against David, he was removed from that position. Someone else was named the executor instead, and the probate court also ordered David to return \$152,568 that he had wrongfully taken from the estate.

The next step for Shelley's parents was to establish that David was a "slayer" within the meaning of Rhode Island law. The state statute provides that a slayer is "any person who willfully and unlawfully takes or procures to be taken the life of another." The "slayer" determination, under the statute, could be made by any kind of court—civil, probate, or criminal. Because the rules of inheritance are part of civil law, only the civil, and not the criminal, standard of proof needs to be met. Rather than proof of murder "beyond a reasonable doubt," her parents needed only to prove "by a preponderance of the evidence" that David willfully and unlawfully caused Shelley's death. The 2006 verdict of wrongful death was sufficient to meet this standard.

In 2008, the probate judge looked again at the will, after David had been legally labeled a "slayer." The judge issued an order that "[n]either David, nor his heirs at law, shall receive directly or indirectly from the Estate of Shelley Arden Tyre." Based on that order, David's children, Jennifer and Jeremy, were not allowed to inherit as contingent beneficiaries under the will.

Jennifer and Jeremy appealed, arguing that the Slayer Act does not bar them from collecting an inheritance because they were specifically named as beneficiaries.

### **Should Children Suffer for the Sins of Their Father?**

The proper construction of Shelley's will is an issue that eventually reached the Rhode Island Supreme Court. The court was asked whether Jennifer and Jeremy could inherit from their late stepmother's estate. In a recent ruling, *Swain v. Estate of Shelley Tyre*, that court held that they could not inherit, because although they were specifically named as beneficiaries in the will, and were not responsible for Shelley's death, their inheritance would confer a benefit on their father.

This was not a straightforward case. The Slayer Act does state that "[n]either the slayer nor any person claiming through him or her shall in any way acquire property or receive any benefit as the result of the death of the decedent. . . ." But the notion of "claiming through him" has a particular, legal meaning.

For example, when a grandparent dies without a will, the estate passes according to the rules of intestate succession. If that grandparent had two children, one of whom died before he did, and four grandchildren (two from each child), the estate would be split between the living child (one-half) and the two children of the dead child (one-half to share). The inheriting grandchildren would be said to "claim through" their deceased parent.

But Jennifer and Jeremy are not inheriting through their father. This is not an intestate estate, and even if it were,

they would not inherit because stepchildren are not intestate heirs of stepparents (nor vice-versa). They inherit because Shelley named them as contingent beneficiaries in her will—if their father could not inherit, she wanted them to have everything. Whether the language of the Slayer Act applies to this situation was a question of first impression for the Rhode Island court.

The court held that Jennifer and Jeremy were still barred from inheriting, even though they were not technically “claiming through” their father. The court followed the legislature’s mandate to interpret the statute broadly “to effectuate the policy of this State that no person shall be allowed to profit from his or her wrongs.” The court’s main concern is that David’s children, now adults, would have the legal ability to spend the inheritance in any way they saw fit—they could, for example, paying their father’s legal fees and expenses in his civil and criminal trials; and supporting him generally. This concern, moreover, was not mere speculation. Immediately after the civil verdict found him liable in 2006, David filed for bankruptcy; he has never paid a cent to Shelley’s parents. And the children had already proven their loyalty to their father, and their willingness to help pay for his criminal defense.

### **The Slayer Rule: A Standard Part of State Inheritance Laws**

In some ways, the granddaddy of the slayer cases was an old and famous New York case, *Riggs v. Palmer*, decided in 1889. Francis Palmer left most of his estate to his grandson, Elmer. Elmer stood to inherit a lot of money; but he was afraid his grandfather might change his will. Elmer, who was 16, made sure this wouldn’t happen: he poisoned his grandfather. Dead people, after all, can’t change wills.

But Elmer had outfoxed himself. He ended up with nothing. At the time, New York had no slayer statute. Nothing in the probate code applied to Elmer’s case. And he had an argument: the state had the right to try him and punish him for his crime. It could put him in prison. Wasn’t that enough punishment? How, he asked, could the court add another punishment—disinheritance—and without any written authority, in the existing laws about inheritance? But the court was not persuaded by this argument. It felt that it would be monstrous to allow Elmer to inherit—he would be profiting from his own wicked deeds; and that, they could not allow. Courts, especially common law courts, can and do invent new doctrines. And they did so here.

*Riggs v. Palmer* is a very well-known case. It stands for the inherent powers of common law courts to do justice through new doctrines that the courts themselves invented. But its message about heirs who kill is no longer necessary, for the most part. The states, quite generally, have filled in the gap by enacting slayer statutes. Under such statutes, killers cannot inherit under a will. They cannot inherit under intestacy laws. And they cannot collect on insurance policies as beneficiaries of the person they killed.

A case arose under a New Jersey “slayer statute;” it concerned a New Jersey man and his wife, Edith, who owned a house together in a form of joint tenancy. In a joint tenancy, both tenants own 100% of the property. Mathematically, this seems impossible, but the law has its own magical logic. The rule means that if one joint tenant dies, the other one in a sense isn’t inheriting anything: he or she already owned the whole property. So, when the husband in New Jersey murdered his wife Edith, he insisted that he had a right to the property, and never mind the slayer statute. Technically, he already owned that property, he pointed out. But he lost the case; this was just too much for the court to swallow—too much of an escape hatch for anyone dastardly enough to murder his joint tenant. The result in the New Jersey case, *Neiman v. Hurff* (1952) is generally (thought not universally) the way the cases on joint tenants have come out.

A recent New York case, *In re Estate of Dianne Edwards*, also stretched the slayer rule a bit—in order to keep an evildoer from getting rich from his crime. Brandon choked his mother-in-law, Dianne, to death. Under her will, all of her estate went to her daughter, Deanna. This was a most dysfunctional family: Deanna died of a drug overdose—but only after Brandon had killed Deanna’s mother. Deanna had no will, and no children. Under New York law, her husband Brandon, who killed her mother, would get her whole estate. But this was too much for the court to tolerate: technically, of course, Brandon was not inheriting from the woman he killed, or even (technically) through her. Had Deanna died first, Brandon would have taken nothing from Deanna’s mother’s estate—in-laws, going up or down the family tree, do not inherit under the laws of intestacy. But the result, nonetheless, would have given all of Dianne’s money to the man who had choked her to death. The court refused

to allow this result. Brandon would not profit from his wrong.

David Swain, like young Elmer, would be out of luck practically everywhere in the common law world. But the Rhode Island case is not about the Davids and the Elmers of the world. Nobody, indeed, should profit from truly wicked deeds; and drowning a wife is pretty wicked. But it is a bit harder to see why the court wanted the David's children, too, to lose out. They believed in their father, and were willing to stick by him in his time of trouble. Should this be held against them? For that matter, it is not obvious why, in the New Jersey case we mentioned above, the grandchildren should lose their rights, just because their father was a killer. Blame is not something that should pass from parents to daughters and sons.

Slayer statutes raise other problems, too: What if the killer is found not guilty by reason of insanity? Must the killing be planned and deliberate? Suppose the killer is a drunk driver who runs over his wife? Purely accidental deaths are not covered by the slayer statutes. The word "intentional" or the like usually appears in the texts. But between pure accidents and willful cold-blooded murder are many in-between stages; and it is these scenarios that have given the courts trouble. Still, the best advice one might give potential heirs is to be patient; wait for nature to take its course. It always does.



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