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Verdict

September 27, 2013

Joanna L. Grossman and Lawrence M. Friedman

Last Rights and the Battle Over Huguette Clark's Will

Huguette Clark died in 2011, at the age of 104. She was the daughter of a man who made a vast fortune in the copper business and then bought himself a seat in the U.S. Senate. She outlived everyone—her father by almost 80 years, and a sibling by a full century. She was enormously rich and left an estate of at least \$300 million. Where is this money to go?

Huguette had been married once, but briefly; and she never had children. According to newspaper accounts, this strange and rather pathetic woman had, in her old age, led an oddly reclusive life. Most of us prefer to see as little as possible of the inside of a hospital. But not Huguette. In fact, despite owning palatial homes in Manhattan, Santa Barbara, and in the country in Connecticut, she spent the last twenty years of her life in a private room in a hospital in the Beth Israel Medical Center in New York. When she first arrived, in 1991, she did need considerable medical attention. But even when her condition improved, she chose to stay where she was. And stay she did, for two decades, in a quiet room, playing with dolls, watching cartoons on television, and seeing almost nobody except for doctors and nurses—and hospital fund-raising staff.

Her situation was, to be sure, unusual (hospitals usually try to chase people out as soon as they can); but Huguette Clark was not an ordinary patient; she was far too rich for that. The hospital was only too happy to keep her—and to use her as a money spigot. In her twenty years there, she showered the hospital, doctors, and nurses with lavish gifts—a Manet painting, for example; and gifts worth millions of dollars to her long-time nurse. The hospital, according to email records, was never really satisfied; officials hungrily pressed her for more and more of the same. Huguette could well afford to be generous. She was worth, after all, hundreds of millions of dollars.

Huguette Clark's Testamentary Plan

In 2005, Huguette, who was then about 98 years old, executed two wills. The first, done in March, left her estate to relatives—grand-nieces and nephews, descendants of Huguette's half-sister. Then, six weeks later, she executed an entirely different will.

In this second will, she cut off the relatives entirely—explaining that she had never had much contact with them (which was true); she elected instead to leave the money to the “true objects” of her “bounty.” She had a lavish estate in Santa Barbara called “Bellosguardo”; she left this to a foundation for the arts. There were also gifts to her lawyer, her accountant, her doctor, her nurse, and the hospital itself. The lawyer was apparently the one who drafted the will, with some input from the accountant. The two men were also named executors; and trustees of the California foundation. The relatives, who smelled money lying just beyond their reach, went to court, trying to overturn the will that had disinherited them.

Why Clark's Estate Was Ripe for a Contest

Huguette Clark's estate was ripe for a will contest—a proceeding in which disgruntled heirs can challenge the validity of a decedent's will. The big two of will contests are two doctrinal twins—lack of capacity, and undue influence. Lack of capacity simply means that the will-maker was too demented to make a will, or too crazy to do so. Undue influence is a rather strange concept: It implies that somebody more or less mesmerized the poor

testator, so that the will was the product, not of his will (or her will), but the will of the evil influencer. The two allegations are very often found together. Wills can also be challenged on grounds of fraud or duress, or because they weren't formalized correctly.

Actual will contests are fairly rare, and most of them are failures. A will made by a professional, on behalf of a person of ordinary mental capacity, is pretty safe against attack. Some wills, however, are much more vulnerable than others. In this case, there were a number of clear signs of danger. First: Huguette was very, very old. And very odd. Apparently, she was shrewd enough when it came to managing her investments, but a woman just short of 100 years old, living for years in a hospital bed, playing with dolls: Those are definite red flags.

The timing of the second will also raises a certain number of suspicions. A mere six weeks after leaving her vast fortune to relatives, she does a complete about-face, and cuts them out entirely. What happened in this short time? She never saw the relatives before Will Number One; they didn't see her in the interim; and nothing seemed to happen to sour her on these people. So what went on? Perhaps the doctors, nurses, and hospital officials somehow got to her; perhaps they cajoled or persuaded her to drop the relatives, and leave a good share of the money to them. Indeed, there are claims that her doctor dropped in on her three times or more, between the dates of the two wills.

Which leads us to the second group of red flags, clustered about the concept of "undue influence." The lawyer who drafted the will also benefited from it. This is not just bad form, but outright suspicious behavior. Under New York law, such an arrangement triggers automatic scrutiny by the probate court because it is inherently suspicious. Who, in their right mind, chooses to make gifts to a lawyer on top of the generous fees that the lawyer will charge? The accountant who helped the lawyer in the drafting process also benefited from the will. And so did the doctors and nurses who had daily contact with the testator. And so did the hospital, where she had been cocooned for more than fourteen years, by the time the will was executed. Not only did the lawyer and the accountant get money under the will; they were also appointed executors—meaning that they were empowered to manage the estate, and could, and likely would, collect the fat harvest of fees that an estate of this enormous size would generate. In addition, they were named as trustees of her charitable trust: another potential source of power and gravy. And the sheer amount of money at stake makes everyone's behavior all the more suspicious.

Could the Will Contest Have Been Avoided?

These are not necessarily winning arguments. But they raised a certain amount of suspicion; and at the very least, were certainly strong bargaining chips in settlement discussions. When a will benefits somebody in a "confidential" position—a lawyer, for example, or a personal physician, cases often say that undue influence is "presumed." Could the lawyer have avoided the problems which the will had raised? Not entirely. Nobody could have made Huguette younger; and it would have been hard to make her seem less odd. The capacity argument is, however, the weaker of the two main arguments; and her lawyers could surely have lined up a parade of witness to testify that she was shrewd and knew exactly what she was doing.

The undue influence problem was almost certainly mishandled. At the very least, an outside lawyer should have been brought in to draft the will. (Although maybe any outside lawyer worth her salt would have raised serious questions about these bequests). A lawyer who drafts a will which benefits him so lavishly is making a serious mistake. Not a fatal mistake, necessarily; what the lawyer did is not illegal. But it weakens the will, beyond a doubt. It raises, as we said above, the specter of undue influence, which the lawyer would have been hard-pressed to rebut at trial. And it raises, too, at least the suspicion that the lawyer was acting unethically.

Huguette's will, in short, suggests some fairly serious legal problems. It suggests an even more serious social problem. Huguette's basic mistake (if you could call it that) was living to be 104. The longer people live—and they are living longer and longer—the greater the likelihood of serious dementia; the suspicion of serious dementia is even more likely. And indeed, even without dementia, the older you are, the more vulnerable you are, both mentally and physically.

Huguette had no close relatives, which is not the usual case. Close family are usually a comfort and support for the old and weak; but not always. Brooke Astor, a prominent figure in New York City's art scene, lived an even

longer life than Huguette. But in her last years she was ill, demented, and helpless. Her own son and only child, Anthony Marshall, was accused of bilking and mistreating her; and ultimately was put on trial for forging checks and other instruments, and stealing right out of her accounts. Perhaps he was tired of waiting for his inheritance. At age 89, Marshall was put in jail for his crimes, although a deteriorating mental condition led to his release. Astor's lawyer is still serving time for his role in the fraud.

Huguette was apparently not seriously demented; perhaps she knew exactly what she was about. But she had nonetheless delivered herself into the hands of doctors, nurses, and the administrators of the Beth Israel Medical Center. She had made herself totally dependent on them. She was, in a sense, within their power.

Even though Huguette had chosen what was, in effect, a kind of solitary confinement, the fact remains: She was shut her off from the world, and from whatever family she might have cultivated; she was in the hands of strangers whose motives were probably not the purest of the pure. This might be an unfair judgment with regard to her doctors, or to her faithful nurse, to whom she was so grateful; but it is surely true of the people who ran the hospital, who obviously saw their long-term guest as a goose that was laying clutch after clutch of golden eggs.

To be sure, Huguette's relatives have been hardly acting out of love, or a passion for justice. They had nothing to do with her during her lifetime (a situation that was partly her own doing); after her death, they were simply after her assets. Money, generally speaking, is a tremendous advantage for anyone, and for the very old and frail, it can buy the best of care. But it also is a fatal attraction for fortune hunters of one kind or another. The money Huguette paid for her hospital room (at about \$1,200 a day) bought her a kind of antiseptic prison cell. She had closed the door on the world of her own volition, but after a while, there was really no way out.

Hashing It All Out: The Settlement

On the eve of jury selection for the trial in the case, the lawyers on all sides exchanged a final flurry of e-mail messages and reached a settlement. The negotiating table was big; it included not only the family members who had been left out in the second will, but also all the beneficiaries to the second will, the charitable entities that stood to benefit, and, because charitable institutions were involved, the Attorney General of New York.

As a technical matter, the settlement calls for the April 2005 will to be "reformed" to reflect significant changes to its provisions and then admitted to probate.

The substance of the settlement is this:

- The attorney and the accountant get nothing, except for relief from liability for their management of the estate so far. They still face liability in pending malpractice suits, and the reformed will leaves proceeds of any such lawsuit to Clark's family members. They also lose their lucrative executor positions. The estate, from this point forward, will be co-administered by a Clark family member and a public servant.
- The nurse, who clearly was a devoted caregiver but who had already received \$30 million in lifetime gifts from Clark, receives nothing under the reformed will. In fact, she must pay back \$5 million to the estate, in recognition of the fact that she could not satisfy the burden of proving, with clear and convincing evidence, that she did not take advantage of her confidential relationship with Clark in soliciting or encouraging these gifts.
- The family members, who brought the case because they were abruptly disinherited by the second will, will share a pot of \$34.5 million. Their attorneys will collect almost as much in fees paid from the estate.
- Assorted smaller gifts to her doctor (\$100,000); her assistant and friend (\$500,000); the caretaker of her Santa Barbara home (two years' salary); the caretaker of her Connecticut home (one year's salary); her goddaughter (\$3.5 million); and Beth Israel Hospital (\$1 million) are part of the settlement.
- The Corcoran Art Gallery, in Washington, D.C., which holds a large collection of art donated by Huguette's father, will receive \$10,000,000 plus the fifty percent of the proceeds of the sale of her Claude Monet "Water Lilies" painting (valued at \$25 million).
- The reformed will establishes a charitable foundation to promote the arts, operated out of Huguette's mansion in Santa Barbara, which has stayed well-maintained but empty for decades. The foundation receives the Santa Barbara property (worth \$82 million!), her doll collection (surprisingly valuable), and

\$4.5 million in cash.

Conclusion

This story has, in a way, a happy ending. Huguette's money goes mainly for charitable and public purposes; the hospital gets some benefit; the relatives also receive money, perhaps as a sort of reward for pressing a claim against arrangements which were legally and ethically dubious; and some players in the drama who probably stepped over the line are punished by the loss of valuable perks. The facts of this case are, of course, quite unique. But there are broader lessons here for lawyers who deal with the elderly; for members of their family; for the professionals who deal with them; and for the old people themselves. The most basic lesson is this: Big money and advanced age can be a dangerous, poisonous, explosive combination. Beware.



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