

ANNA NICOLE SMITH

Buxom blond botches baby's birthright

By P. Mark Accettura, Esq. News of the death of Anna Nicole Smith (born Vickie Lynn Hogan) has eclipsed the Iraq war, global warming, and the 2008 Presidential election. There is no refuge from her saga, as it is being covered on every television station and newspaper. Nonetheless, there are lessons to be learned from Anna if we can look past the public's obsession with the tawdry details of her life.

Not much of Anna's early life is instructive or noteworthy. She quit school in the eighth grade to work at Jim's Krispy Fried Chicken Shack where she met and at age seventeen married deep fryer, Billy Smith. They had the son - who recently died of a drug overdose - and then divorced. Anna later worked as a stripper under the stage names of "Miss Nikki," "Robin," and ultimately "Anna Nicole" because it sounded classier.

From her humble beginnings in rural Texas, Anna's life and subsequent death have become worthy of her own law school course. Her suit for half of her late billionaire husband's estate was appealed to the United States Supreme Court, and continues to diesel on in lower courts

despite the death of the principal parties. Now, her estate and her tragically flawed Last Will and Testament will no doubt be litigated for years to come.

One of the many problems with Ms. Smith's Will is that it does not provide for the natural contingencies of life such as the birth or death of children. Leaving everything to her son, Daniel Wayne Smith, Ms. Smith's 2001 Will goes on to state that "I have intentionally omitted to provide for my spouse and other heirs, including future *wives and children* (italics added) and other descendants now living and those hereafter born or adopted..."

Under normal circumstances, state law would dictate that her late son's share pass to his children, if any, and absent children then to his new sister, Dannilynn Hope Marshall Stern. Unfortunately, the provision of Anna's Will disinheriting future children makes her Will entirely ineffective for the reason that it leaves no beneficiary. In my twenty-five years of estate planning, I have never disinherited future children. I have no explanation as to why a thirty-two year old woman (her age in 2001) would disinherit future children. None! It's not like she's a male rock star, male professional athlete, or writer for the Gazette, who doesn't know whether his numerous sexual dalliances will produce unintended offspring. I guess we'll never



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know the thinking behind Anna's unusual Will provision.

Where there is no taker under the Will, state laws of intestacy - default provisions that take effect when the decedent has no Will or trust - determine the beneficiary. Interestingly, the laws of intestacy provide that Anna's entire estate will pass to her daughter Dannilynn; a proper result, but entirely contrary to Anna's Will.

Anna's Will creates a trust at death; commonly referred to as a "testamentary trust." She would have been better advised to create a revocable living trust since revocable trusts avoid probate while testamentary trusts do not. However, as it turns out, it really doesn't matter since Anna's assets will pass outside her Will and trust directly to her daughter. Without the benefit of a trust, Dannilynn will inherit at age 18. Her interest will not be held in trust until some later date - say, at-

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tainment of age thirty-five - when she will likely have better money management skills.

The next question is who will act as Dannilynn's guardian and conservator. Anna's Will names boyfriend Howard Stern as guardian of her son, Daniel Wayne Smith. No guardian is named for Dannilynn. The strong preference of courts, absent extenuatin circumstances, is to name a child's surviving biological parent as guardian. Identifying Dannilynn's father and determining his suitability to act as guardian may take some time as the parties vie for control of Dannilynn and her potential inheritance from J. Howard Marshall.

While a guardian is charged with the care of the child, a conservator manages the ward's finances. The court may appoint one person to act as both guardian and conservator, or may divide the jobs between two individuals. Whoever is appointed as conservator must account to the court annually until such time as the ward attains age eighteen. At the tender age of eighteen, Danilynn will be left to her own devices to manage whatever inheritance remains.

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As a will maker, Anna Nicole Smith was a bust.

her daughter. Enough time to modify her Will to include Danilynn and to appoint a trustee to manage her finances until she was old enough to handle her own affairs. We can learn a lot from Anna in death: plan ahead, revise your estate plan as life changes dictate, and create an estate plan

that is flexible enough to handle life's contingencies.

Mark is an elder law attorney in Farmington Hills. Mark can be reached at (248)-848-9409, maccettura@elderlawmi.com, or you can visit his website: www.elderlawmi.com.