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Mr. Cub could have prevented nasty probate fight with bifurcated divorce

On Jan. 23, baseball fans mourned the loss of former Chicago Cub Ernie Banks. Banks was National League MVP twice, an 11-time All-Star and premier power hitter with more than 500 home runs to his name. Best known as Mr. Cub, Banks died at age 83.

Undoubtedly, Banks left behind a game-changing legacy and positive spirit that will forever remain with the Cubs (especially in their bid for their first World Series appearance since 1945). Unfortunately, Mr. Cub also left behind an estate dispute that will seemingly remain forever in the Cook County Circuit Court's Probate Division.

When Banks died, control over his estate was initially awarded to his estranged fourth wife, Elizabeth, who claimed Banks died without a will. But, soon after, Banks' longtime caregiver Regina Rice filed a petition disclosing the existence of a will.

Banks' will awarded his entire estate and control of all of his assets to Rice and made no provisions for his wife and children, "not for a lack of love and affection for them and for reasons best known by them."

Banks was diagnosed with moderate to severe dementia days before he signed a last will and testament last Oct. 7, three months before his death.

Elizabeth Banks filed a claim in probate court contesting the will and claiming that Rice took advantage of her ill and elderly husband. Banks' wife and sons accused Rice of coercing him into signing a will.

The Banks' probate dispute gained significant attention in the media regarding various will and estate issues. Many speculated whether a lack of capacity, undue influence or elder abuse was at play.

However, Rice insisted that Banks wanted to make sure his fourth wife did not inherit any of his estate.

In March, a Cook County judge confirmed Banks' will, leaving all of his assets to Rice.

Of important note is that Banks filed for divorce from Elizabeth back in 2012 and that Elizabeth had been living in California, separate and apart from her husband. Banks' petition for dissolution of marriage accused his wife of mental cruelty and also cited irreconcilable differences. The divorce proceedings remained pending at the time of Banks' death.

It is not shocking to divorce lawyers that a divorce matter could remain pending for so many years without resolution. But special consideration should always be given when representing an ill or elderly client in the dissolution of marriage process, especially if that client does not want his or her spouse to have special spouse's rights to make a claim against the estate.

A typical divorce action is fully resolved upon the entry of a single judgment for dissolution of marriage.

However, under appropriate circumstances, there is a "let's play two" option where a party can seek entry of a bifurcated judgment of dissolution of marriage and resolve related issues in a subsequent proceeding.

A bifurcated judgment dissolves the actual marriage but reserves the other issues, such as property division and maintenance.

According to 750 ILCS 5/401(b), "the court may enter a judgment for dissolution that reserves any of these issues either upon (i) agreement of the parties, or (ii) motion of either party and a finding by the court that appropriate circumstances exist. The death of a party subsequent to entry of a judgment for dissolution but before judgment on reserved issues shall not abate the proceedings."

Marital property stops accumulating upon entry of a bifurcated judgment. And, a bifurcated judgment terminates the legal rights of married individuals, including the right to renounce the will of a deceased spouse or take a spousal award.

TIME-OUT

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The court has broad discretion in determining whether bifurcation is appropriate. Illinois case law has shown that "appropriate circumstances" for the entry of a bifurcated judgment include divorce cases involving elderly and very ill individuals.

Additionally, Section 2-1007.1(a) of the Illinois Code of Civil Procedure provides a preference in setting for trial for individuals over the age of 70.

Considering that Banks was ill and elderly, he may have been a candidate for the entry of a bifurcated judgment within his drawn out dissolution of marriage proceeding. And, given that he was over the age of 70, he would have likely been able to obtain a bifurcated judgment in a timely manner before his death.

The entry of a bifurcated judgment pursuant to Illinois law would have likely prevented Elizabeth from contesting her husband's will, as she would not have had an existing interest in his estate that would have been detrimentally affected by the probate of the proffered will. In other words, she would have lacked standing to commence the legal dispute.

If Banks had obtained a bifurcated judgment, he would have been able to distribute his estate according to his wishes — without any fear that his fourth wife would have a claim in probate against the assets awarded to his estate in the

subsequent dissolution proceedings involving property division.

Because Banks did not take the "play two" route in his dissolution of marriage proceedings and failed to dissolve his marriage before his death (through bifurcation or otherwise), Elizabeth was able to legally contest Banks' will and retain her spousal rights to Mr. Cub's estate.

The Illinois Probate Act provides that a surviving spouse is entitled to a sum of money for the proper support of the surviving spouse for the period of nine months after the death of the decedent.

The surviving spouse is entitled to the award unless the decedent's will expressly provides that the provisions thereof for the surviving spouse are in lieu of the spouse's award and if the surviving spouse does not renounce the will.

As a result, in August, a judge approved a \$20,000 spousal award to Elizabeth.

Another right Elizabeth retained was the option to renounce Banks' will. The Illinois Probate Act provides that if a will is renounced by a surviving spouse, the surviving spouse is entitled, after payment of all just claims, to a third of the entire estate if the testator leaves a descendant or half of the entire estate if the testator leaves no descendant.

In the words of Mr. Cub himself, "awards mean a lot but they don't say it all."

We may forever wonder why Banks decided to award his entire estate to Rice and attempt to bar Elizabeth and his children from getting anything from his estate.

However, if that was truly Banks' intent, the entry of a bifurcated judgment in his dissolution of marriage proceeding would have helped solidify some of that wish and would have prevented Elizabeth's involvement in the complex probate dispute that may ultimately drain the bulk of his estate's assets.