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PUBLISHED BY



New Jersey Appellate Court Disallows Judge's Attempt to Create Special Needs Trusts

Posted at 12:04 PM on January 12, 2011 by Mary W. Browning

A recent New Jersey Appellate Court opinion further confirms the importance of having a Will – especially when a special needs person is involved. The court overturned a state court judge who tried to use the “doctrine of probable intent” to create special needs trusts for a decedent’s daughters even though the decedent did not have a Will. The decedent had told relatives that she wanted to create special needs trusts for her daughters and contacted a lawyer to draft the trusts, but died before signing any Will or trust documents.

The lower court attempted to effectuate the decedent’s intent by allowing the personal representative of the estate to create these special needs trusts notwithstanding the fact that the decedent did not have a Will or trust document in place. The court used the “doctrine of probable intent”, which is a doctrine that has been used by courts in the past to reform a Will, typically for tax savings purposes. The doctrine allows the court to modify a person’s Will in limited circumstances based on what the decedent intended the Will to say.

The Appellate Court overturned this ruling on the grounds that the doctrine of probable intent should only be used when a person already has an existing Will. The fact that the decedent did not have a Will, and therefore, her assets passed via the New Jersey intestacy laws, precluded the court’s use of this doctrine.

As a result, the decedent's assets passed to her daughters, outright. Some of the assets have been taken by the state Division of Developmental Disabilities to pay for residential care for one daughter, and the other daughter has lost eligibility for Medicaid and other benefits until her share has been used up. The case is yet another example of the importance of having the proper planning in place.

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