

## **Beyond the Will**

Johnny Smith and Jocelyn Smith were married in 1983 in Massachusetts. They had two (2) children, Randall Smith (born January 1, 1985) and Twyla Smith (both March 3, 1987). Unfortunately, Jocelyn died in a tragic car accident in 1995 with no estate plan in place.

At the time of her death, Jocelyn had a gross estate of approximately Five Million Dollars (\$5,000,000) consisting primarily of individually held investments that she had inherited from her parents. She also had a few minor accounts held jointly with Johnny but no retirement accounts or life insurance policies.

Johnny began dating Moira Alexander in 2000. Moira had two (2) children of her own, Alexis Alexander (born February 5, 1985) and David Alexander (born October 8, 1989).

In 2005, Moira, Alexis and David moved into the Smith home with Johnny, Randall and Twyla. They appeared to have minimal issues as far as blended families go. Their children got along and each accepted the other adult as a parental figure. As the children graduated and moved out of the family home, they remained in frequent contact with both Moira and Johnny and returned home for holiday and birthday celebrations.

Moira and Johnny met with an estate planning attorney, Attorney Mullens, in March of 2013 in order to have estate planning documents prepared including wills, revocable trusts, health care proxies, durable powers of attorney and HIPPA waivers. Moira and Johnny were planning on eloping the following month and thus told Attorney Mullens that they were already married.

Attorney Mullens prepared estate planning documents for each of Johnny and Moira. Each will stated that the testator was married and left tangible items to the surviving spouse and otherwise to the surviving children in equal shares. Children under both wills were defined to include Randall, Twyla, Alexis and David. The residue under Johnny's will poured over to The Johnny Smith Trust. The residue under Moira's will poured over to The Moira Alexander Trust. Moira was named as Personal Representative under Johnny's will followed by Randall as successor. Johnny was named as Personal Representative under Moira's will with Alexis named as successor. Through Johnny's will, he exercised a limited power of appointment that had been granted to him in a Family Trust established by his parents, directing that income from that trust be paid to his spouse, Moira, for her lifetime. That trust, by its terms, would terminate upon the last to die of Johnny and his four siblings, at which time the remaining principal would distribute outright to the issue of Johnny and his siblings by right of representation.

Johnny was the Donor and Trustee of The Johnny Smith Trust. Johnny was the beneficiary of The Johnny Smith Trust during his lifetime. After his passing, the Trust was structured to minimize potential Massachusetts and Federal estate tax while providing for Moira's sole benefit during her lifetime. After Moira's death, any remaining assets would divide into equal shares and would be distributed outright to each of Randall, Twyla, Alexis and David. Moira and Attorney Mullens would serve as successor Trustees after Johnny's death. After Moira's death Attorney Mullens (or another attorney from his firm) would serve as sole Trustee.

The provisions of The Moira Alexander Trust mirrored those of Johnny's Trust. Moira was the Donor and Trustee of her Trust and the beneficiary during her lifetime. After her passing, the Trust would minimize potential estate taxes while providing for Johnny during his

lifetime (if Johnny survived) and otherwise the assets would be divided into equal shares and distributed outright to all four of the children. If Johnny survived, he would serve as a Trustee along with Attorney Mullens (or another attorney from the law firm).

Finally, Moira was named as agent under Johnny's health care proxy and durable power of attorney, followed by Randall. Johnny was named as agent under Moira's health care proxy and durable power of attorney, followed by Alexis.

Moira and Johnny signed their wills and trusts in early April of 2013. Although Attorney Mullens encouraged them to sign all of their documents, Johnny and Moira neglected to sign their health care proxies and durable powers of attorney. They wanted to give more consideration as to whether they wanted a child to serve as a co-attorney-in-fact with the other spouse under the durable powers of attorney, and whether they wanted language concerning life sustaining treatment in their health care proxies.

Moira and Johnny postponed their plans to elope after Moira, a doctor, had worked long hours caring for victims of the Boston Marathon bombing.

Unfortunately, Johnny began exhibiting signs of early onset Alzheimer's in late 2017. His health deteriorated rapidly and by mid-2018 Johnny was unable to function independently. Moira cared for Johnny to the extent possible at their home and hired an in-home nurse to assist as necessary.

That holiday season, Randall gave Twyla one of the newly-released ancestry testing kits hoping that it might shed some light on their father's disease and their potential risks down the road. Twyla took and submitted the ancestry test, set up an online profile and ultimately forgot about it with everything else that was going on in her life.

In February of 2019, Twyla decided to surprise Moira and Johnny and made an unplanned visit to her childhood home while in town for a bridal shower. Twyla became concerned when she saw a brand new Mercedes SUV sitting in the driveway. Twyla inquired and Moira explained that it was a "gift" and not to ask so many questions. Twyla mentioned this to Randall who at the time was roommates with David. He noted that David, an avid baker, had recently come home with a brand new collection of Le Creuset cookware. Randall hadn't given this much thought but after his conversation with Twyla wondered how David, a struggling artist, could afford to spend that much money on items that simply supported a hobby.

Randall and Twyla became more concerned with how they believed Moira was spending Johnny's money. After Moira avoided their questions multiple times, Randall and Twyla sought the advice of their own attorney, Attorney Budd. Attorney Budd advised that they could petition the court to have an independent conservator appointed to handle Johnny's finances. After filing a petition, and over Moira's objection, the court appointed an independent conservator and independent guardian for Johnny.

The relationship Randall and Twyla had with Moira and her children continued to deteriorate as their father's health grew worse. After one particularly difficult evening in February of 2020, Johnny had to be rushed to the emergency room after he was completely unresponsive and had labored breathing. The doctors advised that he likely had only a few hours to live unless he was placed on life support. Moira believed that Johnny did not want life-sustaining treatment and advised the doctors to give him medicine to simply make him

comfortable. When Randall arrived he demanded that the doctors put his father on life-support. Unfortunately, before any decision could be made, Johnny passed away.

Johnny died with a gross estate of Seven Million Dollars (\$7,000,000) consisting of his Massachusetts residence and a variety of investment and bank accounts titled in his name, individually, a bank account with approximately Seventy-Five Thousand Dollars (\$75,000) held jointly with Moira, a life insurance policy payable to his Trust with a death benefit of Five Hundred Thousand Dollars (\$500,000) and a 401k account in which Moira was named the primary beneficiary followed by the four (4) children equally as contingent beneficiaries.

Moira turned to Attorney Mullens to probate Johnny's estate and prepare any necessary tax filings. Attorney Mullens was shocked to discover that despite what he had been told and what was provided in their wills, Moira and Johnny had never actually married. Attorney Mullens filed a Petition in Probate Court to have Moira appointed Personal Representative of Johnny's Estate. Both Randall and Twyla filed objections. In addition, Randall and Twyla engaged Attorney Budd to present an argument that all provisions for Moira under the will and trust should be disregarded given the fact that she was not actually their father's spouse, that their father's tangible items should be distributed in equal shares to them, and that the remainder of their father's estate should pass outright to the two of them (to the exclusion of Alexis and David).

This argument enraged Moira and she engaged a new estate planning attorney, Attorney Brewer, to prepare a new estate plan with the intent to disinherit Randall and Twyla. Moira's new will provided for tangible items to be divided equally between her children, Alexis and David. Moira amended and restated The Moira Alexander Trust and provided that after her death, all assets would be divided into equal shares and distributed outright to Alexis and David.

Meanwhile, Attorney Mullens was working to prepare the Massachusetts Estate Tax Return for Johnny's Estate. He wished to utilize the tax planning methods that had been provided for through Johnny's will and trust and take advantage of the spousal deduction that could be taken on any assets that passed to Moira as the surviving spouse either outright or as held under Johnny's trust for her benefit during her lifetime.

Around the same time, Stevie Jenkins, a young woman living in Colorado, contacted Twyla after her own ancestry test results indicated that she and Twyla could be half-sisters, sharing Johnny's genetic profile. Twyla, although shocked at the discovery, was interested in getting to know Stevie but was concerned about whether Stevie might have any rights to Johnny's assets under his own estate plan or under the Family Trust that Johnny's parents had established.

What issues does you spot here? What are the arguments to be made on all of these meaty issues? Stay tuned to Beyond the Will for the next few months as we dig deep into the saga of the Smiths and the Alexanders.