THE NATIONAL LAW JOURNAL

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In an appellate first, attacks on wills barred after estate owner dies

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July 11, 2008

For the first time, a California appellate court has said that when a conservator seeks court approval of an estate plan, while the subject is living, any challenge to the will must be raised at that hearing — not when the person dies.

The appellate decision is the first in the country to say attacks on wills would be barred after the estate owner dies, if there has been a court-approved substituted judgment, according to David Baer, attorney at Hanson Bridgett in San Francisco. Baer represented the daughter of William J. Murphy in an estate battle with her brother.

The opinion essentially bullet-proofs the will of a person found incompetent and placed under the protection of a conservator, if the court okays a revised estate plan, according to Baer. He added that the court made clear that notice to potential objectors is required to protect due process.

"You essentially can't contest an estate plan that has been approved by a substituted judgment order," Baer said. "A substituted judgment is an opportunity to get a court order for the conservator to sign various instruments," he said.

The 1st District Court of Appeal in San Francisco held in the June 26 decision that an attack on such a court order, after the conservatee dies, is barred by collateral estoppel rules. *Murphy v. Murphy*, No. A115177.

The issue is likely to arise more frequently as baby boomers with significant estates age and may need conservatorships, and their children fight over assets.

Thomas Huster of The Huster Law Group in San Francisco, attorney for Murphy's disinherited son, William J. Murphy Jr., did not return a call seeking comment.

The case grew out of a battle between Murphy's son and daughter, Maureen Murphy, for control of their father's more than $2 million in assets after the senior Murphy had a stroke and could no longer operate his general law practice in San Francisco.

His son, Murphy Jr., sought a conservatorship for his father and hired a professional conservator in 2001 to act on his father's behalf and wind down the law practice. Murphy Jr. was not aware that his father had prepared a will leaving all his assets to his daughter and $1 to his son.

In 2002, an attorney for the father sought to end the conservatorship, transfer all assets to a living trust and give power of attorney to his daughter.

HANSON BRIDGETT'S DAVID BAER

A battle ensued between the siblings over allegations by the son that his sister exerted undue influence over their father and isolated him from family and friends based on his incapacity after the stroke. The son also argued that the terms violated his parents' agreement to divide property equally between siblings.

In 2003, the conservator sought court approval, through a substituted judgment, to re-execute the living trust containing the same division of property. Murphy Jr. was put on notice of the plan but did not challenge the trust terms until his father died in 2004. NLJ