

Note: Details of this case, including the names of individuals, have been omitted or changed to protect the confidentiality of the data.

### Interview Summary

I conducted an interview with Jeff, who had a significant issue regarding the death of his older sister's (Karen's) estate. Jeff is a building contractor in Florida, and his sister, who passed away sixteen months ago, was living in Massachusetts at the time. Jeff is one of four children. Karen being the oldest, then Charlotte, to Jeff, and with the youngest sibling being Gus. Jeff and his two other siblings were originally the only listed beneficiaries to Karen's will. Karen had no children, and her spouse passed away years ago.

Karen fell terminally ill with lung cancer and was at first put in hospice care. Her condition became worse, and she was then admitted to the hospital. Karen was a retired school teacher living in MA. Her friend, Joyce, was named power of attorney to manage her finance decisions. Joyce's daughter, Sue, was named Karen's medical proxy to make Karen's medical decisions.

Karen wrote a will nine years ago [original will] leaving all of her assets to be split amongst her three siblings. She had a house in MA worth approximately \$350,000 and also personal property, investment accounts, and bank accounts totaling approximately \$250,000. However, just twenty-seven days before Karen passed away, a new will [new will] was executed leaving only each sibling 5% of her estate, and the rest was to go to five of Karen's friends (two of those listed being Sue and Joyce).

The new will expressly revoked the original will, therefore, when Karen passed away, the new will was probated. Jeff contested the new will; representing himself, and his two other siblings. He hired a probate attorney in MA, and the settlement of the estate began with a conference call which Jeff was accompanied by his friend, and a local FL lawyer, David. Jeff's

probate attorney in MA was on the other line, sitting with the personal representative/executor of the will.

The personal representative of the will was also the lawyer who drafted the original will, and the new will. David argued Karen was placed under undue influence by the friends, and also Karen did not have the requisite mental capacity to execute the new will (Karen was also constantly on morphine due to her pain level). The new will was formally executed, however, Karen's signature looked like chicken scratch and nothing like her signature Jeff had collected from other investment documents. David threatened to take them to court on the phone, all facts were in favor of Jeff and his siblings, however, the personal representative was a thirty-year probate attorney in a small town in MA; he claimed he would testify he saw Karen twice in the hospital and on the day she executed the new will, and that she was in the right mind to be able to execute the will.

David knew this testimony would be extremely difficult to overcome. Jeff would have to depose multiple nurses and doctors who were working at the hospital during Karen's last weeks in order to prove she did not have the requisite mental capacity. This could cost up to \$2,000 per employee. Jeff could have gone to trial, but it would have cost nearly \$50,000. Multiple negotiations took place, and in the end the siblings got 25% (vs. the 15% the new will devised).

Jeff was not happy with the settlement, but he had spent roughly \$10,000 for the probate attorney in MA. Jeff was unhappy with his probate attorney's work because he was very slow to meet deadlines, and was also a passive negotiator. The estate took over fifteen months to settle, and unfortunately, during this time, Jeff's other sister, Charlotte, passed away. Jeff had to hire a probate attorney in Florida in order for Charlotte to still collect her share from Karen's estate. Jeff was listed as the sole beneficiary in Charlotte's will, therefore, Jeff would take her share from Karen.

Jeff and his siblings all got along and never had any serious conflicts. They would call the hospital multiple times and Sue would answer the phone and say, "Karen doesn't want to speak to you. Karen doesn't want you to come visit her." This all seemed very odd to Jeff and his siblings. When Karen passed away, Joyce called to tell Jeff and even said on the phone, "you know Karen has a will?" Which yes, Jeff knew she had a will, thinking Joyce was referring to the original will made nine years ago. Jeff assumes Sue and Joyce were saying things to Karen such as, "Where is your family? Clearly they do not care enough to come see you." Convincing Karen to change her will.

#### Alternative Explanations

It is possible Karen did have the requisite mental capacity to execute the new will. Of course Jeff wants to believe his sister did not purposely dilute the siblings share down to such a small percentage. However, Jeff also told me Karen would sometimes get upset at small things, and not speak to him for up to two weeks because of trivial matters. This could have made her susceptible to negative comments about her siblings, and induce her to make changes to her original will.

#### Personal Insight

What I learned most about this interview, is that the crazy cases we read in the book really do happen in real life to people we know. I understand the mental capacity required to make a will is minimal, and it is possible Karen had the requisite mental capacity. However, in my opinion, I do believe David and Jeff's best argument was that the will was procured by undue influence. In most jurisdictions, a contestant is entitled to a presumption of undue influence if the contestant shows the existence of a *confidential relationship* between the alleged influencer and the testator

November 9, 2017  
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and one or more *suspicious circumstances* are present. Which shifts the burden to the proponent to prove he/she did not exert undue influence over the testator.

A confidential relationship clearly existed between Sue, Joyce, and Karen because Joyce was the power of attorney and Sue was the medical proxy. Suspicious circumstances were presented due to the phone calls telling Jeff not to come see his sister, and also Karen changing her will only twenty-seven days before she passed away; which essentially disinherited her siblings.

This case makes me see that in the future I need to be extremely detailed when asking questions to potential clients. The tiniest fact can make a huge difference in the case. I see it is necessary to collect any and all documents which may be affected by the distribution of the estate. Lastly, being understanding of the client's situation, and also a counselor is essential because most likely a close friend/family member has just passed away.