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“Tip of the Month”

Constructive Trust

There is a case pending in the Cheshire County New Hampshire Probate Court in which young Nathan Carman is accused of murdering his grandfather to obtain a big inheritance. His aunts who are pressing the case also allege that Nathan is responsible for the death of his mother who disappeared while the two were out sailing in the ocean off the coast of Portsmouth, NH.

Although Nathan’s grandfather was shot with a caliber of bullet fitting a gun that Nathan had recently purchased, the gun was never found. The NH Attorney General did not think there was enough evidence to convict Nathan of murder beyond a reasonable doubt. No criminal charges were filed against him.

Instead, the sisters of Nathan’s mother filed a Petition for Constructive Trust in the probate court administering the estate of Nathan’s grandfather. The goal is to prevent Nathan from profiting by misconduct, that is, getting inheritance money after killing his grandfather. The standard of proof is lower in the probate court than the criminal court.

Unlike other states, NH does not have a “slayer law” that bars inheritance to someone whose bad conduct caused the death leading to the inheritance. This means someone could kill another person and still receive the inheritance under NH law – unless the inheritance is blocked by the NH probate court as a result of a constructive trust imposed by the court.

The court can impose a constructive trust on the heir who otherwise would unjustly profit from his wrongdoing. It’s a legal remedy used to take property from one who has wrongful possession and give it to another. To do this, NH law sets up a series of equity (fairness) principles. These principles include confidential (trusting) relationships, fiduciary (moral) duties, and unjust enrichment.

The fiduciary relationship is broadly defined and applies where there has been a special confidence (trust) granted to someone. In equity and good conscience, that trusted person is bound to act in good faith and in the interests of the trusting person. The fiduciary takes on the role of a moral person and the law pressures him to behave in a selfless fashion. A fiduciary relationship can exist wherever influence has been abused or confidence has been betrayed. Nathan might have betrayed his grandfather’s confidence.

It’s kind of like a slayer law but requires more process that includes filing a petition and getting an order from the probate court. Most probate estates don’t have problems like this. If you need any help with probate, give us a call at (603) 668 -1971. or contact us by email at *mailbox @ biz-patlaw.com*.

Happy Holidays!

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