

ANNA NICOLE SMITH: A TALE OF TWO RULINGS

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Although the primary parties to this ongoing litigation are now deceased, the legal battle that has gone all the way to the United States Supreme Court over who inherits all or a part of J. Howard Marshall's \$1.6 billion fortune continues. The latest decision by the Ninth Circuit Court of Appeals, which addresses issue preclusion and technical bankruptcy code provisions, essentially resolved conflicting rulings from a Texas probate court and a federal bankruptcy court in California. The Ninth Circuit found that the state probate court's ruling precluded the federal bankruptcy court's decision because a final ruling on the underlying claims was first issued by the state probate court. So, who wins . . . ?

Unless you have been living under a rock, you know that Anna Nicole Smith was the widow of J. Howard Marshall. Pierce Marshall, was the son of J. Howard Marshall. Both Anna Nicole and Pierce have both since died, but the litigation over who is entitled to J. Howard's large estate continues on behalf of their respective heirs. J. Howard Marshall died in 1996. Pierce presented J. Howard's will to the Texas probate court which, in conjunction with a trust J. Howard had amended within weeks following his marriage to Anna Nicole, effectively disinherited Anna Nicole from his estate. Anna Nicole challenged the will and trust, alleging that Pierce acted fraudulently and, through duress, forced his father to change his estate plan to exclude Anna Nicole and to benefit Pierce.

While these proceedings were pending in the Texas probate court, Anna Nicole filed for personal bankruptcy in the federal bankruptcy court in California. As part of the bankruptcy proceedings, Pierce brought a defamation claim against Anna Nicole, alleging she wrongfully accused him of influencing his father and seeking to protect any damages awarded to Pierce on the defamation claim from Anna Nicole's bankruptcy judgment. In her counterclaim, Anna Nicole claimed that Pierce had influenced his father to change his estate plan and by doing so, Pierce had intentionally interfered with her inheritance from J. Howard's estate, thereby bringing J. Howard's estate under the bankruptcy court's jurisdiction. In October, 2000, the federal bankruptcy court found in favor of Anna Nicole, awarding her a portion of J. Howard's estate, worth approximately \$474 million.

Subsequently, in a final judgment issued by the Texas probate court in December, 2001, the probate court found in favor of Pierce, holding that J. Howard had capacity and was not unduly influenced when he changed his estate plan. Pierce appealed the decision of the bankruptcy court to the federal district court, challenging the bankruptcy court's jurisdiction to issue decisions regarding J. Howard's estate. On appeal, the federal district court determined that the

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bankruptcy court had jurisdiction to rule on Anna Nicole's tortious interference claim and upheld the bankruptcy court's decision. The district court did, however, reduce the amount of Anna Nicole's share of J. Howard's estate to \$88 million in its March, 2002 judgment. The timing of each of court's decision was key to the recent Ninth Circuit's ruling.

Pierce then appealed to the United States Supreme Court, again challenging the jurisdiction of the bankruptcy court to make a decision concerning J. Howard's estate. The Supreme Court upheld the federal district court's ruling, holding that the federal bankruptcy court had diversity jurisdiction (where Pierce lived in Texas and Anna Nicole lived in California and the amount at issue was large enough to fall within the jurisdiction of the federal courts) and therefore had jurisdiction to issue a decision on Anna Nicole's counterclaim that Pierce intentionally interfered with her inheritance. The Supreme Court remanded the case back to the federal court of appeals to decide which of the two rulings would take precedence where both the state probate court and the federal bankruptcy court had the jurisdiction to make such a ruling. Ultimately, the Ninth Circuit would need to decide which "final" decision came first, the state probate court decision or the federal bankruptcy court decision, to determine which court's decision would preclude the other. That is, once a court issues a final decision, the same parties cannot re-litigate the same issues in a different court.

The Ninth Circuit's decision required an analysis of technical bankruptcy provisions to determine whether Anna Nicole's counterclaim against Pierce was a "core" bankruptcy proceeding. After review, the Ninth Circuit held that Anna Nicole's counterclaim of intentional interference of an inheritance was not so closely related to Pierce's defamation claim that it would be considered a "core" proceeding in Anna Nicole's bankruptcy. As such, the Ninth Circuit held that the federal bankruptcy court's ruling in Anna Nicole's favor was not a final judgment on a core proceeding, but rather a proposed finding and conclusion of law that the federal district court considered and later included in its final judgment in 2002. Since the district court's final judgment in Anna Nicole's favor came after the Texas probate court's 2001 final judgment in favor of Pierce, the Ninth Circuit held that the Texas probate court ruling takes precedence over the precluded federal bankruptcy court decision. Pierce (or rather his estate) wins; Anna Nicole (or rather, her estate) receives nothing.

While the underlying story and characters in this saga provide fodder for gossip news sources, this case also demonstrates the jurisdictional issues that may arise in probate litigation.

So, is the saga over? Given the amount of money at stake and other potential issues that have yet to be fully appealed in this case - - likely not. In fact, the attorney representing the executors of Anna Nicole's estate have vowed to appeal the Ninth Circuit's decision. More to come.

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