

Divorce, Inheritances, and Estate Planning

This brief analysis refers to the case *Smith v. Smith* (2017) that is discussed in our previous blog titled “Divorced Husband Demands Portion of Ex-Wife’s Inheritance.”

The problem in *Smith* was not the husband. The real problem was the attorney who drafted the Smith Family Trust.

First, the attorney drafted a broad provision in the Trust regarding new bank accounts established by either spouse. In suggesting that new bank accounts would be part of the marital estate, this broad provision was itself poorly-drafted. Second, the attorney then drafted specific provisions regarding a spouse’s potential inheritance. These two provisions were not carefully coordinated. This lack of clear coordinated provisions led directly to the lawsuit.

Worst of all were the attorney’s three additional failures:

1. The attorney it seems may have failed to take the full time needed to interview his clients, determine the extent of the wife’s potential inheritance, and truly appreciate the desires of the wife to keep that inheritance separate. Or the attorney failed to do this careful work in annual or regular follow-up interviews with the clients.
2. The attorney then failed it seems to fully appreciate that under Utah law, a traditional inheritance, like the one the wife received from her mother, is considered separate property.
3. The attorney then fatally failed to carefully draft a provision in the Smith Family Trust (or a later amendment after follow-up interviews), (1) clarifying beyond dispute that the wife’s inheritance would be her separate property in the event of a divorce, and (2) clarifying beyond dispute what the wife needed to do to preserve her inheritance as a separate asset, and (3) clarifying beyond dispute under what conditions the separate inheritance would lose its status as separate property and be considered marital property. References to the law in the provisions would have helped.

This lack of careful work on the part of the Smith’s attorney directly created ambiguity. And ambiguity is the enemy of good estate planning. In this cesspool of ambiguity, the husband and his probate litigator were happily enabled to create a litigation mess. Clarity would have gone a long way in containing the husband and his probate attorney—in perhaps even shutting down the conflict before the case was ever filed in the courts. See *Smith v. Smith*, 2017 UT App 40.

By Alicia Knight Cunningham

[Click here to see *Smith v. Smith* \(2017\) UT App 40.](#)

[Click here to see our summary of this this case in the blog titled: “Divorced Husband Demands Ex-Wife’s Inheritance.”](#)