

AN UNWISE FATHER, GREEDY WIFE, AND BAD ATTORNEY

This brief analysis refers to the case of [*Ellsworth v Huffstatler* \(2016\)](#) that is discussed in our previous blog summarizing this case, titled "[SECOND MARRIAGES: PLANNING A DISASTER - CASE SUMMARY \(ELLSWORTH V. HUFFSTATLER\)](#)." To best appreciate the following analysis, read this previous blog summarizing the case. (Hover over the title with your cursor and click.)

Ellsworth teaches us at three important lessons about estate planning.

Kaboom: Second Marriages and Adult Children From First Marriages.

The *Ellsworth* case is one of a thousand cases proving that a second spouse and children from a first marriage are almost always a lethal combination.

A second wife does not want the adult children of her husband's first marriage dictating to her what is going to happen to the assets of her husband/their dad. This is exactly what Elmer Ellsworth's son Mark attempted to do (no matter how calmly or rationally he may have attempted to do it).

Further, children from a first marriage definitely do not want to be dealing with their parent's second spouse who very rarely loves them as much as she loves her own children.

The First Problem Was Mr. Ellsworth.

The first and primary problem was Mr. Ellsworth, a man who failed deeply to comprehend the challenges that awaited his second wife and children. He was likely similar to every other man who cannot comprehend that his second wife is most likely to have serious conflicts with his children from his first marriage--no matter how well they seem to get along while he is alive.

Mr. Ellsworth simply failed in his fundamental duty to do his estate planning correctly.

The Final Problem Was the Attorney.

Perhaps the most serious problem in *Ellsworth* is never mentioned in the case at all. This serious problem was the attorney who drafted the original 1991 Ellsworth trust. The 1991 attorney blew it. The attorney's incompetence in 1991 led straight to the courts 12 to 15 years later.

It is possible to prepare a trust in second marriage situations that both protects the second, surviving spouse and the children from the first marriage. But such a trust requires more than ordinary communication with clients—and their children. Such a trust requires thoughtful anticipation of surprises, and careful drafting. Such a trust requires everything a document-mill attorney is not inclined to do.

The attorney who prepared the 1991 trust for Elmer and Barbara Ellsworth could only have been a typical document-mill attorney who had no concept of second-marriage

surprises—or any interest in preventing such surprises. The attorney’s failure to anticipate and prevent common surprises that occur in second marriages ultimately resulted in expensive, protracted litigation.

While the court ruled correctly, does anyone rationally imagine that Elmer Ellsworth wanted his own children completely disinherited after his death? Shame on him for retaining an incompetent attorney, and shame on the lazy and incompetent attorney who did not honestly ensure that the desires of both Elmer and Barbara Ellsworth were honored.

See our summary of this case in the blog titled [SECOND MARRIAGES: PLANNING A DISASTER - CASE SUMMARY \(ELLSWORTH V. HUFFSTATLER\)](#)

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See [*Ellsworth v Huffstatler*](#), 385 P.3d 737 (Utah App. 2016).