

ANNE HECHE'S WILL CONTEST: A CAUTIONARY TALE

The circumstances involving [Anne Heche's estate](#) are a stark reminder of the uncertainties that may exist following the death of a loved one and the issues that can arise even when someone *thinks* they have their estate plan in place.

Heche's (Possible) Will

When the Emmy Award-winning actress died after a fiery car crash in August 2022, she left behind two sons. After her death, her former partner, James Tupper, the father of the younger of Heche's sons, came forward with a document—reportedly an email from 2011—that he said names him as the administrator of Heche's estate.

In response, Heche's older son, Homer Laffoon, filed a petition to assume control over Heche's estate. In doing so, Laffoon also said that the 2011 document is not a valid will because it does not meet requirements under California law.

More specifically, Laffoon argued, in part, that the document does not qualify as a valid will because it does not contain Heche's signature and was not observed by two witnesses as required by California law. Because there is a question as to whether Heche had a valid will, a probate court must decide the issue before her assets can be distributed.

State law varies on the requirements of a valid will, so let's look at what is required in Wisconsin.

What is a Valid Will in Wisconsin?

First, for a [valid will in Wisconsin](#), the testator (the person making the will) must have the capacity to create a will, which means the person must be at least 18 years old, of sound mind, and acting on their own volition.

For a will executed in Wisconsin to be valid, it must be written down and signed by the testator, or with the assistance of another person with the testator's consent and in the testator's conscious presence, and signed by two witnesses. If a witness to the will is a beneficiary of the will, his or her interests will most likely be limited to what he or she would have received had the testator died without a will, through intestacy law.

Proving a Will in Wisconsin

In Heche's situation, a judge must decide whether Tupper's proposed 2011 document is a legally valid will. Without a valid will, Heche will have died "intestate," and the probate court

will distribute Heche's assets according to California law.

Similarly, when a Wisconsin resident dies, his or her estate will be distributed under Wisconsin intestacy law unless a will is admitted to probate. Depending on the circumstances, it might be appropriate to investigate the circumstances surrounding the purported execution of a will by the testator and/or the witnesses prior to waiving any rights to challenge the proposed will.

Our inheritance litigation team has a wide array of experience in handling will disputes—whether investigating the authenticity of the document itself, analyzing the legal sufficiency of a proposed will, or investigating concerns over lack of legal capacity and undue influence. If a court finds that a document does not meet the legal requirements of a valid will, the decedent's estate may be distributed under a testator's previous estate plan or under Wisconsin intestacy law.

Anne Heche's situation is another reminder of the unfortunate complications and issues that may arise following the death of a loved one.

Trevor C. Lippman is a shareholder at the law firm of O'Neil Cannon Trevor assists clients with all matters related to inheritance disputes, including questions surrounding the creation and administration of trusts and wills. Since graduating from University of Wisconsin Law School in 2013, Trevor has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. Trevor prides himself on protecting the rightful legacies of those who have passed on and seeks to understand each client's unique concerns. To schedule an initial consultation with Trevor, call 414.276.5000 or email Trevor directly at trevor.lippman@wilaw.com.

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THE GREAT WEALTH TRANSFER AND ITS IMPLICATIONS ON ESTATE, TRUST, AND PROBATE LITIGATION

On August 14, 1945, Life magazine photojournalist, Alfred Eisenstaedt, captured the spirit of the nation in his [photo](#) of a sailor embracing a nurse in New York's Times Square. It was the end of World War II, and America was at the top of its game. Although the US had been late to enter the war, after the attack on Pearl Harbor on December 7, 1941, it was all-hands-on-deck. In his best-selling book, Tom Brokaw described the veterans and their peers as "the greatest generation."

When the war ended, families reunited. Sweethearts got married and spent [lots](#) of quality time together. The birth rate—dubbed "the baby boom"—became exceedingly high. The children born in the years following World War II grew up in a period of economic prosperity. Many of the children of "the greatest generation" grew rich, far beyond their parents' dreams. Decades later, Baby Boomers' wealth is now shifting to younger generations in what has been referred to as The Great Wealth Transfer.

Generation Defined

"Generation" is one of those ineffective words. It may refer to a group of people of similar age with a common philosophy or lifestyle, such as the "Hippie generation" and the "Me-generation." It may also refer to people born within the same time period of roughly 15 to 20 years—a useful basis for economic analysis. The following are popular generational terms for people living in the US today, grouped by ages from youngest to oldest:

- Generation Z (Gen Z, 10–25, born between 1997–2012)
- Millennials (26–41, born between 1981–1996)
- Generation X (Gen X, 42–57, born between 1965–1980)
- Baby Boomers (58–76, born between 1946–1964)
- Greatest Generation (77–100+, born between 1922–1945)

How Much Wealth Do the Boomers Hold?

Anyone born between the years 1946 and 1964 qualifies as a “Boomer.” In 2022, the oldest Boomers will be 76 years old, and the youngest, 58. Boomers, like any other age group, consist of a diverse array of people. However, as Boomers spread their wings in the 1960s, ’70s, and ’80s, they developed common characteristics. During those times, adult Boomers had lofty expectations and sought financial stability and success far beyond the lifestyles many of them had been raised in.

Not all Boomers are wealthy, but some Boomers are extraordinarily wealthy. This wealth accumulated through a combination of personal drive and favorable circumstances, including:

- educational opportunities;
- shoulder-to-the-wheel mentalities;
- entrepreneurship and access to capital;
- ingenuity in business and technology;
- real estate appreciation;
- investment in the rising stock market (e.g., bull market of 1980’s);
- compound interest (return on savings); and
- tax advantages.

Boomers make up about 20% of the US population. The Boomer generation’s accumulated wealth adds up to roughly \$35 trillion, more than a quarter of all US wealth. The Boomers own the lion’s share in various asset categories, including the following:

- real estate, 43%;
- corporate equities (including mutual funds), 55%;
- pension entitlements, 50%; and
- private business ownership, 46%.

Father Time is undefeated. As Boomers start to move into their long-awaited retirement and twilight years, Boomers are re-evaluating priorities and thinking about the legacies they wish to leave behind. Analysts estimate that between 2018 and 2042, 40 million households will transfer close to an astonishing \$70 trillion dollars to younger generations. Likely beneficiaries will include children, grandchildren, and great grandchildren. Other potential beneficiaries will include surviving spouses, partners, friends, and donations. Many Boomers also wish to consider providing for loved ones or charities during their lifetimes.

Millennials Will Inherit Boomers' Wealth

In the next 20 years—thanks to the Great Wealth Transfer—Millennials will become the wealthiest generation in US history. Millennials grew up with daycare centers and the internet. Many have divorced parents, blended families, and two-income families are the norm. Many Millennials are still paying off student loans. They are getting married later in life and having fewer kids. They are racially and ethnically diverse.

Although Millennials make up about one-fifth of the population, they control a little less than 5% of the wealth. Unlike the Boomers, Millennials got off to a slow start financially, starting their careers during a period of economic recession. In recent years, they have gained momentum, thanks to low interest rates, entrepreneurship, and homeownership. In fact, Millennials hold the greatest portion of their wealth in real estate.

Wealth Transferred, Wealth Lost

History tells us that self-made millionaires and billionaires are more likely to preserve and increase their wealth than people who inherit large sums of money. Of the wealthiest people in the world, almost 70 percent are self-made. Each successive generation of beneficiaries is more likely than the previous one to lose a substantial portion of inherited wealth.

But history is not destiny. There are several resources for managing wealth and new investment options. Millennials could be the first generation to increase inherited wealth.

Family Fights

When this amount of wealth is changing hands, family and other emotionally charged disputes are inevitable. This is particularly so as Boomers reach their 80s and 90s, many of whom, statistically, will suffer from some form of dementia or other cognitive decline. Families all have their own histories and are made up of unique relationships that are oftentimes decades in the making. Siblings and children may squabble. Step-parents and step-children do not always get along. Friends and neighbors might get their hands caught in the proverbial cookie jar. As a result, loved ones may challenge gifts, deeds, trusts, wills, and the designation of various accounts, among various other kinds of transfers. A person is allowed to do with his or her property what he or she wants. However, if that person lacks the legal capacity or was unduly influenced by a loved one or acquaintance, serious questions may arise as to the authenticity of certain transactions or estate plans.

Consult a Professional

Trevor C. Lippman is an experienced attorney at the law firm of O'Neil Cannon Trevor assists clients with all matters related to inheritance disputes, including questions surrounding the creation and administration of trusts and wills. Trevor has assisted hundreds of clients

navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. Trevor prides himself on protecting the rightful legacies of those who have passed on and seeks to understand each client's unique concerns. To schedule an initial consult with Attorney Lippman, call 414.276.5000 or email Trevor directly at trevor.lippman@wilaw.com.

TREVOR LIPPMAN LEADS EFFORT TO SECURE \$5.4 MILLION SETTLEMENT IN WILL FRAUD CASE

Attorney Trevor C. Lippman, a member of the firm's Inheritance Litigation Team, recently resolved a two-year dispute representing the siblings of a deceased physician involving allegations that the opposing party conspired with an attorney and two witnesses to create a fraudulent will after the death of their brother.

In what can only be described as a tragic, yet fascinating case, the partner of a deceased physician had his purported estate planning attorney (no longer licensed) produce a copy of a will to the decedent's siblings approximately one week following their brother's death. Under the older will, the siblings received the entire multimillion-dollar estate. Under the new will, the siblings would receive \$100,000.

Attorney Lippman fought to allow for a full investigation surrounding the purported new will over the objections of the decedent's partner, who sought, with the purported drafting attorney and two witnesses, to rush this matter to resolution.

What began as an investigation into possible allegations of undue influence and lack of capacity quickly turned into an investigation into the authenticity of the new will and the attorney, witnesses, and partner's involvement in the possible fraudulent creation of that will after the decedent's death. The investigation involved the review of thousands of documents, telephone records, text messages, and an ink testing analysis to test how old the ink was on notes the drafting attorney purportedly drafted in 2017.

Shortly before a scheduled five-day trial before the Milwaukee County Circuit Court, Attorney Lippman successfully negotiated a mediated resolution which resulted in the admission of the older will that had identified the siblings as the sole beneficiaries and the siblings' retention of approximately 88 percent of the estate, or \$5.4 million.

The Inheritance Litigation Team is fortunate to work with incredible clients who have questions or concerns about a loved one's estate plan when there are legitimate questions

surrounding that estate plan, whether it be through a will, trust, or payable-on-death transfer.

Upon the completion of this mediation, O'Neil Cannon was humbled when its clients, unprompted, shared their thoughts about their experience with Attorney Lippman and the Inheritance Litigation team. Here is what they wrote:

“Professional Integrity and a Very Successful Outcome - Our Experience with O'Neil Cannon.

After our brother died unexpectedly at the age of 60, we had serious concerns about the copy of the will that was produced that did not comport with our understanding of our brother's estate plans. There were also several oddities with trying to obtain the will itself and with the dynamics of the relationship our brother had with the purported beneficiary under the new will.

As this was the first time we had ever been involved in a legal action, we needed a lot of support and explanation from our attorneys. Their communication skills are second to none and they answered all our questions quickly and guided us through all the issues as they developed. Trevor began the investigation and through many twists, turns and complications was able to discover that our concerns were justified. We cannot say enough about Trevor. He is smart and hardworking, he digs deep into the facts, pulling layer after layer together to tell the true story. He kept us informed of his progress and gave us excellent advice. He is stellar in the courtroom. We cannot recommend him highly enough and we are so proud to have been represented by Trevor. The rest of the team at O'Neil Cannon played an important role to support this lengthy, complex endeavor.”

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O'NEIL CANNON ELECTS KELLY M. SPOTT AND TREVOR LIPPMAN AS SHAREHOLDERS

O'Neil Cannon is pleased to announce that Attorney Kelly M. Spott and Attorney Trevor Lippman were recently elected as shareholders of the firm.

Kelly has been with the firm since 2017. Prior to joining OCHDL, she was an Advanced Planning Attorney at Northwestern Mutual. Kelly assists her clients with estate planning, succession planning, probate administration, trust administration, and inheritance litigation. She is licensed to practice law in both Wisconsin and Florida. Kelly maintains an AV rating from Martindale-Hubbell® and has been selected for inclusion on The Best Lawyers in America: Ones to Watch List.

Learn more about Kelly M. Spott by visiting her [full profile](#).

Trevor has been with the firm since 2013 and is a member of the firm's Litigation Practice Group. Trevor assists clients in a wide array of personal and business matters with a strong emphasis in litigation relating to wills, trusts, fiduciary disputes, and inheritance disputes. Trevor has recently been selected for inclusion on the Wisconsin Super Lawyers Rising Stars List and The Best Lawyers in America: Ones to Watch List.

Learn more about Trevor by visiting his [full profile](#).

Both Kelly and Trevor are tremendous additions to the shareholder group, and we are proud to have them on our team.

21 FIRM ATTORNEYS RECOGNIZED BY SUPER LAWYERS

Each year, *Super Lawyers* surveys the State of Wisconsin's 15,000 attorneys and judges, seeking the State's top attorneys. In November 2020, *Super Lawyers* published its lists for 2020, which include the Top 10 Attorneys in Wisconsin, Top 50 Attorneys in Wisconsin, Top 25 Attorneys in Milwaukee, Super Lawyers (consisting of the top 5% of attorneys in Wisconsin), and Rising Stars (consisting of attorneys who are 40 years old or younger or who have been in practice for 10 years or less).

Twenty-one of our attorneys were recognized by *Super Lawyers*, which has referred to the firm as "the Milwaukee mid-sized powerhouse." Those attorneys are the following:

- Dean P. Laing:
 - Top 10 Attorneys in Wisconsin
 - Top 50 Attorneys in Wisconsin
 - Top 25 Attorneys in Milwaukee
 - Super Lawyer
- Seth E. Dizard:
 - Top 50 Attorneys in Wisconsin
 - Top 25 Attorneys in Milwaukee
 - Super Lawyer
- Douglas P. Dehler:
 - Super Lawyer
- James G. DeJong:
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- John R. Schreiber:
 - Super Lawyer
- Jason R. Scoby:
 - Super Lawyer
- Steven J. Slawinski:
 - Super Lawyer
- JB Koenings:
 - Rising Stars
- Trevor C. Lippman:
 - Rising Stars
- Erica N. Reib:
 - Rising Stars
- Christa D. Wittenberg:
 - Rising Stars

Super Lawyers is a national rating service that rates attorneys in all 50 states. The selection process utilized by *Super Lawyers* is multi-phased and includes independent research, peer nominations, and peer evaluations. One court recently had this to say about *Super Lawyers*:

“[T]he selection procedures employed by [*Super Lawyers*] are very sophisticated, comprehensive and complex.

It is abundantly clear . . . that [*Super Lawyers* does] not permit a lawyer to buy one’s way onto the list, nor is there any requirement for the purchase of any product for inclusion in the lists or any quid pro quo of any kind or nature associated with the

evaluation and listing of an attorney or in the subsequent advertising of one's inclusion in the lists."

We are proud to be one of the few firms in Wisconsin that had over 50% of its attorneys receive recognition by *Super Lawyers*.

20 OCHDL LAWYERS SELECTED AS 2021 BEST LAWYERS®; ANOTHER 5 NAMED BEST LAWYERS: ONES TO WATCH

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EVEN THE BRIGHTEST MINDS CAN SUFFER

FROM DEMENTIA

Recently, Justice Sandra Day O'Connor, the first woman appointed to the United States Supreme Court, wrote a letter addressed to "Friends and fellow Americans" discussing her diagnosis with the beginning stages of dementia. In her letter, Justice O'Connor explained that her condition is "probably Alzheimer's disease."

Justice O'Connor, age 88, was appointed to the Supreme Court by President Ronald Reagan in 1981. Since retiring from the Supreme Court in 2006, Justice O'Connor has continued to demonstrate her commitment to public service. In 2010, Justice O'Connor began the iCivics program, which she describes as an educational program designed "to teach the core principles of civics to middle and high school students with free online interactive games and curriculum that make learning relevant and remarkably effective." As explained in her recent letter, Justice O'Connor believes her diagnosis means she can no longer help to lead this cause, but she believes the program will continue to flourish under new leadership. More information on the iCivics program can be found at www.icivics.org.

The sad news regarding Justice O'Connor's diagnosis reminds us that even the brightest minds are not immune to the devastating impacts of Alzheimer's disease and other forms of dementia. Justice O'Connor's letter might also serve as inspiration for those who suffer from dementia or who have family members or other loved ones who suffer from such conditions. You can find the full letter [here](#).

It is important to acknowledge the significant impacts that this tragic disease can have on families and on our society as a whole. As our nation's baby boomers continue to age, the number of people impacted by dementia will likely increase significantly. According to the [Alzheimer's Association](#), there are currently about 5.7 million people suffering from Alzheimer's disease in the United States, and that number is expected to double by 2050.

We would do well to heed one of the statements that Justice O'Connor made in her letter: "It's not enough to understand [the effects of dementia], you've got to do something." At O'Neil Cannon, we remain committed to helping to protect the legacies of those who suffer from this disease. Unfortunately, there are times when a family member or other acquaintance might attempt to take advantage of a person suffering from dementia by exerting undue influence to gain a financial benefit. These attempts to take advantage might involve unauthorized transfers or withdrawals of money from an elderly person's accounts, or improperly seeking to elicit changes to a will, trust, or other legal document. While many people diagnosed with dementia remain capable of changing their estate plans for some period of time after they are diagnosed, if such changes are the result of undue influence, then those who are impacted may have the right to pursue relief in court.

If you would like to further discuss this article, please feel free to contact Attorney Trevor Lippman at 414-276-5000 or Trevor.Lippman@wilaw.com.

FAMILY SECURES LARGE SETTLEMENT IN CONTENTIOUS INHERITANCE DISPUTE

The extended family of a reclusive millionaire secured a large settlement on the eve of trial. As reported by the [Milwaukee Journal Sentinel](#), when LeRoy Ern died at the age of 92, he purportedly left his entire \$1.6 million estate to his financial advisor. At the time of the changes, Mr. Ern suffered from dementia and lived the life of a hermit. According to the allegations, soon after meeting the financial advisor, Mr. Ern nominated the financial advisor as his financial and health care power of attorney. Eventually, the financial advisor obtained an interest in 100 percent of Mr. Ern's estate upon Mr. Ern's death.

As is often the case in disputes such as this, the purported transfers to the financial advisor to take place upon Mr. Ern's death occurred through a series of different mechanisms. Here, it involved a revised will identifying the financial advisor as the personal representative and sole beneficiary as well as changes to the beneficiary designation on multiple annuity policies. Other common mechanisms may include the retitling of accounts from the name of the decedent or his or her trust into a joint account, payable-on-death account, or transfer-on-death account to the alleged wrongdoer or a change in beneficiary designation on a life insurance policy.

After Mr. Ern died, the financial advisor filed the will and sought to serve as the estate's special administrator. Mr. Ern's family members objected to the will on the basis the financial advisor obtained a 100 percent interest in the estate in bad faith. As the newspaper points out, the family and the financial advisor settled on the eve of the scheduled trial that was set to begin this week. As part of the settlement, the family will receive the bulk of Mr. Ern's estate. It is evident that had Mr. Ern's family not taken court action to assert their rights, they would have received nothing. Instead, they secured a settlement worth almost \$1.5 million.

If you would like more information on this topic, you are welcome to call Trevor Lippman at 414-276-5000 or trevor.lippman@wilaw.com.