

To Trust or To Put It in a Trust: That Is the Question

By Joan Reed Wilson, Esq.

Today, when more than fifty percent of marriages end in divorce, it is not surprising that many of my clients are couples in their second marriage. And most of these husbands and wives have children from their first marriage. They are not unlike Joseph and Anna Menard, about whom a recent Connecticut court case was written. (*Menard v. Gaskell*, 92 Conn. App. 551 (2005)).

Joseph and Anna Menard married in 1954. They were each married previously and each had a child from the previous marriage. During the marriage, Joseph and Anna kept in close contact with their children. After 32 years of marriage, Joseph and Anna went to a lawyer to prepare wills. Like most couples who prepare wills, they wanted the survivor of them to get everything. Since they did not know who would be the survivor, they created “mirror” wills so that upon the survivor’s death (whichever one that would be) their assets would be split equally between their two children. Their lawyer explained to them that the survivor would be able to change his or her will at any time, so the provision that their children would split the inheritance equally is not carved in stone. The Menards understood their lawyer and presumably felt that after so many years together they wanted to *trust* that the other would not disinherit their child.

Understandably, this conversation is sticky for all involved. As a partner in a happy marriage, you do not want to take a stand that may make your spouse feel distrusted. As the lawyer, I do not want to instill a feeling of distrust in an otherwise happy family; but I must also feel confident that my clients fully understand their decision. Sometimes it is hard to know whether people really understand the realities of the “mirror” wills, which is why I thought it important to highlight this case.

Now back to our story...Mr. Menard passed away in 1989, leaving everything that he owned to his wife, Anna. According to the case, after Joseph’s passing, Anna saw Joseph’s son, George, all but once. As you have probably already suspected, after several years of no contact with him, Anna changed her Will. By 2000, when Anna passed away, Anna’s Will expressly omitted George because she had not heard from him since his father’s passing. George sued Anna’s daughter for over \$300,000—one-half of Anna’s estate. After nearly five years of litigation through the Probate Court, the Superior Court and the Appellate Court, George lost his lawsuit and the estate likely lost thousands of dollars in litigation costs. In the end, no one won.

What is the solution, you ask? It’s simple. To ensure that your beneficiaries are not written out of the inheritance that you intend for them, put it in a *Trust*. Your spouse can use the Trust during his or her lifetime, so he or she will not be left penniless; however, the Trust (as opposed to your spouse’s Will) is irrevocable and unamendable by your surviving spouse. So after your spouse passes away, the beneficiaries whom you named are still the beneficiaries. By the way, the Menard’s situation can also easily happen with first marriages. So the question for every married person is, should you *trust* or put it in a *Trust*?

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