



Lessons From Anna Nicole Smith

The U.S. Supreme Court recently decided Anna Nicole Smith's much-publicized inheritance case. Playboy's 1993 Playmate of the Year married 85-year-old Texas oil gazillionaire J. Howard Marshall in 1994. (He died in 1995.) Marshall left nothing in his will for Smith, and things would have stayed that way had

Marshall's son, Pierce, exercised some self-restraint. But Pierce couldn't help himself. Now, he's on the wrong end of an \$89 million judgment.

Smith was born Vicki Lynn Hogan in Texas. She was a stripper before taking the Smith "stage" name, and when she married, she became Vicki Lynn Marshall. The revered first Chief Justice, John Marshall, on the other hand, never a stripper, decided legal issues in 1821 that 185 years later would tie him forever to his lesser-accomplished namesake. Stay tuned.

While Marshall the tycoon was alive, Smith was lavished with a high lifestyle. When he died, Smith claimed he was to provide for her in a separate trust—despite no mention in his will. Pierce, the prime beneficiary of the will, filed in Texas state probate court seeking a judgment validating Marshall's will. Smith challenged it and accused Pierce of intentionally interfering with Marshall's plan to provide for Smith through a trust.

Meanwhile, Smith filed for personal bankruptcy. Had Pierce ignored this filing, Smith might have received nothing. Disgusted by her alleged gold-digging, however, Pierce filed a claim in the bankruptcy case asking that his defamation claim against Smith (she told the press he was a cheat) not be "discharged."

Pierce's spite provoked Smith to assert a counterclaim of intentional interference. The bankruptcy judge dismissed Pierce's claim, held a trial on Smith's claim and awarded her \$474 million in damages against Pierce. On appeal to the federal district court, the award was reduced to \$89 million. The Ninth Circuit reversed the lower federal court decision, concluding that the "probate" exception—i.e., federal courts do not hear will cases—was broad enough to preclude Smith's claims in federal court. Smith had withdrawn her claims in Texas probate court, so she appeared empty-handed.

Enter the Supremes. The court described the probate exception as originating from "misty understandings of English legal history."

Rewind to Chief Justice John Marshall. Justice Ruth Bader Ginsburg, writing for the Court, quoted his ruling from an 1821 case: "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. ... We have no more right to decline the exercise of jurisdiction which is given them to usurp that which is not given."

So unless Smith's federal counterclaim interfered with or

usurped the authority of state probate proceedings, there was no probate exception. It did neither. The Court sent the case back to lower federal courts where some procedural issues remain.

Federal courts, sensitive to their limited jurisdiction, will dismiss a claim if they believe it is in the wrong court. In Smith's case, the Supreme Court decided that her claim was welcome.

Despite popular belief, the Court did not award Anna Nicole Smith millions but ruled on a rarely invoked exception to federal court jurisdiction. The high court did revive her \$89 million judgment, though Smith is not

home free yet. And Pierce, were he still alive, would be now exposed to this risk because of what appears to be an aggressive stunt intended to punish Smith. (He passed away in June.)

Besides being an interesting case involving a sensational litigant, the Smith case has a lesson: Sometimes it's best to leave a sleeping dog lie, because you never know what kind of a bite the dog has if provoked.

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