



Recent Court of Appeals Case Highlights Importance of Estate Planning in Multiple Marriage Situations

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Multiple marriages have become increasingly common. More than 50% of divorced men and 43% of divorced women are remarried. (U.S. CENSUS BUREAU, SURVEY OF INCOME AND PROGRAM PARTICIPATION, Table 4 (2004)). Moreover, in about 29% of married couples, either the husband or the wife, or both, has previously been married. (U.S. CENSUS BUREAU, SURVEY OF INCOME AND PROGRAM PARTICIPATION, Table 8 (2004)).

A recent Michigan Court of Appeals case highlights an important lesson about estate planning in multiple marriage situations: Multiple marriage situations require extra attention to ensure that the intent of each spouse is effectuated, particularly when one or both spouses have children from outside the marriage.

In *Myers v. Snowdin*, Buck Hunt had four children from a prior marriage and Marilyn Hunt had one child from a prior marriage. After Buck and Marilyn married, they created a joint trust. *Myers v. Snowdin*, unpublished opinion per curiam of the Court of Appeals, issued July 14, 2009 [Docket No. 285158].

Pursuant to the terms of the joint trust, either spouse had broad authority to withdraw assets during their joint lifetimes. Upon the death of the first spouse to die, the surviving spouse could only withdraw trust assets for health, support, and maintenance. At the death of the survivor, the trust assets would be distributed one-half to Buck's children and one-half to Marilyn's child.

Buck became mentally incapacitated and was placed in a long-term care facility. After Buck became mentally incapacitated but before he died, Marilyn withdrew large amounts of trust assets and titled them jointly with her son and his wife. Buck died later that year and Marilyn died two years later, at which time all of the assets withdrawn from the trust passed to Marilyn's son or her son's wife.

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Buck's children filed suit in probate court challenging Marilyn's withdrawals from the joint trust when Buck was incapacitated but before his death. The probate court ruled against Buck's children. On appeal, the Michigan Court of Appeals affirmed that the joint trust unambiguously granted Marilyn the authority to withdraw all of the trust assets while Buck was still alive.

The terms of the joint trust expressly stated Buck and Marilyn's intent to avoid disinherit the children of either spouse following the death of the first spouse to die. However, the couple did not include similar precautions against the same possibility during their joint lifetimes, such as if one spouse became incapacitated. A couple in a multiple marriage situation needs to carefully consider all possible factual developments to ensure that there are no unanticipated results, including planning for the possible incapacity of one spouse.

