

Ledger's Will Dilemma Reflects Wider Issue

Some Estate Planning Lawyers Say Failing to Update Will Is a Pervasive Problem

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The aftermath of Heath Ledger's death took a unexpected turn this week after word got out that the actor had reportedly failed to include his ex-fiancé Michelle Williams and their 2-year-old daughter, Maltida, in his will.



Actor Heath Ledger, who died in January, and former Playboy playmate Anna Nicole Smith, who died last year, both failed to update their... ▼

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Ledger, who died of an accidental prescription drug overdose in January, had apparently never updated his will after the birth of Matilda, leaving everything he owned to his parents and three sisters and triggering an ugly family dispute.

"For celebrities not to be up to date on this stuff, it is a bit surprising," said D.J. Wells, a married father of two living in Redondo Beach, Calif.

"If I were a celebrity, I imagine I'd have a team of lawyers working on every aspect of my life," he said.

Alexis Martin Neely, Wells' estate lawyer, agreed.

"You should certainly call your lawyer if you've had a baby or if you were getting married," Neely told ABC News," and your lawyer would make sure that all of your assets were accounted for in estate plans."

Wells says he makes sure to meet Neely at least every three years to update his will. That sort of vigilance may put him in the minority.

Some family and probate lawyers say that stories about celebrities who fail to keep their wills current reflect a wider problem. Former model and Playboy Playmate Anna Nicole Smith, left her fortune to her son, Daniel, but failed to update her will after he died or after she gave birth to her daughter Dannielynn, leaving the now 18 month old girl out of the will. Smith and Daniel died five months apart, both from prescription drug overdoses.

Celebrity or not, many people just aren't paying attention to their postmortem plans for distributing assets to loved ones.

"Unfortunately, it is very typical because, first of all, many people don't even have estate plans and when they do, they're not regularly updated," said Willem Gravett, a matrimonial and family lawyer in Mt. Kisco, N.Y.

A 2007 survey by Bankrate.com found that 57 percent of more than 1,000 people polled didn't have wills. The problem extends beyond just concerns over inheritance; for parents, there's also the issue of guardians -- those entrusted to raise their children if both parents die.

"Parents are really busy today," Neely said. Naming guardians, she said, is something "they intend to do but never get around to and they just keep putting it off and putting it off."

Gravett said that one of the reasons people put off putting together or updating estate plans is because there often isn't a sense of urgency motivating them. Then there's the general distaste that death talk leaves in the mouths of many.

"Death is not a pleasant subject to talk about," Gravett said. "People don't like to talk about it and they certainly don't like to think about it. There's a little bit of an emotional, psychological element to it."

Deciding guardianship of one's children can also delay the process, especially if the parents are divorced.

"It can become a thorny issue," Gravett said. "There may be problematic family dynamics. One spouse may not like their in-laws all that much."

Gravett said that in choosing a guardian, it's important for parents to select someone who they believe share their philosophy of child-rearing and would also be able to manage any financial assets the children inherit.

Wells said that it's a complicated choice to make.

"It forces you really to look at your family members and your friends differently than you do at your Sunday picnic," he said.

And then there's the not-so-little matter of money. Alan Rothschild, division vice chair in the American Bar Association Real Property Trust and Estate Section, estimated that preparing the most basic will may cost between \$500 to \$1,500. But Rothschild said that most people need more complex wills, which cost more.

"I think sometimes when people focus on the initial cost of estate planning, it deters them from doing it," he said. "But for people who have experienced a family situation where they have seen how expensive and time-consuming and disruptive it can be to a family to not have a well-drawn will ... those folks are convinced that the initial upfront cost of the document is well worth it."

There's also the issue of retirement savings. Many don't realize that, whether they have a will or not, they must provide names of beneficiaries to the administrators of their IRAs, 401(k)s and pension plans.

"It's not enough to say in your will 'my spouse will be entitled to half my retirement or all of my retirement as a death benefit.' You have to actually go to your plan," Gravett said.

'Desperately Broken'

Neely wrote in her blog, www.familywealthmatters.com, that cases like Ledger's and Smith's show that "the current model for providing legal services in the United States is desperately broken!"

"Even wealthy celebrities are victim of the current mindset that estate planning is about form documents that can be prepared once and never looked at again. As these cases highlight, that's incorrect," she wrote.

Through her blog and personalfamilylawyer.com, Neely advocates for a personal approach to legal services and for consumers to choose lawyers with whom they can have an ongoing relationship.

Neely has personal experience with the pratfalls of impersonal estate planning. Her father-in-law, she said, spent thousands establishing a trust for his family. When he died, Neely and her husband were shocked to learn that his assets were never formally transferred into the trust.

His family, she said, had to spend thousands more as a probate court oversaw the disbursement of the man's assets.

Gravett also works on the three-year plan -- he charges a minimum of \$40 a month for his reminder and update services, which includes regular three-year revisions to clients' estate plans. It may sound like a hefty price to some, but Gravett said it's a fee his middle-class clients are willing to pay.

"If you just leave it up to the client, time goes by and they forget," he said.

Not everyone, however, agrees that it's the lawyer's job to tie a ring around a client's finger.

David A. Looney, a lawyer in Akron, Ohio, said that while he has a personal relationship with his clients, "we don't hound the clients down to remind them to come see me."

"I think everybody needs to take responsibility for their own lives, their own situation and realize that estate plans and wills need to be updated now and then," he said. "When things change, that's the time to take care of business, call the lawyer and get it done."

The status of Ledger's estate is still in doubt after two of his uncles accused Kim Ledger, the father of the "Brokeback Mountain" star, of mishandling funds when he was executor of their grandfather's estate in the 1980s.

In Smith's case, Los Angeles Superior Court Judge Mitchell L. Beckloff ruled that Dannielynn would inherit her estate and that Smith's longtime companion Howard K. Stern would administer the girl's trust.

The Associated Press contributed to this report.