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Elizabeth Edwards' Will

Private testamentary provisions follow a very public life

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Elizabeth Edwards led a very public life. The press reported extensively on the various details of that life, including her career, the disintegration of her marriage to John Edwards (the 2004 Democratic vice-presidential nominee and 2008 presidential candidate), her relationship with her children and her battle with breast cancer. Edwards even wrote two best-selling books about her life and struggles and spoke frequently with the media. As the *Washington Post* said, "Elizabeth Edwards lived her private pain on a public stage." In contrast, she kept her testamentary wishes quite private.

Edwards signed her will on Dec. 1, 2010, only six days before her death. It contained typical provisions concerning payment of debts, funeral expenses, expenses of last illness and costs of administration, estate and inheritance taxes. She appointed her 28 year-old daughter Catharine as executor. She also appointed Catharine as the guardian of her two young children if Edwards was the "surviving parent." She gave certain tangible personal property and other "personal effects" to her children.

The balance of her estate was distributed to "a certain Revocable Declaration of Trust entered into by me as grantor and trustee dated December 2, 1992, but amended and restated prior to the execution of this will." In short, Edwards executed a pour-over will, leaving the balance of her estate to a pre-existing revocable trust. To the best of my knowledge, the contents of the revocable trust haven't been disclosed, so we don't know the beneficiaries of that trust.

Questions Remain

We're left with a number of questions. Edwards signed the will less than one week before she died. Did she have the testamentary capacity to sign a will at that point? The typewritten version of the will had an October execution date. However, the notary public who acknowledged Edwards' and the witnesses' signatures crossed out the October date and wrote in the execution date as Dec. 1, 2010. Does this have any impact on the validity of the will or otherwise tell us anything about Edwards' capacity?

Apparently, Edwards was still legally married to John when she died. Will John make a claim for an elective share of her estate? North Carolina law gives a surviving spouse six months after the will is admitted to probate to file such a claim.

Was the revocable trust amended at the same time that Edwards signed the will? The will recites that the trust was amended and restated but doesn't indicate when this occurred. Did Edwards transfer assets into the revocable trust prior to her death?

Did Edwards intend to name her daughter as guardian under all circumstances or only if John predeceased

her? The language of the guardianship provision isn't entirely clear on this point, although it doesn't name John. While I don't practice law in North Carolina, my understanding is that North Carolina law doesn't permit a parent to cut off the parental rights of an estranged or ex-spouse by naming someone else as guardian in a will. While we know little about the disposition of Edwards' assets, in the aftermath of her death we've learned something about the media and its understanding—or its lack thereof—of the law of wills and trusts. Several published reports from mainstream media outlets stated that Edwards had left everything to her three children and nothing to John. Those reports misread the disposition of her "personal effects" in the will and incorrectly concluded that this provision bequeathed all of her assets to her children. Of course, since her revocable trust is her primary dispositive document and that document remains private, there's no way to know whether she left anything to John, if she left assets outright to her children or in trust or whether she left anything to her siblings, charity or others.

Unless there's litigation or an unexpected revelation, Edwards' testamentary wishes will remain as private as her life had been public.