

The New Bride



Dick Adams

By Dick Adams
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I confess, several times I rued the day I said “yes” to Dan Smith. He was likeable, told a good story and I believed him. His father had just died at age 91. He wanted to sue his stepmom for interfering with his inheritance. His father had been married to Genevieve M. Smith for 15 years, a long time in undue influence cases.

Dan and his sister Abigail were raised in a privileged household in Ukiah, California, children of William Hinkley Adams Smith and his wife Isabella. Bill Smith made a small fortune cutting and milling old growth redwood trees. They were a close family that lived in the same house for decades. They traveled to Asia, Europe and Africa together and collected a house full of antiques and exotic

memorabilia destined to be heirlooms.

Dan’s mother died in 1985 when Bill Smith was 72. Although involved in his kids’ and grandkids’ lives, Bill became lonely as a widower and met Genevieve M. Cheek (born Jacobsen, then Fye) in 1989. She salvaged his loneliness. She was charming. They married two months later. She was 60. He was 76.

Within the year, Genevieve Smith claimed a slight at an Easter dinner at Dan’s house in Santa Rosa and refused to visit there ever again. The aging Bill travelled to visit his family, but the visits were a challenge for him and his kids. The kids were not welcome at the new Mrs. Smith’s house, the one they’d grown up in. The one built with some of the redwood Bill had milled and filled with mementoes of their lives as a family.

Charlie McPherson, a CPA, owned an investment company in which Bill was heavily invested. Charlie was also Bill’s money manager, his confidant, trustee and friend. McPherson was surprised at how smitten his friend was with his new bride but he welcomed her and continued his excellent relationship with Bill. But only for a while.

A few years into the marriage, Bill wrote notes reflecting mistrust of McPherson. Like McPherson was stealing his money. That Bill was afraid his friend might have a gun, even though

Bill spent his life with guns, had a shooting range in his Ukiah basement and that McPherson was as old as he was.

Genevieve started playing the stock market options game. And losing. Bill was a buy and hold guy but he started directing large cash transfers her way. Bill wanted out of McPherson’s investment company. Bill’s estate plans in Ukiah gradually increased the gifts to Genevieve, but Dan and Abby remained beneficiaries almost ten years into the marriage.

When Bill was 87, with no notice to Dan and Abby, the couple sold the Ukiah family home and moved to Oregon. Dan hired a private investigator to locate them. A Grants Pass lawyer prepared a new will for Bill which disinherited his kids and left everything to Genevieve.

Dan and Abby learned of their father’s last illness but never saw him again. Genevieve was appointed personal representative of Bill’s estate and that will was admitted to probate.

The law

In undue influence cases, the burden of proof shifts with a “confidential relationship” plus “suspicious circumstances.” *In re Reddaway’s Estate*, 214 Or 410 (1958). Suspicious circumstances are:

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procurement, lack of independent advice, secrecy and haste, change in the decedent's attitude toward others, change in the testator's plan of disposing of his or her property, unnatural or unjust gifts, and the donor's susceptibility to influence. I believed the *Reddaway* factors would favor us.

I also knew we could state a tort claim against Genevieve. Oregon had recently recognized the tort of intentional interference with an inheritance/economic relations. *Allen v. Hall*, 328 Or 276 (1999). I was intrigued with trying a first impression tort claim to a jury. We could try the will contest to the court at the same time.

Taking the case

Most will contest cases against a widow involve short term marriages to persons in ill health and advanced age. One theme of elder law litigation is the

power a caregiver has on an aging dependent. When all that's left are the desires for food, a soft bed and perhaps companionship, threats of withholding those are powerful. It's in that shrunken world undue influence often happens.

But I balked at the long-term marriage. The financial transactions and estate plans favoring the new wife spanned a decade, some while Bill was in excellent health.

Many memorable cases begin with a sense of adventure, curiosity or ambition. All those motivated me. But I had questions. Did I have the experience? Did I have the skill? Did I have the resources? Did I have the guts? Even at first blush this case looked to be a major challenge, in the midst of my already busy practice. My curiosity and sense of adventure outweighed my concerns. I told Dan Smith I would help him sue his step-mother.

I didn't know then that my assistant of many years would be moving to San

Diego. Nor did I know I would recklessly tell her she was irreplaceable and that I would not replace her. I did not know I would be facing a team of lawyers whose budget from Genevieve appeared unlimited and that the paper chase would involve rooms full of financial records spanning decades. Nor did I know Bill's last known brokers and critical witnesses were in Boca Raton, a place I just knew was a long way away. I also did not know that for the first time ever before or since, I would start to have thoughts that the defendant I'm suing may be capable of violence to protect her gains. I later learned Genevieve M. Smith had a past involving Jim Jones and the People's Temple.

Discovery

Will contest cases begin with the file of the drafting lawyer, in this case, a surly man. The lawyer told me Bill was competent and not acting under any undue influence. (Which is apparently a common thread in estate cases. The original lawyer often resents anyone suggesting his or her client signed a will while incompetent or under someone else's influence.) I recently found a note to the file I made after talking to this lawyer: "He said we're going to lose our case big time and the bad guy is McPherson who is probably ripping off our client, too."

Lucky for us, the greed of Genevieve led her to sue McPherson, but only after dementia made him unhelpful. As the personal representative of Bill's estate, she claimed she was just carrying out Bill's wishes. It was always Bill's idea. Moving to Oregon. Florida brokers. Burning the family cards and letters.

Because Genevieve sued McPherson, I shared a common enemy with first rate lawyers in San Francisco. McPherson's son Mike, his business successor, knew the Smith family well and was an able ally. He was familiar with the Smith family finances. He could do a forensic accounting and provide affordable (i.e.

free!) expert testimony in support of our damage claim.

He distilled many years of financial history and estate planning into a clear picture of what Dan and Abby would have but for Genevieve's interference.

We had discovery depositions in San Francisco, Ukiah, Grants Pass, Seattle, Everett and Boca Raton. As in most estate contest cases, what's critical is testimony from witnesses of the interaction between the influencer and the influenced. Finding those witnesses was difficult because of Genevieve's deception and skill in covering her tracks. By her account, she and Bill had many best friends in Ukiah, Grants Pass and Florida. She claimed Bill was never isolated. But she was unable to provide the name of even one person who got to know Bill after leaving Ukiah, other than the doctors, lawyers, brokers and care givers.

But, we were lucky to find some gems. One witness was a neighbor who appeared by serendipity. He was a counselor-type who knew a healthy relationship. He was disgusted when Genevieve yelled at Bill over his pace of getting out of a car. Bill's medical record of progressive illness showed how sick he was. The nursing home chart had comments about Bill possibly leaving against medical advice. Employees of Royale Gardens Nursing Home remembered Bill and Genevieve. And the lawyers' and brokers' files had the reasons why Bill would disinherit his two children. These anecdotes framed a story of rapacious, controlling and personality-disordered behavior by our defendant.

Not a gold digger

Genevieve claimed she didn't need Bill's money because she had her own. She wasn't a gold digger. She testified she amassed a good sum exploring farm steads in Wisconsin with a metal detector with her father when she was young. She carried that large sum of cash in five pickle jars when she headed west many

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years before meeting Bill.

She also got cash working the flea markets in the Bay Area. She was imprecise as to her stock in trade. She seemed to claim she was selling goods she acquired from various storage facilities while providing home care services.

An ominous turn

I got a call from San Francisco with the word that Genevieve had been tied to the People's Temple. I was old enough to know the significance to our case. Jim Jones was a charismatic leader of a cult in the 70s that relocated many of its adherents to Guyana. At a mass gathering, followers were encouraged to drink a potion containing cyanide and over 900 of the Jonestown faithful perished. This event is noteworthy for burning into the popular lexicon the phrase "drink the Kool-Aid." California Congressman Leo Ryan traveled to Guyana on a factfinding trip and was assassinated on a runway near the compound.

Genevieve Smith sent her 17-year-old daughter Kimberly Ann Fye to South America with the reverend Jim Jones. Genevieve testified she stayed behind in the Bay Area. In my opinion, we found the source of her flea market goods. Her name is on a lawsuit against the People's Temple for the death of her daughter. It's also worth noting the People's Temple had a temple in the Ukiah area. I don't think anyone believed Genevieve ever confessed her former life to Bill. I did, on occasion, wonder what all she might be capable of.

Our case

I thought Genevieve's past related powerfully with the undue influence factors and our expert's expected testimony. I wanted to tell the jury of the People's Temple and argue its cult environment showed Genevieve how to take control of Bill's life. Through her isolation of him, and substituting herself for

his former network of friends and family, she became the Jim Jones who could meet his needs.

But the judge wasn't buying it. We couldn't talk about cults or the People's Temple. But we could talk about how influence becomes undue, which our expert was prepared to do. That would include:

- Isolation from family and social contact while the influencer plays the role of protector.
- An influencer with a history of multiple unstable relationships.
- An embellishment of credentials.
- An influencer who is psychologically dysfunctional/antisocial with little regard for rights of others.
- An influencer who gains control over finances by deceit, intimidation and psychological abuse.

After getting lucky in discovery, I was ready for trial, even without the People's Temple. Getting through this mass of minutiae was going to take a while. I didn't relish trying a month long case by myself with no legal assistant. I would need a stack of yellow legal pads. I've climbed a few Pacific Northwest volcanoes, and I knew what leads to success is just plain stubbornness. One foot in front of the other.

I also knew Dan and Abby were delightful, truth-telling clients. We were out to hold a black widow accountable.

Voir dire

Two competing ideas dominated *voir dire*: the right of a senior to choose to disinherit his children and that heirlooms go with family. The theme of the missing Smith family collectibles was powerful. Genevieve had no explanation for where they went, other than it was Bill's idea to get rid of them. I believed she did with them just what she likely did with the property of the deceased People's Temple believers. Which was sad. The defense had no interest in settlement discussions, but I think Dan and Abby may have been happy with just those keepsakes of the

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lives lived with their parents. I believe the jury was incensed that Dan and Abby did not end up with the treasured contents of the Smith family home.

Theme of the case

Genevieve's history was littered with severed relationships, and we used that as our theme at trial. In opening, I detailed first the Jacobsen family and then the Smith family. Using my high tech two sheets of butcher paper I told the story of the Jacobsen family from Wisconsin, parents, siblings, children, and then the Smith family from Ukiah, writing their names in a family tree. I then added the friends. With a red marker, I crossed off the names as I explained the severed relationships. Genevieve's five siblings. Genevieve's children. She claimed her favorite sibling was Henry, who testified he hadn't seen or heard from his sister in 30 years. "She just disappeared."

Once she entered the Smith family, Bill's relationships seemed to end. Dan and Abby. His grandchildren Jenn and Josh. His step-grandchildren and son in law John. Charlie and Mike McPherson. Then the many Ukiah friends and professionals of decades.

Three weeks in, Genevieve called an unannounced surprise witness, a cop from Ukiah. He'd gotten to know Bill and Genevieve through community policing. Bill told him of his excitement about moving to Oregon where he could go hunting again. They were a loving couple and Genevieve provided excellent care. They promised they'd report back to him about their new life in Oregon. My last question on cross confirmed he

never heard from them again.

According to Genevieve, Bill so wanted to distance himself from his friends and family that he burned his boxes of cards and letters, in a barrel, by himself, at almost 90 years of age, walking with a cane, on their Applegate Valley acreage. That was a good visual.

The severed relationships theme tied together the testimony of almost every witness.

Wedge issues

In estate contests, the reasons for disinheritance play out. Was the decision the product of the new wife's influence or was it motivated by disappointment in the kids? A careful will writer will document those reasons. The deeper we dug, the more the reasons. Some of the reasons for the disinheritance showed up in the lawyer's and brokers' files. Genevieve's fingerprints were all over them.

Bill was upset about Dan's failed business ventures in the 70s to which Bill added capital. Dan's later long career at the post office, a better fit for him, didn't count. And Dan tried drugs in 1970s Ukiah. Abby drank too much. They were unruly and had no respect for their parents. They were profligate spendthrifts who had abused their life of luxury. Genevieve, on the other hand, had to work for her money.

On another note, the lawyer and brokers learned Dan and Abby were adopted! As infants. How dare they claim Smith family heritage?

The defense expert

As luck would have it, the defense promised in opening that Dr. Raffle, a world renowned expert on undue influence from San Francisco, would testify there was none. A few days before calling him, the lawyers for Genevieve told the court she would be absent for two days for medical reasons. Her absence was about to become more conspicuous. The day she returned, the defense called Dr. Raffle who said he had just completed a

two day evaluation of Genevieve. He found no undue influence. Genevieve is not that type. She has no history of involvement with brainwashing or cult-like behavior. What luck. I couldn't say the word, but he did!

Conveniently, there was a calendar on the wall to the right of the witness. From that visual aid, I could point out to the jury that the opening statement was August 2nd when the defense told the jury the expert's opinion. But it wasn't until two weeks later, when he met with Genevieve for the essential forensic interview.

When I took a peek at his file, I added up the hours he'd recorded. After learning his hourly rate, I asked him, "so you're in the case for about \$70,000 so far?" The question drew audible gasps from jurors. His response: "I think it's closer to \$76,000." My forensic psychiatrist from Medford could not have charged more than \$2,500. That day the wind seemed to shift. An acquaintance overheard an angry Genevieve telling her lawyers outside the courthouse, "he certainly didn't do us much good."

After renewing our motion *in limine* to allow evidence of the defendant's People's Temple connection, the judge did open the door a little, allowing us to prove she had been separated from her daughter for a year and a half before her death with a religious-like organization.

I've tried PI jury cases in a day. Most are two to three days. Some trials go a week or two. Very long trials, for me, have gone three weeks, but I always had co-counsel. I was unaccustomed to spending every work day of the week for a month trudging off to the same courtroom alone, facing the same combative lawyers, looking at the same jurors whose lives were being disrupted by my clients' claims. And wearing the same court room costume, repeating the cycle every fourth day, in the heat of summer in Josephine County. At home, Gwen put up with a kitchen counter painted with yellow sticky notes for summation that today I'd put in One Note or some other

computer vessel.

The verdict

On the 31st day of August, after several hours of deliberation, the jury returned a verdict of \$3.5 million. That would have been a record in Josephine County but for the fact that my prayer was only \$1.5 million. By all known accounts, this was the longest civil trial in Josephine County history. By report, it was the first verdict under *Allen v. Hall*. After the verdict, the judge set aside the Grants Pass will due to undue influence, removed Genevieve and appointed Dan as personal representative.

Aftermath

We knew collection was a problem, and we were likely facing an appeal as Genevieve engaged appellate counsel to weigh in on the form of judgment. We knew she still had money but it could be anywhere. On a lark, just after judgment entered, I ran a garnishment on the only local bank I thought Genevieve may have stashed a little cash. A few days later we got a check for \$250,000. That ended the appeal and Genevieve disappeared again. To my knowledge, the rest of the judgment remains uncollected.

As the new PR, Dan filed suit against the estate's former lawyers who filed and lost the suit against McPherson. That case was settled.

I will always have good memories of Dan and Abby who are two of the most delightful clients I've had the pleasure to represent.

Dick Adams operates Rogue Law Firm PC in Grants Pass along with his son, Tom Adams in Portland. He handles plaintiff personal injury, workers' compensation and general civil litigation throughout Southern Oregon. He contributes to the OTLA Guardians of Civil Justice at the Guardians Club level. His office is located at 600 NW Fifth St., Grants Pass, OR 97526. He can be reached at rda@roguelawfirm.com or 541-476-2110.