

SECOND MARRIAGES: PLANNING A DISASTER—CASE SUMMARY (ELLSWORTH V. HUFFSTATLER)

Second marriages and children from first marriages always pose a serious challenge in estate planning. The Ellsworth case proves this point. [Ellsworth v Huffstatler \(2016\)](#).

When Elmer Ellsworth and Barbara May married around 1991, they each had children from their first marriages. Together, Elmer and Barbara created a trust. The Trust indicated that upon the death of the second spouse, their children would each receive an inheritance. Elmer also executed a will which left all of his "personal property" to Barbara. Unfortunately, the will said that the term "personal property" would be "hereinafter defined," but it was not.

When Elmer died twelve years later in 2003, his children were of course interested that their inheritance be preserved. They were not only interested in division of the major assets, but in division of Elmer's collection of gold and silver coins, part of Elmer's "personal property." Barbara held onto the coins until they were eventually placed in a bank safety deposit box.

Elmer's children were patient until about 2012, when Barbara suffered a fall, and her physical and mental health declined. During this time, Barbara relied a great deal on her daughter, Terry, who helped her mother with medical visits to the doctor and also took her mother to see Barbara's estate planning attorney who suggested Barbara sign an updated general power of attorney authorizing Terry to act for Barbara in her personal affairs.

Elmer's son, Mark, was concerned regarding Barbara's declining health and reliance on Terry. Mark asked that Barbara resign as the trustee of the 1991 trust, and appoint a member of Elmer's family and Barbara's family as co-trustees.

This hurt Barbara's feelings because she wanted to continue to make decisions on her own. Before visiting her estate planning attorney again in 2013, Barbara visited her doctor, to confirm that she was competent to make decisions. The doctor said that Barbara suffered from confusion but overall could be an active participant in her own care.

Barbara then met with her estate planning attorney. She requested and signed new estate planning documents. In this planning and signing of new documents, Barbara ensured the coins would be disposed of pursuant to the terms of her new trust, the 2013 trust. In the new trust, Barbara named her children as the only beneficiaries of the entire Ellsworth estate. Barbara passed away a few months later. At the time of her death, she was suffering from advanced dementia.

Elmer's children sued. They accused Terry of exercising undue influence over her mother to disinherit them, Elmer's children. Elmer's children sought half of the estate as well as the coins because Elmer's will never defined "Personal Property" and therefore his

children, as heirs, should receive the coins because they could not be wrapped up in the generic term "Personal Property."

The court decided that the term "Personal Property" was a common, legal term and did not need to be specifically defined, no matter what his will said. The court also decided that Terry did not overpower her mother to the extent of taking away her willpower to do what she wanted in her estate planning, which is required before a court will find undue influence. The court found that the estate plan reflected Barbara's own wishes and hurt feelings and not efforts by Terry to exert controlling influence and force Barbara to disinherit Elmer's children and turn over everything to Barbara's side of the family.

See [Ellsworth v Huffstatler](#), 385 P.3d 737 (Utah App. 2016).

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See our analysis of this case in our blog titled: "[AN UNWISE FATHER, GREEDY WIFE, AND BAD ATTORNEY.](#)"