THE SUFFOLK LAWYER
THE OFFICIAL PUBLICATION OF THE SUFFOLK COUNTY BAR ASSOCIATION
DEDICATED TO LEGAL EXCELLENCE SINCE 1908
website: www.scba.org
Vol. 28 No 3
November 2012

Standing of "Potential Heirs" to Sue for their Parents' Assets

By Robert M. Harper

Oftentimes estate litigation arises when parents favor one or more of their children over others in their estate plans. Fortunately, at least for the parents, they do not have to deal with the issues involved in the litigation, as they are deceased by the time that it arises. As the Second Department's decision in *Sharrow v. Sheridan* demonstrates, however, disfavored children do not always wait for their parents to pass before commencing litigation concerning the parents' assets. Indeed, some disfavored children have gone so far as to sue their parents and siblings as "potential heirs" of the parents' estates. This article explains why such a strategy will prove unsuccessful.

In *Sharrow*, the plaintiff commenced an action against his mother and his sister, seeking to impose a constructive trust on certain assets that the mother transferred to the sister.[1] The plaintiff alleged that a constructive trust was warranted because the sister exercised duress and undue influence on the ailing mother in pressuring her to transfer the assets to the sister. When the mother and sister moved to dismiss the plaintiff's complaint, the plaintiff asserted that he had standing to seek a constructive trust over the assets formerly belonging to his mother as a "potential heir" of her estate.

The Supreme Court granted the defendants' motions to dismiss and the Appellate Division affirmed. In affirming, the Second Department found that the plaintiff lacked standing to seek to impose a constructive trust on the assets that his mother transferred to his sister. As the court explained, for as long as she was alive, the mother had "the absolute right to change her intentions regarding the distribution of her assets." Accordingly, the court concluded that the plaintiff's interest as a "potential heir" of his mother's estate was a "potential, speculative interest" that did not vest him with standing to prosecute a constructive trust claim concerning his mother's former assets.

Of course, *Sharrow* is not the only case in which a child sought to void an inter vivos transfer made by a parent as a potential heir of the parent's estate. In *Schneider v. David*, the plaintiff commenced an action to impose a constructive trust on real property that her mother transferred to her brother.[2] Among other things, the plaintiff alleged that her brother had fraudulently induced their elderly mother to convey the properly to him by telling the mother that the deed she signed only permitted him to manage the property while she was out-of-state. The defendant moved to dismiss, arguing – with his mother's support – that the plaintiff lacked standing to seek a constructive trust.

Although the Supreme Court denied the defendant's motion, the First Department reversed. The Appellate Division reasoned that the plaintiff was not a party to her mother's conveyance of the property and could not void it simply because she considered herself to be an heir of her living mother's estate. In short, the plaintiff's self-serving description of herself as a potential heir of her mother's estate did not cloak her with standing to sue or exercise rights on her mother's behalf.

There are several lessons to take away from *Sharrow* and *Schneider*, the most obvious of which is for children to respect the wishes of their parents as those wishes relate to the parents' assets during life. Putting the obvious aside, however, disfavored children and their attorneys should take note of the well-reasoned legal principle that, as "potential heirs" of their parents' estates, they lack standing to take legal action concerning their parents' assets. During their lives, the assets belong to the parents and are subject to the parents' absolute right to dispose of their property as they wish.

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1. *Sharrow v. Sheridan*, 91 A.D.3d 940 (2d Dep't 2012).
2. *Schneider v. David*, 169 A.D.2d 506 (1st Dep't 1991).