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Wye Trust
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Find the beneficiary

Sometimes determining who is a proper beneficiary can be a challenge, as two recent cases illustrate.

Case one. Dale Ackers' 1993 will left half of his estate to his son, Gary, outright, and the balance to a trust for the benefit of his son, Larry. Larry was the sole lifetime trust beneficiary, and at his death the corpus would pass to Larry's then-living descendants per stirpes and not per capita.

Although this may sound like a routine trust provision, Larry's life circumstances turned out to be anything but routine. He had three children, but he gave up his parental rights as to two of them, and they were adopted into other families. One of those has since had two children of her own.

Larry wanted to enter into negotiations with the trust remaindermen with an eye toward terminating the trust. The problem is, who are the remainder beneficiaries? Larry wanted to exclude the children adopted by other families and any of their descendants. He filed a petition for declaratory relief to determine the remaindermen, and the trustee resisted. The question is not ripe for review, the lower court held, and the appellate court later affirmed. Members of the class gift cannot be determined until Larry's death.

Case Two. Theodore's June 2012 will left his multimillion-dollar estate to his life partner, Velma, if she survived him, or to the St. Jude Research Hospital if she predeceased him, which she did. The estate planning attorney kept the original of that will. An October 2012 will was executed changing only the nominee for executor of the estate. Theodore kept this original himself, as well as a copy of it.
Both wills explicitly disinherited Chip, Theodore's long-estranged son. He specifically asked his estate planner to not get in touch with Chip.

As Theodore's health declined, he was eventually moved into a nursing home, and a guardian was appointed for him. His papers were boxed up and followed him. After Theodore died, the guardian was unable to locate the original October 2012 will. She speculated that Theodore had destroyed it and recommended to the probate court that the estate pass to Chip. When the estate planning attorney learned of this development, she contacted the probate court and St. Jude's to inform them of the existence of the earlier wills. The probate and appellate courts held that the statutory requirements for proving a lost will had not been met.

The Supreme Court of Nevada reversed. Although the original October 2012 will could not be found, it continued to have legal existence until there was proof of its destruction by the testator, which was not here provided. The statute requires that two witnesses have knowledge of the terms of the will, and in this case one witness only could confirm the testator's signature, not the terms. Because the terms of the will were uncontested, failing to probate the lost will in this situation "would create an absurd result of putting an unnecessary and onerous.