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The lost will

It's important to have a will, but it's just as important to take steps so that the will is available to heirs after death. Otherwise, it will be ineffective, and the estate will pass by intestacy. Here's an example of the problems that may arise.

Theodore's June 2012 will left his multi-million 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. But the terms of the will were uncontested, and failing to probate the lost will in this situation "would create an absurd result of putting an unnecessary and onerous burden on the second witness."

In this case, Theodore's wishes ultimately were respected, and it's not entirely clear what he should have done differently. But those wishes were respected only after much delay and incurring attorneys' fees.

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