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Law, love & MARRIAGE

Husband, wife team litigate bellwether case involving 'predatory marriages'

COVERSTORY

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By ADINA GENN

Brothers Harvey and Joel Berk, as their attorneys tell it, were headed to the funeral home. It was 2006, and their 100-year-old father had just died. In the car, their dad's caretaker revealed she had married their father, Irving Berk.

The caretaker, Hua Wang, who is known as Judy, told the siblings that she and their father married in the last year, the attorneys said. According to court documents, she was nearly 48 when they married, while Irving Berk was 99. And as his spouse, she told the brothers, her name belonged on the death certificate, according to the attorneys.

"She'd kept it a secret from the family, his medical providers – anyone you'd expect to know," said John Farinacci, a partner at Uniondale-based law firm, Ruskin Moscou Faltischek, Farinacci, and his wife Jessica Baquet, a partner at the Garden City-based law firm Jaspian Schlesinger, represent the brothers.

And while the brothers claimed their father was mentally incapacitated, Wang maintained that was not the case.

"Ms. Wang deeply loved and cared for Mr. Berk and spent all her time with him," her attorney, Jordan Weitberg, a principal of the law firm Bressler Amery Ross, told the New York Law Journal.

As Irving Berk's spouse, Wang filed the right to take a third of the estate.

But Berk, the founder of the Berk Trade and Business School in New York, had never changed his will to provide an inheritance for Wang, Farinacci and Baquet said.

And while court documents show that Wang maintained over the years that Berk was "fully capable of entering into a marriage at the time of his nuptials with her," the co-executors say their father suffered from dementia.

After a 37-day trial, Acting Brooklyn Surrogate Judge John Ingram deemed in his June 2018 ruling that it was "impossible to believe" that Wang did not know of Berk's "diminished mental incapacity," especially given the "significant" amount of time she spent with him, and the number of doctors' visits and hospitalizations.

A growing demand

The decision comes at a time of growing demand for caregivers as the population ages, experts said. The number of Americans ages 65 and older is expected to more than double to more than 98 million in 2060, according to the Population Reference Bureau, a nonprofit research group in Washington.

It's a case that trust and estate attorneys in New York State have followed in the media for more than a decade.

Over the course of that time, Farinacci and Baquet would work on the case together, first at one law firm, and then at separate firms. They grew close, ultimately marrying.

The legal battle marked the first to apply new tests created by New York's appellate courts, and the decision is considered a bellwether of change for the courts in the way they handle elder exploitation – an area that may become more prevalent, experts said.

"People are living longer and increasingly need to rely on others for care," Farinacci said. "There will always be people who exploit the situation," noting that inheritances could be at stake.

The law "didn't intend for a spouse like Judy, if she in fact committed wrong doing, to get one third of an elderly man's estate because she was cunning enough to marry him," Baquet said.

Wang had immigrated to the United States in 1996 from China, where she worked as an ophthalmologist at a hospital, records show. A year later she was hired as a live-in caretaker for Berk, who at the time was 91.

Berk first arrived in the United States in 1940, an immigrant from Romania.

He built up an estate worth \$5 million, according to published reports. His accredited school provides training for plumbers, electricians, car mechanics and secretaries. But Berk became mentally incapacitated, ultimately needing care.

2008 ruling

After Berk died, Wang asserted her

'People are living longer and increasingly need to rely on others for care.'

rights under a New York law that entitles a deceased person's spouse to one-third of the estate despite what the will says.

The brothers claimed that Wang should not be permitted to inherit because she influenced their father to marry her when he was mentally incapacitated.

By 2008, then Brooklyn Surrogate Judge Diana Johnson initially ruled in favor of Wang, as a technical matter, holding: "While this may appear incongruous and seemingly invite a plethora of surreptitious 'deathbed marriages' as a means of obtaining one-third of a decedent's estate immune from challenge, this is simply the state of the law."

The brothers appealed in 2010 and, in a landmark decision, the appellate court held for the first time that a surviving spouse could be disqualified from inheriting in this kind of case if a certain test was met. The appellate court sent the case back to the Surrogate's Court for a trial as to whether Berk had truly been mentally incapacitated and whether Wang married him anyway for financial gain.

Wang's legal team includes Benjamin Xue of Xue & Associates, a New York law firm, and Randall Eng, of counsel at Meyer Suozzi, English & Klein in Garden City, and a retired presiding justice of the Appellate Division, Second Department.

The case was primed for trial in 2015 when Johnson issued an order indicat-

ing that she would not disqualify Wang even if the co-executors proved that the marriage had been the result of undue influence, which is distinct from mental capacity. The co-executors appealed and won and the case was sent back to the Surrogate's Court for trial.

In his 2018 decision, Ingram said that the record was "replete with credible evidence" that Berk "suffered from both physical and mental impairments."

Dismayed at Ingram's ruling, Weitberg told the New York Law Journal that Wang's legal team would appeal it.

Husband-and-wife attorneys

Both Baquet and Farinacci initially worked at Jaspian Schlesinger, where the Berk siblings were clients. In 2011, Farinacci moved to Ruskin Moscou and the Berk brothers kept both firms as counsel so that Farinacci and Baquet would continue to represent them.

That co-counsel arrangement is not necessarily uncommon – especially with big cases, Farinacci said.

The two firms "operate in the same market," he said. "You can say we're competitors, but both of us had full backing of the firms to do this together in an extremely cooperative way. Your duty is to your client."

With the case tried in Brooklyn, Baquet and Farinacci, who live on Long Island, spent most nights of the trial in a hotel across from the courthouse. During the week, Baquet's mother watched the couple's children. The family was together on weekends.

The hotel staff got to know Baquet and Farinacci. And the judge and opposing counsel knew they were married.

"We didn't want to appear we were hiding it," Farinacci said.

They lived and breathed the trial, sharing ideas in the middle of the night, playing on each other's strengths in the courtroom.

It was an intense several months – time they'll always remember.

"We learned a lot from each other," Baquet said.