



WILLS

Jury Enforces Will of J. Howard Marshall II; Anna Nicole Smith Poured Out

VERDICT **\$30,580,500**

CASE In the Estate of J. Howard Marshall II, Deceased; J. Howard Marshall III, et al. v. Robert S. MacIntyre, et al.

COURT Harris County Probate Court No. 2, TX
JUDGE Mike Wood
DATE 10/02/2000

PLAINTIFF
ATTORNEY(S) **John Chapoton;** Cunningham, Darlow, Zook & Chapoton, L.L.P.; Houston, TX,
Tom Cunningham; Cunningham, Darlow, Zook & Chapoton, L.L.P.; Houston, TX,
William Harnett; the Harnett Law Firm; Dallas, TX
Jack Lawter; Lawter & Lawter; Houston, TX
Kalli O'Malley; Cunningham, Darlow, Zook & Chapoton, L.L.P.; Houston, TX,
John Powell; Cunningham, Darlow, Zook & Chapoton, L.L.P.; Houston, TX,
Richard Zook; Cunningham, Darlow, Zook & Chapoton, L.L.P.; Houston, TX,

DEFENSE
ATTORNEY(S) **Don Jackson;** Ware, Snow, Fogel & Jackson; Houston, TX
Jeff Chambers; the Chambers Law Firm; Houston, TX
B. Lee Ware; Ware, Snow, Fogel & Jackson; Houston, TX
Don Fogel; Ware, Snow, Fogel & Jackson; Houston, TX
Robert S MacIntyre Jr.; Thompson & Knight; Houston, TX
Rusty Hardin; Rusty Hardin & Associates, P.C.; Houston, TX

INJURIES/DAMAGES A jury found that the entire fortune of deceased billionaire oilman J. Howard Marshall II belongs to his son E. Pierce Marshall; found that decedent did not promise half his property to his widow, Anna Nicole Smith; and awarded E. Pierce Marshall, his family, and other defendants over \$28 million in damages against the decedent's other son, J. Howard Marshall III. Shortly after his father's death in 1995, E. Pierce Marshall (Pierce) filed for probate of his father's Last Will and Testament; the will was dated Dec. 22, 1992. The will and living trust left all of decedent's property to Pierce and specified that decedent's other son, J. Howard Marshall III, should receive nothing. J. Howard Marshall III contested, alleging that on Dec. 2, 1980, he and his father

entered into an oral contract under which he and Pierce would receive equal shares of their father's property upon his death. He maintained that Pierce and two of their father's accountants, Finley Hilliard and Ken Farrar, (1) tortiously interfered with his right to half of decedent's property; (2) conspired to exercise undue influence over decedent; and (3) pressured decedent to leave him, J. Howard Marshall III, out of the will. He also claimed that when the 1992 will was executed his father lacked testamentary capacity. He also sued Pierce's wife and two sons, Marshall Museum and Library Trust, and three Bettye B. Marshall Trusts, because they had received property from decedent over the years. Decedent's widow, Vicki Lynn Marshall, better known as Anna Nicole Smith, a mother and former stripper who gained international fame as a Playboy model, also contested, claiming that decedent had promised her, in private, half of everything he owned. She also alleged that the men who conspired against her stepson also conspired to deprive her of her right to half of decedent's property. Defendants asserted that after Dec. 2, 1980, J. Howard Marshall III waived his rights, if any, in decedent's property; that he was estopped from asserting his claims against Pierce and the estate; that he unreasonably delayed in asserting those claims; and that he acted with unclean hands. Pierce, his family, and the trusts filed counterclaims alleging tortious interference by Smith and J. Howard Marshall III. The Bettye B. Marshall Trusts also alleged J. Howard Marshall III had defrauded them in a securities transaction. J. Howard Marshall III contended that the Bettye B. Marshall Trusts unreasonably delayed in asserting their claims. Decedent's fortune was valued by Pierce's experts at \$40 million to \$60 million, by J. Howard Marshall III's experts at \$800 million to \$900 million, and by Smith's experts at \$1.6 billion. Robert S. MacIntyre Jr. was appointed Temporary Administrator of the estate. In January 2001, after obtaining a \$475 million judgment in California, Smith non-suited her claims in this suit. Due to the counterclaims against her, however, she remained in the suit.

J. Howard Marshall III sought half of his father's property and denial of Pierce's probate application. E. Pierce Marshall sought to probate the will, which would have given him alone all of his father's property. He also sought actual pecuniary loss, consequential loss, and emotional distress, as well as punitive damages. Elaine Marshall, Preston Marshall, and E. Pierce Marshall Jr. (Pierce's wife and sons respectively) sought actual pecuniary loss, consequential loss, and emotional distress, as well as punitive damages. The Bettye B. Marshall Trusts sought actual pecuniary loss and consequential loss for fraud and securities fraud, as well as punitive damages. Marshall Museum and Library Trust sought damages for actual pecuniary loss and consequential loss, as well as punitive damages.

The court also admitted the records of several of decedent's treaters. Not all of the attorneys agree, however, which party offered each doctor's records. Records of the following doctors, among others, were admitted:

Joel Reed, M.D., pulmonology, Houston, decedent's treater James Gray, M.D., retired, Houston, decedent's treater Mike Gordon, M.D., cardiology, Houston, decedent's treater Theodore Pearlman, M.D.,

psychiatry, Houston, court-appointed psychiatrist Lloyd Sponsel, M.D., urology, Houston, decedent's treator

In 1996, Smith filed bankruptcy in California. In the bankruptcy court, Pierce brought what amounted to a defamation claim against her, and her counterclaim alleged that she was bankrupt because Pierce had tortiously interfered with her inheritance. The bankruptcy court awarded her \$475 million. Pierce's attorneys report that the bankruptcy court's award is not a judgment on the merits, but only a discovery sanction. Pierce's appeal of that award is pending. According to James Hartnett Jr., attorney for J. Howard Marshall III, the attorneys' fees and administrative fees that the jury awarded are to be paid from the estate, if they are to be paid at all. However, according to B. Lee Ware, attorney for E. Pierce Marshall and his family, those fees are to be paid by J. Howard Marshall III. Among decedent's tax and estate planning lawyers had been Harold Sorenson of Foulston & Seifken in Wichita, KS and Edwin Hunter. J. Howard Marshall III named both men, as well as Sorenson's firm, as defendants and alleged they conspired against him. Vicki claimed Mr. Hunter, but not Mr. Sorenson or his firm, also conspired against her. By the time of trial, Mr. Hunter had settled out of the case. He was represented by Billy Shepherd of Cruse, Scott, Henderson & Allen, L.L.P., Houston. Mr. Sorenson and his firm obtained a directed verdict at the close of plaintiffs' case. They were represented by David Beck of Beck, Redden & Secrest, Houston. Every day of the trial, the parties chipped in to pay each juror an extra \$38 and to buy lunch for the jury. Attorney Jim Hartnett Jr. comments that the jury was the most cheerful, punctual one he had ever seen. William Hartnett, counsel for J. Howard Marshall III, is a member of the state House of Representatives (R-Dallas). Smith came to Houston from Mexia (south of Dallas) in the late 1980s. She took up stripping to support herself and her son, now 15. In 1991, the decedent saw her dancing in a club and, according to her testimony, she never stripped again. The decedent lavished her with clothes, cars, \$5,000 cash a week, \$2.4 million in jewelry, and three homes. He spent \$6.7 million on her during their relationship. In 1994, at the age of 26, she married the decedent, who was then 89. He died the next year. Smith had a role in Naked Gun 33 1/3. Some information, including that in the two paragraphs immediately above, was obtained from a March 8, 2001 Houston Chronicle article.

VERDICT INFORMATION The jury found that when decedent executed the 1992 will he had testamentary capacity; that he did not execute it as the result of undue influence; that J. Howard Marshall III and his father did not enter into an agreement providing that Pierce and J. Howard Marshall III would be treated equally in their father's estate planning; that Pierce did not tortiously interfere with J. Howard Marshall III's right to inherit from their father; and that Pierce, as well as Finley Hilliard and Ken Farrar, acted in good faith and with just cause in defending the will. The jury also found that J. Howard Marshall III, without just cause or excuse, and with malice, intentionally interfered with the inheritance rights of E. Pierce Marshall, Elaine Marshall, Preston Marshall, E. Pierce Marshall Jr., and Marshall Museum and Library Trust. The jury also found that decedent did not agree to give Vicki Lynn Marshall half of all his property. The jury also found that J. Howard Marshall III committed fraud against and fraudulently concealed his fraud against the Bettye B. Marshall Trusts. However, the jury found that he did not use fraud to sell stock to the trusts. It also found that the trusts did not unreasonably delay in asserting their claims. Finally, the jury found that J. Howard Marshall III waived his rights, if any, in decedent's property; that he was estopped from asserting his claims against Pierce and the estate; that he unreasonably delayed in asserting those claims; and that he acted with unclean hands.

E. PIERCE MARSHALL	\$833,000 attorneys' fees through trial, and \$489,000 attorneys' fees for the entire appellate process. \$5,900,000 for tortious interference. \$6,000,000 punitive damages.
ELAINE MARSHALL	\$200,000 for tortious interference. \$500,000 punitive damages.
PRESTON MARSHALL	\$200,000 for tortious interference. \$200,000 punitive damages.
E. PIERCE MARSHALL JR.	\$200,000 for tortious interference. \$200,000 punitive damages.
MARSHALL MUSEUM AND LIBRARY TRUST	\$5,400,000 for tortious interference. \$3,600,000 punitive damages.
HILLIARD AND FARRAR	\$147,500 attorneys' fees through trial, and \$244,500 attorneys' fees for the entire appellate process.
ROBERT S. MACINTYRE JR.	\$1,200,000 attorneys' fees.
BETTYE B. MARSHALL TRUSTS	\$4,000,000 actual damages for fraud. <u>\$6,000,000 punitive damages for fraud.</u> \$30,580,500 Total Award.
PLAINTIFF EXPERT(S)	R. Hall CPA; financial and estate planning; Dallas, TX Richard Baker M.D.; Houston, TX Charles Gaitz M.D.; Houston, TX Mark Hendry D.C.; Houston, TX Alex Howard; business valuation; Houston, TX Dallas Johnson J.D.; Houston, TX Kent McMahan; estate planning; Houston, TX Alan Westheimer; financial and estate planning; Houston, TX Finley Hilliard; accountant; Lake Charles, LA Edwin Hunter J.D.; Lake Charles, LA John Hale; Phoenix, AZ
DEFENSE EXPERT(S)	Joel Kirkpatrick M.D.; pathology; Houston, TX Michael McCan M.D.; Houston, TX Stanton Moldovan M.D.; Houston, TX Nancy Koonce; finance; Lake Charles, LA Harvey Sorenson J.D.; Wichita, KS