

# Anna Nicole Smith Gets Her Day in Supreme Court

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WASHINGTON — **Anna Nicole Smith** seems to have found some friends in high places — on the U.S. Supreme Court.

At least four of the court's justices were sympathetic to the former Playboy Playmate's argument that the **9th Circuit Court of Appeals** erred in overturning a favorable multimillion-dollar judgment for her from her late husband's estate.

Smith, née **Vickie Lynn Marshall**, has been in a nasty legal battle for more than a decade with her 67-year-old stepson over the fortune of his father, Texas oil tycoon **J. Howard Marshall**. Marshall and Smith, 38, married in 1994 when he was 89 and she was a 26-year-old topless dancer.

As movie-of-the-week as her story may be, the issue at hand — the probate exclusion as applied to jurisdiction of federal courts — is highly technical and would probably be considered dull to most non-legal eagles.

In fact, Tuesday's oral arguments only got exciting when it was time for opposing counsel to present its case. Several justices, most vocally **Stephen Breyer**, seemed skeptical of the argument that Texas law barred a federal court from participating at all in the inheritance dispute.

"Under Texas law, the probate court determines the universe of people with legitimate claims," said G. Eric Brunstad, arguing on behalf of Marshall's son, **E. Pierce Marshall**.

Complicating Smith's case is the fact that J. Howard Marshall did not leave anything to her in his will. But as a California bankruptcy court later found, he instructed his attorneys to create a "catch-all trust" for Smith, which E. Pierce Marshall sabotaged. Breyer was especially disturbed by the "many fraudulent things" E. Pierce Marshall did to keep his father's fortune to himself, including forging documents, according to the bankruptcy court's findings.

Though Smith was initially awarded huge chunks of her late husband's estate, the 9th Circuit later ensured she did not see a dime. In December 2004, the 9th Circuit vacated the judgment of the bankruptcy court because, it said, that court did not have jurisdiction to decide the case.

Those following the case hope the Supreme Court lays down parameters for the probate exception, which has resulted in a messy body of case law among lower courts.

"What they brought was, is it a probate exception, but the scope of [the question] is more narrow than this case would allow," said probate expert Terry Turnipseed on E. Pierce's claims. "The court will clarify the scope of probate exception, and define it in such a way that it's fairly narrow so federal courts will have a fairly broad jurisdiction."

John T. Brooks, a probate attorney and partner at Chicago law firm Foley & Lardner LLP, was pleased to see the high court hear Smith's case.

"Beyond a decision, you may get fairly helpful dicta," Brooks said, noting that the last time the court ruled on the probate exception was 60 years ago, in **Markham v. Allen**. "The court will try to circumscribe the nature of the probate exception, because we've got a lot of decisions pointing in different directions [in lower courts]."

Even if the court declines to narrow the definition of probate exception, Smith stands a good chance of seeing the 9th Circuit's decision reversed and finally receiving some of the money she says she's owed. Kent Richland, her attorney, said that E. Pierce Marshall erroneously based his suits against Smith on jurisdiction arguments.

"This case really has almost nothing to do with probate or probate jurisdiction. This gift was to be carried out during the lifetime of the deceased," Richland said, referring to the trust J. Howard Marshall ordered before his death.

Brooks noted that was the approach the federal courts took in deciding the case. The bankruptcy court cited E. Pierce Marshall's "secret plan" to flout his father's wishes when it awarded Smith \$475 million. A district court later lowered Smith's award to \$88.5 million, but agreed with the bankruptcy court's findings.

"The bankruptcy court's judgment was a sanction for the massive discovery fraud perpetrated by E. Pierce Marshall," Brooks said.

Several justices were quick to jump on that point, since determining the validity of a will or trust — the purpose of probate proceedings — was not the point of contention in Smith's battle.

And even if the claim that states should govern probate proceedings is legitimate, Justice **Ruth Bader Ginsburg** said, the 9th Circuit did not bother to mention the Texas laws cited by E. Pierce Marshall. Criticizing his interpretation of the probate exception as overbroad, she asked, "Shouldn't we make the probate exception as narrow as possible, or just do away with it because it has no statutory basis?"

The Supreme Court unanimously agreed to hear Smith's appeal last fall. Smith found an unlikely ally in the Bush administration, which also argued on her behalf on Tuesday.

"The 9th Circuit foolishly included in their litany of issues that a state court might have exclusive jurisdiction over federal tax issues" associated with probate proceedings, said Turnipseed, a professor at the Syracuse University College of Law. "The United States government might not have gone into this case if but for that."

Probably unnoticed by most of the justices hearing the case was the swarm of cameras, TV reporters and spectators parked outside the courthouse. Photographers ran over each other in a rush to capture the "Naked Gun 3 1/3" star entering such hallowed legal ground Tuesday morning.

But inside, it was mostly just another day at the nation's highest court. Dressed conservatively in a long, black dress, Smith went to great means to avoid causing a distraction, even waiting until after the room had emptied before taking a side exit from the courthouse.

Smith's erratic and often-inappropriate behavior is well documented in the reality show she starred in for the E! Network. An appearance at last summer's **Live 8** concert for poverty awareness prompted a lawsuit by its organizers, who were offended that the "intoxicated" diet pill hawker only jiggled her ample assets during what was meant to be a brief Q&A with reporters.

