

Anna Nicole Smith case sends ripples through probate world

By [Reni Gertner](#) Staff writer

As Anna Nicole Smith's recent win before the U.S. Supreme Court reverberates through the probate universe, experts tell Lawyers USA it's likely to have implications beyond the former Playboy Playmate's fight to collect an \$88 million bankruptcy award.

Traditionally, under the probate exception to federal jurisdiction, federal courts do not have jurisdiction over probate matters.

But the Supreme Court said that Smith could sue her stepson in federal court for tortious interference with her right to receive support from her husband - even though the case involved the probate of her late husband's estate.

While the Court made clear that basic will contests will generally remain the purview of state courts, jurisdiction experts say the case opens the door to fresh attempts to steer some probate litigation into federal court.

"The ruling reduces the presumption of finality and exclusive jurisdiction of the state probate courts, creating an opportunity for far greater litigation" in the sometimes contentious world of probate, said Jonathan Turley, a professor at George Washington University in Washington, D.C. who comments frequently about the Supreme Court.

"The Court has affirmed that you can create a second front in a probate case by declaring bankruptcy."

Terry L. [Turnipseed](#), an estate planning attorney and professor at the Syracuse University College of Law, agreed that the ruling paves the way for a wide range of federal court cases related to probate matters.

After this, "there are very few categories of probate-related cases that cannot be brought in federal court - either bankruptcy or district courts - as long as federal court jurisdiction is otherwise proper," he said.

In the case before the justices, the 9th Circuit had held that the probate exception applied, barring Smith from bringing her tortious interference claim in federal court. As a result of dicta in the opinion which suggested that, if the probate exception kept Smith's tort claim out of federal court, federal tax liens might have to be litigated in state court, the Department of Justice intervened on Smith's behalf.

Now that the Supreme Court has held the other way, "federal tax liens related in some way to probate assets may be pursued in federal court," [Turnipseed](#) said.

In future probate cases, lawyers could threaten to file for bankruptcy in an attempt to encourage settlement.

"There will be many lawyers who will say, 'We could pull an 'Anna Nicole Smith,'" predicted Turley.

The Court's ruling

Smith was working as a stripper when she met her wealthy future husband, J. Howard Marshall II. The couple married when she was 26 and he was 89. He died the following year.

While her husband's estate was being probated, Smith filed for bankruptcy. Her stepson filed a proof of claim, alleging that Smith had defamed him. Smith then counterclaimed, alleging the stepson had tortiously interfered with her right to receive support from her husband. The bankruptcy court ultimately awarded her \$475 million - the top verdict for 2000. (See "Gold digger or good wife?" *Lawyers Weekly USA*, Jan. 8, 2001. Search words for LUSA Archives: Bowden and Mangels.) A U.S. District Court reduced the award to \$88 million.

However, a jury in the Texas probate case subsequently sided with the stepson, and all of Smith's claims were dismissed.

The stepson argued that the bankruptcy court judgment had to be dismissed under the probate exception to federal jurisdiction, which provides that the federal courts do not have jurisdiction over probate matters. The 9th Circuit agreed.

But the U.S. Supreme Court reversed.

"[T]he probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction," the Court said.

Here, Smith's claim "does not 'involve the administration of an estate, the probate of a will, or any other purely probate matter.' ... [She] seeks an *in personam* judgment against [her stepson], not the probate or annulment of a will. ... Nor does she seek to reach a *res* in the custody of a state court. ... [N]o 'sound policy considerations' militate in favor of extending the probate exception to cover the case at hand."

The Court remanded the case to the 9th Circuit to consider whether Smith's claim qualified as a "core" proceeding, as well to address as the stepson's arguments concerning claim and issue preclusion.

Charities and more

Some experts predict that the ruling will implicate - and possibly reduce - future charitable bequests.

"The door is now open for clever lawyers and disgruntled heirs to challenge charitable bequests when one or another party can claim to have been hindered in fulfilling obligations under federal law by the actions of state probate courts," said Leslie Lenkowsky, a professor of public affairs and philanthropic studies at Indiana University's School of Public and Environmental Affairs.

For example, "if you had expected to get a share of someone's estate, but that person decided to give the money to a charity, that is going to be challengeable not only on the state level but in the federal courts," bringing more uncertainty to charitable organizations, he said.

The case could also have implications for federal jurisdiction in other areas where state and federal law conflict, such as property or contract matters that involve a federal claim, Turley said.

Another possibility, suggested Charles Abut, a divorce attorney with offices in Hackensack and Springfield, N.J., is the decision might encourage more plaintiffs in divorce cases to try to avoid the domestic relations exception which generally requires state courts to handle family law matters - and pursue custody battles in federal court.