

## Challenging a Contentious Last Will and Testament

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Brooks Pierce attorneys Jimmy Adams, Thomas Varnum and Ryan Fairchild successfully challenged a will signed by a Wilmington man within a month of his death, returning his home and his estimated \$25 million estate to his wife.

David Scott Corbett married Diana Corbett in 1995. In 1997, he wrote a will leaving all of his property other than his interest in one family business to Diana. In 2012, Scott was diagnosed with stage 4 colon cancer. He then immediately updated his will, leaving all of his property to Diana.

In December 2014, Scott Corbett's mother died, and he inherited a share of family-owned property worth more than \$23 million; his three sisters also inherited equal shares of the property.

In 2015, shortly after the death of his mother, Scott Corbett was approached by Bob Warwick, an accountant and financial advisor who had assisted Scott's father with some estate planning. Warwick suggested that Scott create a trust with Diana receiving an income from the trust for life, with the remainder being left to Scott's three sisters. In late spring or early summer 2015, Scott decided not to create the trust, continuing to leave his entire estate to his wife.

In September 2016, Scott's battle with colon cancer took a serious turn. He was admitted to New Hanover Regional Medical Center on Sept. 6 with a variety of health issues and placed on antibiotics as well as opioids to manage the pain. On Sept. 12, Diana decided to transfer him to Duke University Medical Center and reached out to several of Scott's business associates letting them know that if Scott needed to sign anything for them, he would need to do it soon.

Upon hearing this news, Warwick called Richard Morgan—the attorney who had drafted the prior wills and the 2015 trust document—and asked him to finalize the 2015 trust, naming Diana as one trustee and Warwick as the second. He also asked Morgan to draft a new will that put all of Scott's estate, including the house that he and Diana lived in, into the trust. Warwick also told Morgan to name Diana and himself as the co-executors. That afternoon, Warwick and Morgan took the documents to the hospital and had Scott sign them while Diana was out of the room. All of the parties involved in the case agreed that Scott had not read the will before he signed it.

Scott died on Oct. 16, 2016. Warwick's accounting firm would not let him serve as executor and co-trustee of Scott's will and the trust.

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Several months into probate of the purported September 2016 will in the New Hanover County Superior Court, Diana concluded that her husband could not have had testamentary capacity at the time the new will was signed and that the process by which Warwick and Morgan obtained the execution of the new will was flawed. In June 2017, Diana hired Brooks Pierce to investigate the matter. After conducting an investigation, Diana filed a caveat to the purported 2016 will in New Hanover County Superior Court on Sept. 12, 2017. Diana also resigned as executor of the will.

Following a three-week trial in July, the jury concluded that Scott lacked the testamentary capacity to sign the will, that Scott was unduly influenced to sign the will by Warwick and Morgan and that the 2016 will was not Scott's last will and testament. This verdict sets aside the 2016 will, allowing Diana to probate the 2012 will that left her Scott's entire estate.

## SERVICES

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