Marshall v. Marshall and the Probate Exception to Federal Court Jurisdiction

by Hon. Ronald A. Cass

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by Hon. Ronald A. Cass*

This spring, the U.S. Supreme Court ventured into an area it had last addressed 60 years earlier: the scope of the "probate exception" to federal jurisdiction. For more almost two centuries, the federal courts have recognized an exception to federal jurisdiction for certain matters that are within the special jurisdiction of the probate courts, although there is no express statutory language spelling out the exception. In *Marshall v. Marshall*, 547 U.S. ___ (2006), the Court reaffirmed but also narrowed the probate exception.

The *Marshall* case drew considerable attention in legal circles because of its important implications for the boundary between federal and state courts' competence. The case drew even more attention from the public at large because one party, Vickie Lynn Marshall, also goes by the name Anna Nicole Smith, internationally known model and reality TV star. The facts of the case are as much grist for entertainment buffs as the legal issues are for anyone concerned with estate planning and courts. The facts also show the reason estate planners should have special concern for the scope of various courts' jurisdiction over probate-related issues.

J. Howard Marshall II, a wealthy 89-year-old, wheelchair-bound oil executive, married Ms. Smith, then a 26-year-old exotic dancer. Mr. Marshall, who had been a trust-and-estate lawyer and law professor before making his fortune, had executed a living trust and pour-over will to dispose of his estate. He did not add Ms. Smith to those provided for in his estate plan, and indeed shortly after their marriage made the trust (and beneficiary designations) irrevocable. Although he could thereafter delete a beneficiary, he could not add new beneficiaries. Mr. Marshall did, by formal agreement, convey $6 million of property and other items to Ms. Smith in consideration of their marriage. He died just over a year after marrying Ms. Smith.

Ms. Smith filed suit in Texas probate court as a Texas resident claiming that J. Howard had promised her half his estate either as a gift during his life or through his estate. She alleged that his son and principal heir, E. Pierce Marshall, had interfered with that gift and accused Pierce of forging signatures, altering estate documents, and much more. A few months after filing the Texas suit, Ms. Smith filed for federal bankruptcy protection in California as a California resident, saying her bankruptcy was caused by a large court judgment against her and her failure to inherit from J. Howard. Pierce asked that the federal bankruptcy judge confirm that bankruptcy would not discharge any liability Ms. Smith might have for defamation, and she counterclaimed with all the charges from the Texas litigation.

The court judgment she had referred to—a default judgment on a sexual harassment claim brought by her housekeeper—was then settled for a sum small enough to alleviate any need for further action to satisfy her creditors, and a plan settling all claims was approved. That left, however, the claims respecting tortious inference with a gift or inheritance and other assertions that duplicated the issues before the Texas probate court. The bankruptcy court refused to defer to the Texas court, declared that Pierce had abused the court's discovery process, excluded his evidence (and accepted hers) as a sanction, and, having concluded then that Pierce had forged signatures, altered documents, and so on, awarded Ms. Smith $475 million.

Meanwhile, in the Texas probate proceeding, a 95-day trial (including 6 days of testimony from Ms. Smith), resulted in exactly the opposite conclusions. The court and unanimous jury concluded that the estate documents and signatures were valid, not forged, not altered, and reflected J. Howard's intent, that there was no promise to Ms. Smith, and that she had no valid claim against Pierce or the estate. The federal district court vacated the bankruptcy court decision as not based on a claim within the "core" bankruptcy court jurisdiction, but then held its own brief evidentiary proceeding, entered findings contrary to those of the probate court, and gave an $89 million judgment for Ms. Smith.

The U.S. Court of Appeals for the Ninth Circuit reversed, based on the probate exception, which it said deprived federal courts jurisdiction to hear claims within the special competence of state probate courts. The Supreme Court then overturned that ruling and sent the case back to the circuit for decision on several other issues.

The scope of the probate exception was contested by an unusually large number of parties, including the U.S. Department of Justice, state attorneys general, law professors, philanthropic foundations, and others. The arguments fell along two lines.

On one side, amicus briefs for the Justice Department and bankruptcy law professors, for example, argued that federal jurisdiction should be construed expansively. They asserted that bankruptcy in particular should be given broad scope and that states should not be able to contract federal jurisdiction by giving exclusive jurisdiction to state probate courts.

The other group, including state attorneys general and philanthropic foundations, argued that the probate exception should recognize the special problem of estate planning and special difficulty of spreading decisions on probate-related issues across different courts that might not be familiar with the specific law respecting disposition of a particular estate. The emphasis for these arguments was the need for consistency and predictability in the law for those who sought to provide for disposition of their property and the related need to prevent lengthy, repetitive legal proceedings contesting disposition of estates.

The *Marshall* case presented an unusual intersection of two legal schemes that are designed to bring a set of claims into a single forum at a single time. When disposition of a decedent's estate is at issue, the person who best knew what was intended cannot testify, so it is not uncommon to have spurious claims and serious contests about the decedent's intent. These claims potentially can be

advanced anywhere in the world, and could require beneficiaries and executors to contest the disposition of an estate repeatedly in different jurisdictions. To address that problem, states provide a single, centralized forum for resolving all claims, once and for all, before a specialized court used to sorting through the evidence and construing the documents designed to convey property at death. Bankruptcy proceedings also attempt to provide a single, centralized, specialized forum to resolve all claims against a bankrupt's estate. In bankruptcy, there is the same problem of needing to dispose of assets once and for all, though there is not the same evidentiary issue as in probate.

The Supreme Court took a pro-federal jurisdiction approach to the conflict between these proceedings. As it had done in several recent cases involving conflicts between federal court and state court jurisdiction, the Court in *Marshall* gave a narrow reading to the exception to federal jurisdiction, limiting the probate exception to litigation over the actual administration of probate or disposition of property held by the probate court. It did not find it sufficient that the federal and state cases involved identical issues and provided the opportunity for the federal and state courts to give different—indeed, diametrically opposed—answers.

The conflict between the state and federal courts did appear to trouble the justices, and Justice Ginsburg, writing for the Court, pointedly noted that other doctrines such as claim preclusion and issue preclusion might eliminate the conflict. Those doctrines give binding effect to the ruling of the first court to render a final decision on a matter—either by excluding later claims on the same matter by a party to a case or by making a ruling on a specific issue binding on those who participated in the case or have a close enough relation to the participants.

The bottom line for the justices, however, was that limitations on federal jurisdiction—on the authority of federal courts to consider a set of issues—should be narrowly construed. The justices left it to the Ninth Circuit to see how the other doctrines might resolve the federal-state conflict.

The Supreme Court's decision in *Marshall*, while in keeping with its recent approach to jurisdictional issues in other cases, is disappointing. The conflict between the specific court decisions in the *Marshall* litigation will at some point be resolved under one or another legal doctrine. But the assertion of federal jurisdiction over issues central to probate determinations and peripheral to bankruptcy litigation will have untoward effects nonetheless. The bankruptcy and federal district court decisions rested on findings respecting the validity of signatures on estate documents, the alleged alteration of the documents, and other matters essential to the determination of the legitimacy of the estate documents that are before the probate court. The probate court necessarily will decide those issues in the course of probating the will and approving disposition of the estate.

Wholly apart from the enormous difference between the extensive fact-finding process in the Texas probate court and the far more cursory process in federal court in *Marshall*, the possibility that there *could* be a proceeding in a federal bankruptcy or federal district court parallel to the probate case creates problems. A critical problem is the opportunity to misconstrue state law and to distort the intention of the person whose property is at issue and whose intent should be the touchstone for

any court decision. The federal courts lack the familiarity with construction of local law that the probate court has. They are less likely to provide a construction of that law that implements the expectation of the decedent. Typically, that is someone who engaged in estate planning with counsel familiar with the local law and local courts and who anticipated that the local law would govern the estate disposition.

Additionally, the opportunity to bring the same claims and issues in different venues, with the first decision gaining preclusive effect, encourages just the sort of forum-shopping and "race to the courthouse" that the law usually is at pains to avoid. *Marshall* provides a perfect illustration. The bankruptcy filing, by someone who recently received $6 million and who also enjoyed substantial additional income of her own, was based on a default judgment for sexual harassment in a suit by someone working for Ms. Smith. The fact that she did not contest the suit, and then settled it on favorable terms after the bankruptcy filing, looks suspicious. That she filed suits within a few months in both Texas and California, claiming residency in each, also looks suspicious. That she used the bankruptcy filing to assert an array of claims that are closely linked to probate and unrelated or only tangentially related to bankruptcy also looks like the entire process was used to manipulate the judicial system, seeking a friendlier forum for her claims.

Aside from the impact on the judicial system of permitting such forum-shopping, there is a clear threat to philanthropies. Philanthropies receive a substantial proportion of funding from bequests. They rarely are in a position to engage in the sort of forum-shopping that other potential beneficiaries might. And they are less likely than other potential beneficiaries to assert claims based on suppositions that the philanthropy should have been given a bequest not clearly provided for in estate planning documents. The outcome of the Supreme Court case in *Marshall* makes it all the more important for philanthropic gifts to be made in clear terms by well-drafted documents clearly specifying the applicable law.

**Honorable Ronald A. Cass filed an amicus brief with the Supreme Court in* Marshall v. Marshall *on behalf of The Philanthropy Roundtable.*