

QUESTION 12 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV

You are a law clerk for a probate judge who has heard evidence for several days in adversary proceedings involving the estate of Jason Walker. The following summarizes the evidence:

Jason, a wealthy bachelor who lived a happy and healthy life, suffered a devastating stroke at 84 causing him to be partially paralyzed, unable to care for himself. Jason hated the idea of living in a nursing home and hired Carlee Caregiver, a registered nurse, to move into his home and provide 24-hour care. She was to assist Jason in continuing to live in his home, doing such things as managing his home health care, helping him with his personal needs, and domestic duties like housework. Carlee knew about Jason's wealth. He was by far her most lucrative client.

Soon after the stroke, Jason began to suffer from extreme depression over his loss of independence. His depression was so severe Carlee described it as his "black hole." In his "black hole," Jason would not talk for days, refused to see his family and friends, and made no effort to manage his personal affairs and finances.

Jason then worsened to his deepest depression. He refused to speak for weeks, was not compliant in his treatment and generally hated the world. He was especially rude and nasty to his family for seemingly no reason at all.

One day, in the midst of this "black hole," Jason asked Carlee to take dictation as he often did when he wanted to write something but could not because of the paralysis. The letter, to his attorney, stated that he knew his family and had come to despise them. It stated further that he knew he was quite wealthy and he thought his wealth would be wasted on his family members. Finally, it asked the attorney to draft a codicil to his will changing the beneficiaries of his entire estate from his family to Carlee. Surprised by this, Carlee nevertheless dutifully drafted and mailed the letter.

Jason's attorney, also surprised by the letter, drafted the codicil as requested. Knowing Jason was homebound he met Jason at his home to execute the codicil. Carlee let him in and led him to Jason, then left them alone. The attorney showed the letter to Jason and described how he had implemented Jason's requests into

the codicil. When he expressed concern about Jason disinherit his family and leaving his entire estate to Carlee, Jason said "screw my family and let me sign the damn thing."

The attorney gave Jason a pen and placed the codicil in front of him, but Jason could not sign his name without help because of the partial paralysis. Carlee often helped Jason sign his name when necessary, and the attorney had her come back into the room to help.

As she usually did, Carlee put scrap paper in front of Jason, placed the pen in his hand, and gently helped him practice signing until he had a neat signature. She then put the codicil in front of Jason, placed the pen in his hand, and helped him sign the codicil. The attorney and Carlee signed the codicil as witnesses because they were the only people in the room.

Two months later Jason died of complications related to the stroke having never emerged from his deep depression. His family found out about the codicil shortly after his death and was shocked that they had been disinherited in favor of Jason's caregiver.

The probate judge has asked you to prepare a memo discussing the issues raised in the case and how they should be resolved.

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