TEXAS PROBATE NEWS
Probate Dispute Discussions

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Risks of Failing to Probate a Will

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Many times clients choose not to probate a will so that legal fees can be saved, especially when the estate is relatively small and the heirs have agreed on how to divide it. However, if other estate assets are discovered later and an heir then wants to probate the will, the heir may be barred from doing so. Such an heir was denied probate by the Tyler Court of Appeals in the 2010 case of *In the Estate of Rothrock*.

1. Will Not Probated, Other Assets Discovered

In the *Rothrock* case, the testator named one of his six children, a son, as the sole beneficiary in the will. After the testator's death, the son assumed that all of his father's estate had been disposed of pursuant to an agreement between the heirs, and he chose not to probate the will. Years later, the son became aware of other mineral interests owned by his father.

2. Probate Attempt, After Four Years

The son sought to probate the will 14 years after his father's death so that he would receive 100% of the mineral interests. The will was presented for probate as a monument of title, which the court had discretion to allow if the son could have shown that he was "not in default" in failing to present the will within the usual four year limitations period.

3. Probate Denied

The son's five siblings opposed the probate, since without the will they would be equal heirs to the minerals. They Tyler Court held that the son was in default for choosing not to probate the will within four years, and that "a family agreement is not sufficient to excuse (the son's) noncompliance with the four year limitation." The *Rothrock* court also stated that "to foreclose any unexpected contingencies, a will must be probated within the statutory period whether the necessity for doing so is apparent or not."

4. Caution to Clients

Clients who choose to not probate a will should be cautioned that there are risks involved that may later prove harmful.

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