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Breach of trust

Texas estate laws make stealing from the dead an easy crime

By [Tony Plohetski](#)

AMERICAN-STATESMAN STAFF

Friday, June 27, 2008

Sunday, December 10, 2006 — Long before Laura Ellis' mind failed, the retired government worker reassured one of her closest relatives that an Austin lawyer she had trusted for years would settle her estate after she died.

Ellis, the frugal widow of a retired U.S. Army sergeant, didn't tell niece Margie Hensley the specifics of her will, which divided at least \$550,000 equally among her loved ones, her late husband's family and her lawyer's legal fees.

And Hensley didn't pry.

After Ellis died in 1999, years passed before Hensley and other family members figured out that attorney Terry Erwin Stork hadn't sold her property and was instead letting Ellis' home in San Antonio sit empty while driving her well-kept 1995 Buick LeSabre to disrepair, according to a lawsuit the family later filed against Stork.

And they didn't know that Stork had used some of Ellis' money to add to his collection of rare china and siphoned more than \$120,000 to pay heirs of another estate he was handling, the lawsuit and Travis County prosecutors said.

Stork systematically mismanaged or stole from three estates worth more than \$800,000 over two decades, according to prosecutors and court records. Each time, elderly people with no living children had chosen him to divide their belongings among organizations and loved ones who usually had no idea they had an inheritance.

In Texas, writing a will and picking someone to carry out your final wishes doesn't guarantee that the family homestead or your great-grandmother's wedding ring will get to the person it was meant for.

An Austin American-Statesman review has found that state laws make it alarmingly easy for the executor of a will — usually a family member, friend or lawyer — to steal or squander what people often spent a lifetime building, frequently with little chance of getting caught. State probate laws don't ensure that a deceased person's assets actually get to heirs — or require executors to tell the heirs they're named in a will.

Probate judges and lawyers in every major Texas county tell horror stories of families and friendships splitting apart amid accusations of estate theft or mismanagement.

Last year, a Tulsa, Okla., orthodontist sued his brother, who had been named executor of his parents' San Antonio estate, accusing him of buying a limousine, BMW, a yacht and South Padre Island property with money that didn't belong to him. The accused brother died earlier this year before the case was settled, an official said.

An Austin woman sued an accountant responsible for dividing her husband's \$4 million estate after he died in a helicopter crash, accusing him of funneling nearly \$2 million into a business venture without her permission. She won the suit in 2001, but the executor was granted a new trial after claiming he wasn't given time to respond to the accusations. The estate still hasn't been settled, but the business was sold and the money was recovered and given to the widow.

And in San Antonio, a lawyer who had been appointed to manage the trust for a child whose mother died was disbarred in 2001 after investigators said he improperly invested trust money into his business.

Texas probate judges and lawyers say it's impossible to know how often people entrusted with dispersing a dead person's belongings steal them instead. Neither the state nor any other organization monitors estate thefts.

But records at the State Bar of Texas give a hint of how prevalent the problem is. Even though lawyers are tapped to be executors far less frequently than family and friends, the bar receives more than 100 complaints each year against lawyers handling estate cases.

The complaints included anything from attorneys missing court deadlines or other inaction to estate mismanagement and theft.

Stork is among lawyers who have been disciplined by the bar for mishandling money of the dead.

In 2002, Hensley and other relatives realized none of the people closest to John and Laura Ellis, a childless couple from San Antonio, had gotten any of their money or property. The relatives hired San Antonio lawyers to help solve the growing family mystery.

During the next three years, the lawyers helped unravel what they and court documents describe as a disturbing pattern of estate mismanagement.

Stork's handling of two Austin estates led to his indictment in September in Travis County on two counts of aggregated theft and two counts of aggregated misapplication of fiduciary property.

No trial date has been set for Stork, who faces up to life in prison if convicted.

Travis County Assistant District Attorney Patty Robertson estimates Stork mismanaged or stole more than \$400,000 in estate money in Austin.

Bexar County prosecutors say they are investigating Stork's handling of the Ellis estate.

The family's lawyers say at least \$300,000 was taken from the estate and has not been returned.

Stork has repeatedly declined to comment and did not respond to a written interview request sent to his South Lamar Boulevard law office.

"It has been a tumultuous time," said Peggy Williamson of Belton, whose late husband was Laura Ellis' nephew. "I would like to see it settled, and I would like to see Stork actually have to answer to the courts for the things he has done.

"I would like some justice."

Texas' probate system is built on trust.

Created soon after Texas became a state in the mid-1800s, it was designed to pass wealth from generation to generation with little government involvement.

That lack of oversight has created significant weaknesses in an area of the law that eventually affects almost every Texan:

* State statutes don't require executors — the people trusted with settling estates — to tell loved ones that they are named in a will, although in 1989 lawmakers required charities to be notified. Unless heirs know they were supposed to receive something, they might not know to ask for it.

* Executors are not required to tell probate courts how they distribute assets and whether they were distributed according to the will, and probate judges almost never follow up to make sure executors carried out the will's instructions.

* Unless heirs who suspect wrongdoing hire an attorney and file a lawsuit, they generally must wait 15 months after an executor takes charge before demanding an accounting of how the executor divided the assets. Critics of the process say money and property often have vanished by then.

"It is the easiest system to manipulate," said James J. King, one of the lawyers hired on the Ellis case. "If nobody is there to shake the tree, who knows what is growing under it? And an executor is free to pull whatever fruit he would like."

Many probate experts, lawyers and judges like Texas' system for its simplicity and say it is one of the easiest in the United States to navigate. They said they would be reluctant to trade that convenience for more oversight of executors' work.

"The system has really worked very well and has saved the people of Texas a whole lot of money and aggravation in dealing with the courts," said Austin probate attorney Al Golden.

At least 15 other states have modeled their probate laws after Texas', but those states require executors to notify people named in a will and to file annual accounts of how they divided money and property.

El Paso County Probate Judge Max Higgs said he thinks Texas' probate laws are "very lax."

Higgs said he believes the law should at least require executors to notify heirs named in a will — an idea he knows others in the system don't like.

"It gets thrown back in my face by all the probate lawyers who will have to do all the work," he said.

Terry Stork, 68, grew up in a family of lawyers and has worked for a quarter-century out of a South Austin law office, a small brown wood-framed building with his name painted on the window. His work includes anything from representing people in traffic cases to divorces.

In the early 1980s, Stork was put in charge of a trust fund for L. Ray Benskin, a mentally retarded man whose parents had died and left him more than \$50,000, according to court records.

Over several years, Travis County Probate Judge Guy Herman said Benskin frequently showed up in his chambers, often appearing disheveled and out of sorts, asking the judge to help him get his money.

Herman said he initially did not suspect Stork was doing anything wrong.

Benskin eventually hired a lawyer to help him figure out how much was in the fund and how much he was supposed to get each month, court records show. The lawyer later sought to have Stork removed from Benskin's case, accusing him in court of failing to maintain records of the trust and making it impossible to know how he had managed it.

The attorney also complained to the State Bar, which in 1989 said that Stork appeared to have borrowed \$18,885 from the trust and had written a promissory note to return it. The bar ruled that the transaction amounted to "self-dealing," put Stork on probation for five years and ordered him to repay the money.

Herman said he warily appointed Stork as an executor twice more during the next two decades because the deceased had chosen him to handle their estates.

"It wasn't clear in my mind I had anything to disqualify him on," Herman said. "But certainly, his ethical behavior had been called into question."

In 1987, Stork began sorting out the estate of Allene Naumann, an Austin widow whose only child died as a toddler from eating rat poison.

Months before Naumann died, she had invited five board members from the Fall Creek Cemetery in western Travis County to her house to explain her final wishes.

Naumann's daughter and late husband were buried in the tiny rural cemetery, and she wanted the money from her estate — her house was her biggest asset — to help keep up the property and their gravesites.

She brought out a handwritten copy of her will and told them Stork, whom she had known for years, would be handling her affairs, said Lamonda Whitley, now secretary-treasurer of the Fall Creek Cemetery Association.

Soon after Naumann died on Christmas Eve 1987, board members assumed Naumann's house would be sold and the money would be available when they asked for it. Whitley said several years passed before the cemetery association thought to ask Stork for it.

"We never really did know how much money there was supposed to be," Whitley said. "We would ask him, and he would say, well, he just didn't really know."

Around 2000, the board wanted to buy property to expand the cemetery and asked Stork for \$50,000.

They said Stork resisted at first but finally wrote a check paying for the property.

"It just got to be a terrible, unhappy situation, and we were bumping our heads against the wall trying to talk to him," said Robert Mauck, the cemetery board president. "Being the trusting people we are, we thought he was doing right."

Instead, an arrest affidavit filed in Travis County said Stork sold Naumann's house on Oxford Avenue in Austin's Barton Hills neighborhood in 2002 — 15 years after she died — and deposited the \$129,099 profit into his own bank account. The affidavit said he spent all but \$2,000 of it on child support payments and other personal expenditures during the next 18 months.

Investigators said checks from Stork's accounts also listed Naumann's address as his own, bolstering prosecutor Robertson's theory that he was using the house for personal gain all those years as a rental property.

The cemetery board says they still haven't seen the remaining money from the sale of Naumann's house. Earlier this year, Naumann's grave was covered with weeds that had to be pulled away to reveal her name on the granite headstone.

Eleven years after Naumann's death, Stork again stood in court before Herman with another will naming him executor.

Clara Petri, a quiet, churchgoing woman, wanted almost all of her money to go to help others. Her will, signed nearly 20 years before her death, left her furniture to her three sisters and everything else — a little more than \$120,000 — to Shriners Hospital for Children in Galveston and Christ Lutheran Church in South Austin, which she and her husband had helped create in the 1940s.

The law says Stork should have notified Shriners and the church that they were named in Petri's will because they are both nonprofits. But Herman said it wasn't until this August — after the Statesman began its review and eight years after Petri's death — that he began making sure all charities were notified. Until then, Herman said he instructed executors to carry out that task but didn't check; now he requires them to give his court copies of the notification letters they send to charities and other organizations.

"I always just assumed they would go ahead and get it done," Herman said.

Petri died in May 1998, and about a year later, her nephew said he began wondering whether her estate had been settled.

He called the Christ Lutheran Church secretary, one of Petri's closest friends, and asked whether the church had gotten the gift.

A couple of days later, the secretary called back and said Christ Lutheran hadn't gotten a dollar.

After confirming the church was named in the will, a Christ Lutheran parishioner and local attorney went to Stork and demanded the money, according to testimony at a hearing earlier this year to remove Stork as executor of Petri's estate.

Stork then wrote the church a check for \$64,507.

The problem, according to investigators, was that Stork paid the church with money from a different estate.

Three years after Laura Ellis died, her loved ones began wondering what happened to Ellis' house and other property.

Williamson, the relative from Belton, grew suspicious after talking to another family member. If neither of them had gotten anything, who had?

Williamson hired a Belton lawyer to look into the matter.

In October 2002, the attorney claimed Stork had missed the 90-day deadline to file an inventory after submitting Ellis' will to the court, and the inventory he eventually filed was not "full and detailed," according to court records.

The 10-page document, which sought to remove Stork as executor and require him to provide an accounting of the estate, also accused Stork of using Laura Ellis' Buick, which was omitted from the list of her belongings.

Finally, the suit accused Stork of selling the Ellis' assets and stealing the money.

The attorney told Williamson she probably needed to hire a lawyer in San Antonio more familiar with Bexar County courts. Williamson found Darryl T. Watson.

Watson said he took one look at the records Williamson gave him at their first meeting and knew the estate was a shambles.

He pulled estate records and subpoenaed Stork's personal bank records, reviewing all the money that had flowed in and out since 1999.

He said he spotted questionable transactions, including two payments totalling \$2,500 to dealers he later learned sell RS Prussia china, a pricey variety that collectors covet for its elaborate floral designs.

He also saw the \$64,507 payment from the estate to Christ Lutheran, and another to the Shriners hospital for \$62,723. Each had a notation: From the estate of Clara Petri.

"It was like a big puzzle, is what it amounted to," Watson said. "With a lot of missing pieces."

Watson and the other Ellis lawyer, King, kept digging through records and discovered that the State Bar had disciplined Stork for his handling of the mentally retarded man's trust fund in the 1980s.

"It kind of gave us an indication of who we were dealing with," Watson said.

Armed with documents supporting their suspicions, the lawyers decided to file a State Bar complaint against Stork, which is still pending. They also shared the information with Tom Rickhoff, the Bexar County probate judge. And the San Antonio police.

Rickhoff ordered Stork to appear in his court in August 2004 to explain himself. According to transcripts from the hearing, Stork told the judge that he put \$150,000 from the Ellis estate in a bank in Bastrop but couldn't get it out because he had co-signed a loan with a family member who owed the bank money.

Rickhoff told Stork that he found that "flabbergasting."

Rickhoff then mailed a letter to his counterpart Herman in Austin, saying he believed Stork "has engaged in a gross breach of fiduciary authority as an administrator and as an attorney."

He wrote another letter to a Bexar County assistant district attorney, detailing what Stork had done with the Ellis estate.

"In short, he stole the money," the letter said.

Before long, the Travis County district attorney's office had launched its own investigation into the Petri and Naumann estates and had charged Stork in those cases.

He soon posted bail and continues to practice law.

Bexar County authorities say their investigation into Stork's handling of the Ellis estate is still pending after two years.

Watson and King have since sold Laura Ellis' property, including the house in San Antonio and her Buick (which sold for \$200), and will divide the money among her heirs.

They said they are unsure if they will be able to recover any of the remaining money, including the more than \$120,000 they said Stork sent from the estate to Christ Lutheran and the Shriners hospital.

The Fall Creek Cemetery board members have hired a lawyer and are considering seeking money from Stork they think they are owed.

More than six years since Laura Ellis' death, her niece Hensley is still angry that the estate of a woman who was so careful with money has turn into an exhausting, convoluted legal case.

Ellis "told me so many times they had everything settled and had everything written down exactly the way they wanted," Hensley said.

"It breaks my heart to know things were not done the way they intended them to be."

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Taking care of a place to rest

Allene Naumann was buried next to her child and husband at Fall Creek Cemetery outside Austin, but money she allocated for care of their graves was slow to follow.

A man they trusted

Austin lawyer Terry Stork is accused of mishandling several estates worth hundreds of thousands of dollars.

Plans gone awry

Laura and John Ellis kept close watch over their finances; Laura made sure to carefully plan how her estate would be distributed.

Estates handled by Terry Stork

Name, age:

Allene Naumann, 76

Laura Ellis, 85

Clara Petri, 88

Date of death:

Dec. 24, 1987

July 28, 1999

May 5, 1998

Assets:

\$54,000 in property, \$119,643 in mortgages and notes; \$3,500 in miscellaneous property

\$330,000 in property; \$140,000 in stocks and bonds; \$50,000 in mortgages; \$1,500 in miscellaneous property

\$124,446 in real property

Wishes in will:

Money to go to upkeep of Fall Creek Cemetery

One-third of estate to her heirs; one third to husband's heirs; one-third to Stork for handling estate

Half of her money to the Shriners burn hospital in Galveston and half to Christ Lutheran Church in South Austin

What happened:

Prosecutors say Stork waited years to sell her house, then spent most of the money on personal expenses

Lawsuits say Stork wrongly used money to pay beneficiaries of Clara Petri, drove Ellis' car to disrepair

Authorities say Stork paid Petri's beneficiaries more than \$120,000 from the estate of Laura Ellis

Status:

Stork indicted on charge of misapplication of fiduciary property

Civil lawsuit filed in Bexar County; prosecutors are still investigating

Stork indicted on charge of misapplication of fiduciary property

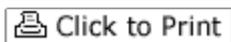
Sources: Travis County probate court, lawsuits

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