

Ace and Buck in the Probate Pit

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Yellow Peril



W.C. and Sam Scott, May 29, 1993

Ace and Buck in the Probate Pit

The story of

W.C. and S.C. Scott—Co-Trustees of the Sophia H. and Wm C. Scott Revocable Trust

This is a cautionary tale for all who have followed the advice of an estate planner and created legal documents to express their final wishes. It is a tragic commentary on the ruthlessness of the probate system. Although Probate Court is supposed to be a court of equity, it is still required to operate within the law. The Denver Probate Court is established as a specialized court with a single judge. Decisions in probate court cannot be appealed until all claims are settled, unless the court rules to allow an appeal on a single claim. Waiting to appeal a portion of a case can destroy one's ability to finance a defense. Courts control the pace and therefore the cost of litigation and few people can afford to pursue it to the end. The very structure of this specialized court can easily lead to a sort of "star chamber" when its phenomenal power is abused.

Be afraid. Be very afraid. Don't count on your directives being honored by the probate cartel. As one conservator said, "If you can get in with the court, it's a gravy train." This is about W.C. Scott and his son, Sam, who has endured a 12-year slog through the probate quagmire. (Note: Sam is aka Scotty and Buck, and his father, W.C. is aka Ace.)

***It would be something if I had taken anything,
but I cannot fathom how this happened.***

—Sam Scott, 2000

The story begins with the culmination of a corporate lawsuit between Sam and two of his sons, Bill and Mark Scott. “Shame on you, you’re just not credible,” Judge McCahey said to Bill who claimed he was nothing more than a glorified maintenance man at his father’s business. Bill and Mark were found guilty of unfair competition and unjust enrichment. Mark was also found guilty of civil conspiracy against Scott System, the company owned by his father. The two sons had been with the company for approximately 20 years.

Scott System is a 40-year-old business that manufactures architectural form liners and owns several patents related to adding texture, brick or tile to precast and tilt-up concrete construction. In July 1997 Mark (then 40 years old) and Bill (42) took a proprietary product, customer lists, marketing materials and computer files, generally everything needed to start a business in direct competition with their father.

Attempts at mediation failed, and a lawsuit was filed in September 1997 and continued through the appeals process until May 2006, when Judge Lawrence Manzanares made a final ruling in favor of Scott System. Judge Manzanares then discounted the damage award by 90% removing the incentive for Mark to mediate and resolve both cases. Sam could have appealed the discount, but he was more interested in ending the conflict. (Note: Judge Manzanares committed suicide June 2007.)

Sam’s father, W.C. Scott died during this time in January 2000. Sam was W.C.’s only child. They were very close and consulted each other regularly regarding family and business matters. In June of 1991, W.C. and Sam established the Sophia H. and W.C. Scott Revocable Trust. Sam’s mother, Sophia, suffered several strokes and had been ill for a number of years. Sam was her conservator and was co-trustee with his dad of his parents’ trust.

A mere eight months after W.C.’s death, Sam was in Denver Probate Court being grilled by his son Mark’s attorney in Mark’s desperate attempt to find anything to justify Sam’s removal as trustee. He was questioned for hours about every minute transaction of the previous nine years of W.C.’s life.

Denver Probate Judge C. Jean Stewart presided over the proceedings. These proceedings were never framed in terms of W.C.’s wishes; in fact his final wishes were completely ignored by the court. She made no attempt to protect him, his son or his estate plan. Judge Stewart did not challenge Mark to present any specific evidence of wrongdoing or his questionable motives. She never considered the love and trust between W.C. and Sam.

I have never seen a judge as arrogant, uncaring, ignorant of the law and vicious as Judge C. Jean Stewart. I have spoken to other attorneys and it is clear from their comments that my client’s case is not the only one in which Judge Stewart has arrogantly ignored the law and the facts and done incalculable harm to those she is charged with protecting. Those attorneys are unable to speak out publicly for they still practice law before her. They cannot take the chance that she will punish their existing or future clients. . . . It is not only the disabled who are at risk before Judge Stewart. Our elderly in Denver are also at risk . . .

In her capacity as Presiding Judge, she is directly responsible for the incredible and consistent failures of Denver’s Probate Court to protect our elderly from rapacious guardians and conservators.

—P.J. Finley, attorney of 31 years, 2010

Who Was This Man Judge Stewart Completely Ignored?



W.C. standing-Easton, MD, 1943

W.C. was born in Robinson, Illinois and raised in Pittsburgh. His father, Samuel Clyde Scott I, was owner and partner of McPeak, Wade & Scott Lumber Company. A popular leader, W.C. was president of his graduating class at Washington and Jefferson College in 1930. Following graduation he joined the Army Air Corps and became an aviator.

W.C. had a brief, but exciting, marriage in 1931 to Lillian Roth, actress and author of *I'll Cry Tomorrow*. They honeymooned aboard the "Mauritania" on a six-week cruise to Paris and later hobnobbed with the likes of Tallulah Bankhead and Milton Berle in New York City. Their divorce was announced on the front page of the *Pittsburgh Gazette* just 13 months later. He was the first of her seven husbands.



W.C., Scotty and Sassa
During WWII

Fortunately for W.C., he met his true love, Sophia "Sassa" Kirkpatrick Haven, as she was walking down the street one day in Pittsburgh. It was love at first sight and he vowed to his buddy, "I'm going to marry that girl." He then crossed the street and introduced himself. They were soon married and their only child, Samuel Clyde II, was born in 1934.

In 1942, during World War II, W.C. joined the Navy and served as a Lt Commander in the Air Transport Command. Sassa and Sam, then nicknamed "Scotty", followed him from post to post. During the next three years they lived in at least nine different cities.

In Oklahoma, where W.C. was the chief flight instructor at the naval air base, he and his son often went horseback riding. They pretended to be cowboys giving rise to pet names they used for each other. They called each other various forms of Buck, Bucko, and Buckaroo.

Later, when W.C. was stationed in Pawtuxent, Maryland, they rented a home in Oxford on the Eastern Shore. Scotty, now in the second grade, found an old leaky rowboat buried in the sand. The hardware store provided caulking, rope, tar, new oars and locks. Scotty made the repairs — sloppy but water tight. His dad tied the boat to a rock with 100 feet of clothes line and announced that was as far as Scotty could go. Scotty soon tired of this restriction, so W.C. took him to the middle of the Tred

Avon River and said, "If you can swim to either shore, you can untie the rope." Scotty made the swim and off he went, crabbing in his little rowboat.



Sam "Scotty" Scott
1942 Oxford, MD

Near the end of the war, W.C. was honored by the defense department when he was designated the lead pilot of three planes tasked with bringing home the survivors of the Bataan Death March. Flying for the Navy, W.C. touched down at the precise moment with his fragile passengers followed by the Army and Marine Corps planes. The landing was synchronized to the minute and W.C. tearfully shook the hand of each man as they deplaned.

At the end of the war the family moved to North Carolina where W.C. and a Navy friend started an oil distribution business. There he bought a retired Army trainer— a Stearman biplane for \$500.00 that was widely known as the "Yellow Peril" during the war. It had two cockpits, one for him and one for Scotty. As pilots, they refined their nick names to Ace (W.C.) and Buck (Sam) with variations such as Acey Bo and Bucko — endearments they used throughout life.

Scotty had asthma as a boy and the North Carolina humidity made it worse. One evening while at the beach, he suffered a life-threatening attack. The only place his dad could turn to for help was a local veterinarian who was having a party when they arrived at his door. The doctor was a little tipsy and requested that they come back the next day. Terrified, W.C. got in the doc's face and demanded immediate help for his son. In the clammy night with only headlights to see by, Scotty received life-saving injections as he lay under a tree in the front yard.



W. C. Scott, September 5, 1943

Soon after that episode the family made one more move, the one that brought them to Denver, Colorado in 1950. W.C. and Sassa started Scott Insulation Company. W.C. handled sales, Sassa the office and Scotty worked on weekends and after school stocking and driving the truck, a true family business.

Sam was at the University of Colorado when he married his first wife. Bill and Mark came along soon after. As Sam's family grew; his sons worked in the business during their summer vacations. The family tradition was continuing and both W.C. and Sam couldn't have been happier. Sam's first marriage ended and in 1970 he married his second wife, Mo. They have been best friends and partners ever since.

By 1960 father and son were working together in two related businesses: Styro Materials, the first distributor west of the Mississippi of Styrofoam insulation and Denver Lining Company which built commercial cold storage facilities.

Buck owned 50% of Styro Materials and he bought the other half from his dad in the early 1970s. The two businesses continued to operate in a building owned by Styro at 2519 Walnut Street. Ace and Buck shared office space on the second floor of the clock tower building. The property was eventually placed in a separate entity known as 2519 Walnut Corporation. This property later became an issue in Mark's lawsuit to remove his dad as trustee.

In the late 1970s, W.C. was developing property with his good friend Morris "Push" Sigman of the Sigman Meat Company. One of their first projects was Terra Gardens Apartments in Edgewater, Colorado. Although Sam was not a partner in the project, W.C. treated him as a level-two partner and he received income distributions as did Push's son, Steve Sigman.

Their biggest project was Carriage Hills in Estes Park, Colorado. W.C. distributed two lots to his son and single lots to his grandsons. The land was part of the Lord Dunraven Estate which included provisions for watering two hundred head of livestock twice daily at the town lake. When negotiations over a road easement got bogged down, W.C. reminded the local officials that Push owned livestock and would gladly water them at Lake Estes. Needless to say, the two pals enjoyed a better relationship with the Estes Park City Council from then on.

W.C. created Scott Partners in 1974 in an effort to shelter some income and make some distributions to his family. It was a loosely formed entity without an official partnership agreement between Sam, Sassa and the grandchildren. W.C. controlled the activities of the "partnership." The tax shelter plan was ineffective and W.C.'s accountant, Bill Mertching, filed the final tax return with the IRS in 1979. That was the end of Scott Partners except for a small stock settlement from an egg carton manufacturer that W.C. received years later.

Sam owned Styro Materials Company which owned the property at 2519 Walnut Street. During the short existence of Scott Partners, two stock certificates were prepared but never registered for 2519 Walnut Corporation. One certificate for 50% was in Sam's name and the other 50% was in his name as nominee for Scott Partners. When the partnership was dissolved full ownership reverted to Sam and these certificates became invalid although they remained in a forgotten file.

Their survival formed Judge Stewart's grounds for clawing back to Sophia Scott's closed conservatorship of 1992 and the ruling that Sam had "intentionally misled the court" by omitting his mother's 5% interest in the building as a trust asset. Stewart made this finding despite the testimony of W.C.'s attorney, Tom Scheffel who said he had researched the issue and consulted with both W.C. and his accountant and Scheffel was satisfied that Scott Partners was defunct in 1979. Although evidence was presented in court of the 1979 final tax return for Scott Partners, Judge Stewart still found that Scott Partners existed — even though no tax return or K-1 was ever filed again.

Judge Stewart ignored the evidence that Sam owned the property and had paid all taxes and expenses since the early 1970s. Stewart took no notice of the many well-documented instances (going back to, at least, 1992) where Mark admitted he knew his father was the sole owner of the property.



*Sassa and W.C.'s 50th Anniversary
August 1983*

Sophia Scott died after a very long illness in September 1992. At the family Christmas dinner that year W.C. shared his intentions regarding his estate with Mark and the other beneficiaries. His estate was approximately \$1,400,000. His trust allowed for three other trusts to be established, a family trust that he could fund with up to \$600,000, a spousal trust for him and a generation-skipping trust (GST) of \$400,000 if there was enough money.

W.C. decided he would fund the family trust and retain \$800,000 in his spousal trust for his maintenance. During this gathering he generously distributed \$20,000 to each grandchild and donated \$30,000 to a charitable foundation. After these gifts, he wanted the remainder to be in his spousal trust. He consulted his attorney, Tom Scheffel and guided by his advice, W.C. did not fund the GST.

At the time, W.C. had no doubt that it was he who would decide what to keep and what to spend from his estate. If he had had any idea that he was about to give up his right to make his own financial decisions when the trust was formed, he would have just left everything to his only son. As he frequently said, "You take it Buck, you know what we want to do."

W.C. wanted to create a "family bank." He imagined it as a means whereby the beneficiaries could get cash and simple loans with little or no interest to help them with special purchases.

At the 1992 Christmas gathering the family members were reminded that Sam was sole owner of the property at 2519 Walnut Street and that both W.C. and Sam had invested in a company called Sports World Network. Years later, Judge Stewart would find W.C.'s decisions invalid and again claw back to 1992 and surcharge Sam for W.C.'s investment in Sports World Network.

Mark became extremely interested in his grandfather's business, so much so that he went to the Probate Court in early 1993 to review the trust documents himself. He began to meet privately with his grandfather, engaging him in discussions about the terms of his estate plan. On more than one occasion Mark drafted changes and amendments to the trust for his grandfather to sign. He also had notes on how to video record someone changing their will with a focus on ways to remove a trustee and change provisions for asset distribution. Mark also possessed a blank piece of paper with an actual or forged signature by W.C., but could not explain why he had this paper when questioned.

Mark, Bill and another brother, Mike continued to work for their father until mid-1997. Sam had no idea about the behind-the-scenes attention Mark was giving his grandfather's estate until the day after W.C.'s funeral in February 2000. Mark sent a demand letter to his father on that day threatening a lawsuit if Mark didn't receive nine years of W.C.'s accountings within one week. Sam, who was grieving his father's death, a death that followed 8 weeks of illness, made a reasonable request to have 30 days to arrange a meeting with the family and W.C.'s advisors.



W.C. exercising, 1999

W.C. still weight trained at age 91 with a personal trainer twice a week until November 1999. Early the following month he complained of a stomach ache and was diagnosed with a ruptured appendix. He managed the surgery just fine and was recovering at home when complications developed and he died the end of January 2000.

***Increased to 18 lb weights for strength training in upper body routine. Increased reps by 100% in lower body routine . . . Mr. Scott knows his routine and without doubt enjoys it very much . . . R.R. Personal Training
—R. Raymond, April 1999.***

Mark's insensitive timing in requesting immediate accountings was calculating and begs the question of his motives. Was it greed? Was it revenge for the corporate lawsuit? Or, was it something else?

Whatever his motives, Mark had planned this litigation for years. He was surrounded by biased advisors and predatory associates of the probate business. If he was concerned about fair treatment as a beneficiary, he had the option of suing after the proposed family meeting, but he couldn't wait. The other beneficiaries (7) did not join Mark in his lawsuit and by his actions they have been denied access to their inheritance for nearly 12 years. At least two objected in writing to Judge Stewart:

At the very heart of my distress is the fact that the will of W.C. has been completely ignored. The suspicious inferences made about Sam Scott are equally disturbing. It is incomprehensible that the hostile actions of one beneficiary can cause this horrendous chain of events (and) that it was carefully planned (for when) W.C. passed away so that he could not be heard.

I believe . . . Sam Scott has not done anything suspicious or dishonorable and it is my wish that he be reinstated as trustee. DLS, 2002

I am embarrassed by the behavior of my brother, Mark Scott, who continues to punish our father . . . In 1997, when he conspired to take what was not his, he angered our father and grandfather. He clearly understood that he was in trouble with his grandfather, because he ceased visiting for the next three years, right up to his death in 2000.

I respectfully request that my father be reinstated as trustee . . . and that my grandfather's wishes be honored and respected, at last. SWS, 2002



Sam and W.C. with great-grandson
December, 1996

Mark did not become a beneficiary and was not eligible for annual accountings until after W.C. died. Nevertheless, Judge Stewart ordered not one, but two accountings of the previous nine years. Mark rejected his father's request for a reasonable amount of time and immediately filed suit to have Sam removed as trustee. Thus began a horrific course of litigation that the Probate Court allowed to run amok for years.

The Beginning

Mark's first bill from his attorneys, Garold Sims and Frank Suyat of Sims and Boster, exposed the power brokers behind the lawsuit. (Note: G. Sims died April, 2011.)

At the top of the bill was Richard "Dick" Dally. Dally's wife, Diane was hired in 1972 and worked for W.C. and Sam for 25 years. Within a short time Diane was caught stealing cash sales from Styro Materials. She tearfully pleaded that if they didn't prosecute and allowed her to keep her job she would be the most loyal employee they had ever known. Dick had just finished law school at DU and was starting his career. Sam and W.C. agreed to give her another chance. Diane went on to work for Scott System until her termination March 1997. In July 1997 when Mark and Bill opened their competing business, they hired Diane as their bookkeeper.

The Dallys divorced in 1996. As Diane was leaving Scott System for the last time in 1997 she said, "I'm afraid of what Dick will do, he's so vindictive." The Scotts didn't understand what she meant — until they saw Mark's first legal bill.

Dick Dally was deeply involved in Mark's case against Sam from the beginning. The first item on the first invoice:

2/1/00 — Research on probate rules and petitioning to remove trustee; . . . conference with Dally re Complaint

Review complaint; Telephone conference with R/ Dally re basis of claims; use of D Dally's affidavit in complaint.

Although Dally didn't submit legal fees, he attended every trial and was clearly working to ensure Sam remained entangled in a lawsuit.

That same bill reveals a call to attorney Bob Steenrod a few days prior to a lengthy meeting at Steenrod's office. Steenrod has been Denver's Probate Public Administrator since about 1980. Mark's attorneys met with him for several hours to develop a strategy to remove Sam as trustee. During their meeting they called Mark to inform him of their plan. The strategy appeared to include accusations, innuendo, and most importantly, character assassination. Mark later admitted in a deposition that he had no idea what his father might have done to be removed as trustee, but that his attorneys were going to tell him.

Probate Public Administrators (PAs) in Colorado are not employees of state or local government. They are private individuals appointed by a judge for an undefined period. Steenrod has made a thirty-year career as Denver's PA, and in the past two years he has received nearly \$1,000,000 in income for his duties as PA — this is in addition to his lucrative private practice.

Steenrod was featured in a May 2010 *Denver Post* article by David Olinger focused on his practice of selling several homes exclusively to Steven Snyder of Ridgemoor Realty. This benefitted the broker, but the estates that owned the properties were denied the best price. The *Post's* analysis showed that on average Ridgemoor Realty owned the homes for about one month and then sold them for about 18% more than they had paid. In one instance, Steenrod sold a house to Ridgemoor for \$266,000 and three days later, Ridgemoor sold it for \$315,000 — a loss to the estate of \$49,000.

Steenrod has such a strong influence in his PA position that last year he asked Judge Stewart to appoint his law firm partner as PA and make him Deputy PA. Asked if the job was offered to any one else, Stewart said that no others have expressed an interest in becoming the public administrator.

Some believe that Steenrod is more powerful than the judge. After all, he has worked there longer than any Probate Court judge. If you have a flimsy case, in fact no case, who better to strategize with than the most influential character in Denver Probate Court?

During the strategy meeting Steenrod brought in attorney John Holt. Holt had recently left a job as a bank trustee and was “working from home”. In Holt’s deposition he acknowledges a long relationship with and admiration of Judge Stewart. Sam would later learn what he was up against when Holt first appeared in court, January 2001, and Stewart greeted him warmly and was heard saying, “I admire his work.”

When Steenrod was deposed by Sam’s attorney he denied attending the strategy meeting with Mark’s lawyers in his office. Sims and Suyat must have gotten the word about the disclosure of Steenrod’s involvement, because when their bills were submitted a second time to Judge Stewart, all references to Steenrod and Holt appeared as “DELETED”. The second submission was changed from the billing statement format to the law firm’s time slip format perhaps in an attempt to conceal the deletions. Although this was brought to Judge Stewart’s attention she seemed deaf to Sam’s objections about their shenanigans and Steenrod and Holt’s unmistakable lack of neutrality.

Mark’s Petition

Any first-year law student knows that in order to file a complaint, you must have evidence of wrongdoing; otherwise it can be deemed frivolous. Mark clearly did not have a basis for his suit, but he was counting on his attorneys to create a case.

Mark had been manipulating his grandfather since 1993 as well as discussing ways to remove a trustee with his attorneys since at least 1997. He had a file of unsent notes and letters addressed to his father regarding his grandfather’s estate dating back to 1997. He admitted that he purposely waited until his grandfather died to sue his father, stating, “I didn’t want my grandfather involved” and “I’ve waited long enough.” By waiting Mark avoided his grandfather’s condemnation and denied Sam his most important witness.

The following excerpt from Mark’s pretrial deposition illustrates that he did not understand his own petition and relied on his attorneys to explain his claims.

Deposition — Mark Allison Scott (43) August, 2000

Q. This is a statement of claims and defenses to be pursued or withdrawn. Are you familiar with this listing of claims?

Mark No.

Q. So you don’t know of any payments that were improper as we sit here today?

Mark I can’t think of any right now.

Q. Is there anything indicating misconduct in this transaction as reflected in Exh 127, 128 and 92?

Mark First time I’ve seen this, but no, there’s nothing.

Q. What is the breach of duty of loyalty with respect to that transaction?

Mark I don’t know, Larry. I don’t know. This is the first time I’ve seen this.

Q. I'm talking about theft.

Mark No theft, no, I don't think he's ever stolen anything from my grandmother — besides her interest in the Styro Building.

(Note: This statement changed later in the trial when Mark was asked directly by Hamil —

Q. "So you're saying your father and grandfather stole from your grandmother."

Mark: "That is exactly what I am saying.")

Q. Did you ever assert that he failed to keep — that he was in breach of his duty as a trustee?

Mark No, of course not.

MR. SUYAT I object. He said he hasn't said those things, and he's testified several times now that he hasn't seen the document nor did he write this document.

MR. HAMIL Mr. Suyat, this document was filed for the guidance of all parties in trial. Whether he wrote it or not, these are the claims that he's asserting.

Q. So although it's stated in this pleading, this Trial Management Order, that this is an issue that we're going to be trying to the Court, you as petitioner don't even know what that means, do you?

Mark I've discussed it with Gary Sims. He understands it. So--he did not explain it to me fully, nor did he—

Q. In what way are they incorrect?

Mark I don't know. Gary told me that they were.

Q. Do you know of any reason that you could state that these records or these numbers are inaccurate?

Mark No, I can't recall anything right now.

Q. What do you plan on doing in the next two days to prepare for trial, or three days or whatever period of time it is?

Mark Discuss with my attorneys, whatever they suggest I do.

Q. So they're the ones that are going to tell you what's wrong here?

Mark This is first time I've been through this.

The Probate Pit — August, 2000

At the first several-day trial in August 2000, Judge Stewart allowed Mark's attorney to greatly exceed his allotted time by questioning Sam about the minutia of W.C.'s day-to-day expenses for the previous nine years. This was obviously part of the strategy — use up time so Mark wouldn't have to take the stand and defend his claims.

On Friday morning, September 1, 2000, just before the Labor Day weekend, Judge Stewart asked if they could wrap up before noon so everyone could have a long holiday. She demurely promised to read Mark's deposition. Sam and his attorney agreed because they were convinced that Mark's own words clearly demonstrated that he had no basis for litigation. In hindsight, this turned out to be an error, because as a result, Mark was not required to present his case and Sam was denied the opportunity to question him.

The Colorado Supreme Court removed a Denver judge from an emotion-filled probate case, saying the judge improperly jailed a poor, medically ill woman for almost three months after telling her to "shut up" on at least two occasions. . . . Stewart prejudged the outcome of the case, and allowed "marked personal feelings" toward Robinson to affect her judgment without hearing evidence from both sides.
"Judge Taken Off Emotional Probate Case," Denver Post, February 16, 2000

It was a shock when just a few weeks later Judge Stewart removed Sam as trustee. The main goal in a probate strategy such as Mark's is to get control of the money and the first step is to remove the trustee. One would think that the removal of a decedent's designated trustee (especially the only child) would be nearly impossible, but depending on the judge, it can be quite easy.

Judge Stewart had several options for resolving the matter before her, including: finding the case lacked evidence, deciding that W.C. had appointed his son as trustee for his own good reasons, questioning Mark's motives by taking judicial notice of the corporate case, or simply freezing all the assets, etc. She took none of those actions, but instead took the most extreme action possible -- one that set in motion the means of depleting W.C.'s life earnings, breaking his son and, of course, enriching the gravy train.

Let us consider the reason of the case, for nothing is law that is not reason.
—Sir John Powell, British Barrister, 1713

Stewart stated, "The trustee's explanations for many of his shortcomings as a fiduciary may turn out to be legitimate and may defeat entirely petitioner's claim for surcharge, damages, and disgorgement." This would have been an appropriate time to direct Mark to present evidence or drop the case.

Stewart continued, "Ill feeling between the trustee and beneficiaries that makes future cooperation and proper administration improbable may be grounds for removing the trustee even if misconduct is not proven." This surprising finding infers that one who doesn't like his or her trustee can simply inform the court of that sentiment. There is no doubt there were ill feelings; Mark, after all, had tried to steal his father's business.



W. C. and Mo Scott at Scott System, 1997

When Mark stole from his father, W.C. was angry and extraordinarily disappointed. He said, "That just shows who they are, I don't trust them." W.C. wanted to change the succession terms of his spousal trust and prepared a codicil with his attorney. As it turned out, he didn't actually disinherit anyone, but he did move his son Sam ahead of all the grandchildren. He amended the spousal trust to make Sam the first beneficiary and upon Sam's death the balance would be distributed to the remaining beneficiaries.

Mark initially sued over the family trust (funded when Sophia died), not W.C.'s spousal trust. W.C. wanted his son to serve without bond. He certainly never anticipated Mark's vicious attack. Sam quickly amassed huge legal bills and rightly used the spousal, now referred to as codicil trust, for his financial maintenance. In the end, Judge Stewart overturned the codicil W.C. had made to his trust and as a result, Sam was surcharged

\$327,956.12* for distributions he had lawfully received. Mark, and the probate cartel, has caused Sam to spend over \$1,500,000 of his own money to defend his father and himself. (*Properly distributed.)

In order to obtain a ruling invalidating W.C.'s codicil Mark had to prove that his grandfather "lacked capacity" in December 1997. Despite testimony and several photos of W.C. clearly demonstrating his cognitive soundness, Mark pursued the issue for five years.

Even Mark didn't believe W.C. was incompetent, because although he hardly visited his grandfather during the last three years of W.C.'s life, he did write to him on at least three occasions in 1998 and 1999:

I hope you get the chance to read this or the chance to have someone read it to you.

— Letter stamped "CONFIDENTIAL," July 24, 1998.



1998, last year playing golf

("Have someone read it to you" is a reference to W.C.'s progressive macular degeneration. This was the year [1998] that W.C. stopped playing golf due to his failing vision.)

In early April 1996, W.C.'s accountant, Charlene Zahn, requested documentation that W.C. required household help to support the deductions for that service on his tax return. Dr. Todd Ogawa provided a letter he called a "form letter" that he used whenever a patient asked for this type of documentation. Diane Dally made a note on the letter that she had faxed it to Zahn on April 10, 1996 — just five days before W.C.'s tax return was filed.

Dr. Ogawa had never examined or treated W.C. for any type of diminished capacity. He treated him for just two things: gout and chest congestion. In his testimony 2007, Dr. Ogawa, who had since lost his medical license due to his drug addiction, stated that he was using drugs at the time he was W.C.'s physician. He acknowledged that he recognized the letter, but didn't remember providing it.

At first, the Court of Appeals found the letter not relevant in time and said it did not meet the Cunningham Test for capacity. Not deterred by the higher court, Mark and his team pursued an administrative clause in the trust that said a letter could be used as a "certificate" of incapacity. Dr. Ogawa provided his form letter for tax purposes only and the concept of some type of "certificate" of mental capacity was not requested or ever discussed. A "certificate" of capacity would have involved specific testing and an extensive examination, which never happened.



W.C. at a friend's wedding, August 30, 1997

This is a warning about how easy it is to take away someone's rights by having them declared incompetent through the legal system. At age 87 W.C. had diminished hearing and vision. Sometimes he couldn't remember and sometimes he was confused. These issues did not mean that W.C. was incompetent. Certainly, an unknown and obscure "boiler plate" clause in the back of a trust document should not be the determining factor in denying a person's capacity.

Judge Stewart acknowledged that the letter was hearsay and she did not allow it as evidence of diminished capacity in 2001; however, six years later it became the key to denying W.C.'s testamentary rights.

The Court of Appeals, ignoring all other evidence of W.C.'s soundness of mind, affirmed Stewart's finding of 2007 and ruled that W.C. was incapacitated, not by truth or fact, but by misusing the purpose of Dr. Ogawa's letter to take away W.C.'s rights.

Be afraid! You may hire a professional to write your estate plan and your intentions may be very clear, but if the planner was careless or the judge deemed the planner "not credible," your directives will not be protected by the court. Probate "pros" will line up to fight over your estate and spend your money. After all, you're dead! Why should anyone look out for you? W.C. could have just left a will and let everyone pay some inheritance tax. Tragically, he was sold the idea that an estate plan was the appropriate way to secure his wishes. He would be heart-broken to know that his plan has cost his son 3.5 million dollars in legal fees and surcharges to date!

The process goes something like this: You meet with an attorney, you state your plan, you list your assets, you pay a large, generally flat fee, the attorney goes to the computer and scrolls through the estate planning software picking and choosing various articles from the program, plugs in the parts and pieces, has another meeting, gets your signature, collects a fee and you're done. Good luck and don't die!

Holt as Trustee

The next step in the strategy was to insert Steenrod's new hire, John Holt, as trustee. According to the provisions of the trust, any change in trustee must be approved by unanimous vote of the beneficiaries. Judge Stewart disregarded that provision, because Holt was Mark's choice. Without exercising any effort to help the parties find a neutral successor, she ensured that Holt was the only choice. Thus, over Sam's objections that Holt and Steenrod were obviously not neutral, she rewrote W.C.'s instructions — changing "unanimous" to "majority" — and Holt got the job.

Denver Probate Court has always been an informal, insular court, specially created, with a circle of attorneys and professional fiduciaries and one judge, Denver attorney [Chris] Campbell said. It engenders an old boy network. That couldn't happen in a worse place than a court where vulnerable elderly people are in danger of losing all their rights. . . . It's not a level playing field, attorney John Holland said. There's the sense that there's a lot of informal decision-making and things are prejudged based on politics or connections between people.

—The Probate Pit," Rocky Mountain News, April 7, 2001

Mark now had his grandfather's money in the hands of a biased successor trustee to prosecute his father. Holt didn't even pretend to be neutral; he consulted Mark's attorneys regularly on various strategies to defeat Sam.

The largest estate Holt had handled prior to W.C.'s estate was valued at \$40,000 and neither Holt nor his assistant is an accountant. It took Holt and a team of handlers more than two years, at a cost of \$182,586.12, to prepare an accounting. This was in contrast to Sam's accounting that was prepared by Mary Flannigan Smith, a CPA experienced in trust accounting. Smith prepared the accounting in just a few weeks at a cost of \$5,333.88 and delivered it to the court before the August 2000 trial. In the end, when Holt finally submitted his accounting, the two audits were virtually identical and showed that the estate had increased in value during W.C.'s and Sam's administration.

Holt's other assignment was to trace assets and prepare a report. He seemed overwhelmed and under qualified to do the job. By the final trial in January 2007, six years later, he did not seem to understand his report and it remains incomplete to this day.

During the 2007 trial, Sam's attorney, Larry Hamil, questioned Holt about each of the nine years in his report. Mistakes and wrong assumptions riddled his work. A review of just the first few years revealed staggering errors. Judge Stewart called for a recess around 4:30 PM. When everyone returned it was decided to continue into the evening. Upon resumption, Holt's testimony completely fell apart. He was forced to acknowledge his mistakes and that nothing was missing. Indeed, the trust was exactly as it should have been.

Court was adjourned around 9:30 that night. Sam had proved that nothing was missing and everything was in one trust or the other. Holt had lost credibility. It was thus no less than stunning the next day when Judge Stewart adopted Holt's immensely flawed report in its entirety. Eighteen months later, while preparing for appeal, it was discovered that the electronic recording of Holt's disastrous, but critical, evening testimony — over four hours — was mysteriously missing.

Secrecy has been a hallmark of this case, particularly when it comes to the judge and her appointees. . . . When one nurse complained in a deposition that she believed the judge (Stewart) was participating in a cover-up and said she was going to demand an investigation, the judge had the deposition sealed . . .
The transcripts from that meeting were sealed.
— "Changing of the Guard," Westword, December 18, 1997

This was a terrible injustice. Holt's testimony showing his report to be incorrect and incomplete was absolutely essential to Sam's case. Yet Judge Stewart treated this development as inconsequential; she offered no explanation, no acknowledgement, no apology, no notes, no offer of a redo, and no order for the other side to disclose their notes — nothing.

After extensive consultation with his vast legal team, Holt finally agreed to the following regarding his missing testimony:

Annual accountings were prepared by Janet Johnson and signed by him.

Neither Mr. Holt nor Ms. Johnson is an accountant or CPA.

The variations between Holt accountings and Smith were due to differing methods of accrual, timing of recognition of transactions, etc. Holt carried over many of these variations from year to year and thus they were repeated in each annual period.

Holt testified that if W.C. exercised the 'five-by-five' provision of the Family Trust to withdraw funds or direct funds to be paid on his behalf, such exercise would not need to be in writing.

Holt testified that if differences relating to the methods of accounting used by him or Smith are disregarded, the cumulative disparity between the two accountings for the entire nine year period during which Sam acted as co-trustee was less than \$1,000.

He summarized transactions relating to the missing check register as "unknown expenses." He further testified that, based on additional information provided by various sources after the preparation of Report #1, most of these expenses were confirmed to be properly documented and permissible expenditures.

Another example of Holt's favored treatment occurred at the January 2007 trial when he arrived with a long list of corrections and revisions to his depositions taken on October 4, 2002; August 10, 2004; and December 19, 2006. Judge Stewart accepted the changes to his testimony. It's unbelievable that an officer of the court was allowed to alter his sworn testimony as if it were a take home exam that could be submitted at his convenience years later.

Judge Stewart's rulings were based on Holt's tortured report. Even though he barely understood his own work, when Stewart asked if there was anything he wanted to change, he said "No." She depended on him to support her findings and he was clearly dependent on her. In an email, Marc Darling, one of Holt's many attorneys and also a former deputy public administrator under Steenrod, asked without any pretense of neutrality, "What does Jean [Stewart] want?"

Sam eventually filed a suit against Holt and Steenrod for excessive fees. In an effort to save himself from the lawsuit, Steenrod called attorney Michelle Stern in Hamil's office on May 14, 2007 and claimed that Holt's fees "are monstrous" and that "Holt was appointed personally because of his relationship with the judge." Steenrod went on to say he didn't know "how the hell they (the fees) got so high." In response to Stern's comment about the lack of supervision because of Holt's relationship with the judge, Steenrod said, "Well that's the politics of our world."

Sam's case against Holt and Steenrod was separate from Mark's action, and was still pending at the time of the appeal, but the Court of Appeals rendered a decision that wrapped everything, including making Holt a party to Mark's original suit, into one decision and dismissed Sam's lawsuit without it ever being heard in any court.

Judge Stewart had evidently decided that everything Sam professed about his father's wishes and their relationship was not true. It seems she should have asked: Just who did W.C. want to represent him in death if not his son? She dismissed all testimony by W.C.'s attorney Tom Scheffel by ruling that he was "not credible".

I don't feel Judge Stewart is a competent judge, because of her arbitrary decisions, her personal bias against people she believes have offended her. There are attorneys she likes and attorneys she doesn't like.

—Harry Arkin, attorney for 53 years, "Lawyers, others take sides of efficacy of Denver probate court," Denver Post, October 26, 2010

So, again, beware: you may think you have a good plan, but don't be naïve. Probate law can be manipulated. It takes only a couple of powerful people who know how to use the system to ignore common sense and manage to seize your estate. At the end of their maneuvers it's possible that they will control the money, while you are forced into bankruptcy.

A Story of Surcharges

Mountains of surcharges were levied on Sam despite the fact that nothing was missing.

Extreme justice is extreme injustice
— Marcus Tullius Cicero (106-43 BCE)

How did Judge Stewart manage to paint Sam as such a terrible person? It might not be easy, but if one can invent a couple of salient "facts", it is possible to go down that path. One thing she decided about this man she knew nothing about was that he had been plotting against his own children since 1991. With absolutely no evidence for this outlandish conclusion, she was provided cover for her mind-boggling decisions. The turning point in this family saga didn't occur until Mark and Bill left the company in mid-1997, but Stewart ignored that fact.

Sam has owned a business since before 1970. He is honored and respected in the community. Associates around the world would gladly attest to his good character. He lives modestly and works at his company every day. Judge Stewart's premise that Sam coveted his father's estate and schemed for years against his own children is blatantly absurd. There is no valid reason for these bizarre rulings. Not only were they illogical, but her rulings lacked common sense and compassion.



W.C. and Sam with Scott Family, December, 1996

For example, the fact that the family was still celebrating Christmas together through 1996 was ignored. This was known to her because she surcharged Sam for "unauthorized gifts" as a result of W.C.'s gifts of money being drawn on the family trust instead of the spousal trust. W.C. was allowed to use this account, but the judge treated this as nefarious conduct on Sam's part. None of the recipients returned the money or complained that their check may have been drawn on the *wrong* account. Nonetheless Judge Stewart surcharged Sam in the amount of **\$16,400*** for these "unauthorized gifts." (*Money not missing.)

In another instance in 1992, a friend of one of the grandchildren launched a company called "Sports World Network" to sell sports equipment and clothing on a TV shopping network. Based on what appeared to be a good business plan, W.C. and Sam decided to invest \$15,000 each. Unfortunately, the business did not succeed and they both lost their investment. Judge Stewart ruled that Sam was responsible for W.C.'s loss and surcharged him for W.C.'s **\$15,000***. (*Money not missing.)

This was not logical because it was W.C.'s choice and he had the right to make all investment decisions for his trust. One wonders: If he had gone to Las Vegas and lost money would she have surcharged Sam for that as well?

Judge Stewart seemed confused on this issue at first and ruled it out, but when Mark's attorneys later revisited the question, she followed their lead and ruled in favor of including it.

Another surcharge was applied for not funding the Generation Skipping Trust (GST). W.C. had decided not to do that and instead opted to leave the funds in his spousal trust where it continued to earn interest. The \$400,000 that he could have used for the GST was not missing and was still invested. Judge Stewart concluded, however, that surcharges would be levied against Sam despite the fact that W.C. kept the money in his spousal trust. The amount surcharged was interest on the not missing \$400,000; another strange ruling because the principle was always there in W.C.'s account. Nevertheless, Sam was fined a staggering surcharge including interest at the whopping statutory rate of 8% from September 22, 1992 to June 2007 totaling **\$835,970.80***. (*Money not missing.)

John Holt's assistant, Janet Johnson of Paperworks, LLC, had entered every single check and transaction from all of W.C.'s accounts from December 1990 to January 2000. During the time of the court proceedings, it was discovered that a check register from the early 1990s was missing. W.C. maintained his books at his office under the supervision of his bookkeeper, Vicki Peterson, but a thorough search did not turn up the register and the bank no longer had copies of the checks. Despite every effort to document the missing register, Judge Stewart held Sam accountable and surcharged him for the amount that was legitimately spent by W.C., but couldn't be reconstructed totaling **\$55,261.08***. (*Money not missing.)

Even though Holt and Johnson held no accounting credentials they billed the trust **\$182,286.15*** for the more than two years it took to complete the accounting. Judge Stewart passed these charges on to Sam and rejected all eight complaints filed for Holt's excessive fees. Even Holt's attorney, Marc Darling, was admonishing him to finish his report and be prepared to justify the cost. (*Money not missing.)

Mark was by far the biggest beneficiary of W.C.'s "family bank" receiving at least four large loans from his grandfather. In fact, Mark managed to get the last loan of \$20,000 from the family trust just weeks before he embezzled corporate documents from his father's company in 1997. He had recently purchased a new home and wanted new furniture. His stepmother, Mo, served as his real estate broker and gave him \$4,200 from her broker's fee. Mark accepted all of this knowing he was about to commit civil conspiracy.



Ace and Buck, Christmas 1995

In 1995 W.C. decided to give a loan to another beneficiary to buy a house. To help spread the risk, Sam decided to assume 25% of the liability and SDG Properties, LLC, was formed to handle the purchase. Although this arrangement was supported by W.C., Judge Stewart ruled the trustees' decision to cash two municipal bonds to fund the loan had caused a loss of \$10,067.00 in interest income. The bonds were near maturity and would have sold in a few weeks in any case. The judge did not acknowledge that the trustees had the right to make such investment decisions or that the SDG loan had paid the trust \$55,000 in interest income. As the loan payments were received they were reinvested in a mutual fund compounding the income, and the loan was paid in full December 2004.

Nevertheless, Judge Stewart surcharged Sam **\$10,067.00*** for the perceived loss of revenue from the municipal bond. The truth of the matter is that the early sale of the bonds to fund the SDG loan produced a net gain of at least \$45,000.00 for the trust — a significantly better outcome. (*Nothing missing — Increased value.)

Also overlooked were the unique accounting procedures Holt applied when he decided to refigure every SDG loan payment made since 1995. In his relentless effort to find wrongdoing he went back to the start of the loan and recalculated every payment, using a method that even he could not explain. This expensive and unprofessional procedure cost the trust at least \$2,200 because more payments were early than late — but no surcharge was levied on Holt.

Judge Stewart reinterpreted events and relationships by inserting her views into the Scott family history. Although everything was accounted for, she criticized W.C. and Sam's decisions and seemed to demand an unnecessary degree of perfection.

At the same time she overlooked all of Holt's many inadequacies. He was not even able to make timely deposits, which probably accounted for his incomprehensible method of recalculating the loan payments. In many cases he lost checks or held them from 20 to 50 days, and he was always unresponsive to requests for explanations of missing checks.

In light of Holt's excessive expenses Sam requested a monthly electronic income and expense report. Holt refused and Judge Stewart ruled that he only had to give accountings once a year after filing tax returns. Thus the financials are always months out of date, because the reports are through the end of the year, but not received until at least the following June. For example, financial activity for 2011 will not be known until sometime after April 15, 2012.

Without considering W.C.'s wishes, Judge Stewart rewarded Mark for disgracing his father and grandfather by surcharging Sam **\$567,303.12*** for Mark's legal fees. Just to make sure she didn't miss an opportunity to pile on, she also surcharged Sam for a late tax return filed in the mid-1990s in the amounts of **\$692.51*** and **\$67.19***. (*Nothing missing!)

Garnishing Your Father's Salary

Mark has been relentless throughout his effort to defeat his father. He has instructed Holt and collection attorney Irv Bornstein "to get everything they can." To date, they have seized Sam's bank account, accelerated a loan and garnished his income. In December 2008 they threatened to evict him from his home of 28 years just in time for the holidays.

***Money comes and goes, but when this is over I will still have
a relationship with my dad.
— SWS, daughter, 2000***

Acting in the manner of true bullies, Holt and company have schemed to keep the financial pressure on Sam so that he can no longer pay his attorney to defend him.

***Spoke with Suyat today, we agreed to try to put as much pressure
on Buck and Hamil . . . as possible.
— Brian Reynolds, Holt's personal attorney, January 8, 2008***

***Hi John — I just got off the phone with I Bornstein . . . Colorado Capital Bank . . .
has frozen Buck Scott's funds. Happy Friday.
— Brian Reynolds, February 8, 2008***

The Probate Cartel

As of December 31, 2010 Holt and his cartel have spent **\$812,677.69** of W.C.'s estate. The individuals on this particular gravy train have taken the following amounts:

| | | |
|----------------------------|-----------|---------------------|
| R.L. "Bob" Steenrod | 2001-2007 | \$205,698.87 |
|----------------------------|-----------|---------------------|

Denver Probate Court Public Administrator and attorney in private practice.

Holt was employed by Steenrod from 2001-2005. When they separated, Holt owed Steenrod \$53,583.17 which he didn't pay until 2007. No explanation has been given as to why Holt was terminated, why he owed Steenrod trustee fees from the Scott Family trust, and why he took two years to pay his previous employer.

| | | |
|---------------------------------------|------------------------------|----------------------|
| John Holt total time 2001-2011 | 2006 to 2010 received | \$77,590.94** |
|---------------------------------------|------------------------------|----------------------|

Attorney

Writes himself checks in round numbers; doesn't itemize for his time or services.

Charges the same fee for all activities — legal services or not.

Needs a very large team of other professionals to do his work.

****From 2000 to 2006 was paid a salary by Steenrod of approximately \$87,000/year.**

| | | |
|---------------------|-----------|---------------------|
| Marc Darling | 2002-2010 | \$125,947.73 |
|---------------------|-----------|---------------------|

Hired by Holt, attorney with Wade, Ash, Woods, Hill & Farley law firm.

Darling was Steenrod's partner in the past — they are leaders in the trust/estates section of the Bar Association. They draft the bills for probate law, such as compensation legislation for professional fiduciaries. He has played many roles for Holt — attorney, coach, front man to sell assets, and general advisor.

| | | |
|-------------------|-----------|---------------------|
| Renee Ezer | 2003-2004 | \$115,042.15 |
|-------------------|-----------|---------------------|

Attorney hired by Holt

Coach on preparing Holt's report, prepping Holt for testimony, researcher on corporations and partnerships and general advisor.

| | | |
|----------------------|-----------|---------------------|
| Janet Johnson | 2001-2010 | \$183,284.56 |
|----------------------|-----------|---------------------|

| | | |
|--------------------------|-----------|-------------------|
| And Jamie Johnson | 2009-2010 | \$7,116.50 |
|--------------------------|-----------|-------------------|

| | | |
|----------------------|--|---------------------|
| Johnson Total | | \$190,401.06 |
|----------------------|--|---------------------|

Hired by Holt

Janet and her family have done very well from their services in the Probate Court saga.

She holds all the trust financial records in her home. Her relative, Jamie, began scanning documents two years after the last trial spending over \$7,000 just for scanning from 2009-2010.

| | | |
|----------------------|-----------|--------------------|
| Irv Bornstein | 2008-2010 | \$69,260.00 |
|----------------------|-----------|--------------------|

Collection attorney, hired by Holt

| | | |
|------------------------|------|--------------------|
| Gelt/Grassgreen | 2008 | \$12,966.00 |
|------------------------|------|--------------------|

Law Firm, hired by Holt

James Ingraham 2008 **\$ 6,283.75**

Attorney, hired by Holt to file a revised 1992 tax return for Sophia Scott's conservatorship some sixteen years after the fact. Despite advice to the contrary, he spent \$6,283.75 to consult about a return that the IRS rejected.

Brian Reynolds, Craig Fleishman, Katherine Karamalegos **Unknown Amount**

Attorney with Fleishman & Shapiro law firm, hired by Holt as personal attorney. Reynolds consults with Holt and many of the attorneys listed above on various strategies. Holt has not submitted these bills to the trust, yet.

To Holt and Marc Darling — . . . We also would like to resolve the Trustee issues while Judge Stewart is still intimate with the case and favorable in her view of the Trustee.

— Brian Reynolds, February 21, 2008

Holt consults with four or five of the individuals above on the same subject and, of course, they all bill the trust for their time — a very expensive and redundant process.

What power has law where only money rules?

— Gaius Petronius (66 A.D.)

Everyone Has a Right to Appeal

For the most part over the many years of this case, Sam's appeals had favorable results and restored his faith in the judicial system, until the last appeal.

When the notice of appeal was filed following Judge Stewart's final orders after the January 2007 trial the list of issues to be raised on appeal was 35 items long. Each item (with the exception of #8) begins with the question ***Did the Probate Court err in:***

1. **its findings, determinations, orders, and awards of fees, costs, and surcharges . . . in the various orders in Sect. II?**
2. **surcharging Sam in Final Order June 2007?**
3. **assessing attorney fees, other fees . . . June 2007 . . . ?**
4. **determining monetary amounts . . . ?**
5. **calculating amount surcharged . . . ?**
6. **refusing to admit Second Codicil to probate and in holding the January 2007 trial to determine the validity of W.C.'s exercise of power of appointment after the Court of Appeals already held that the Codicil was valid?**
7. **determining that W.C. lacked testamentary capacity . . . ?**
8. **Was there insufficient evidence as a matter of law upon which the PC could determine that W.C. lacked**

capacity or was subjected to undue influence when he executed the codicil, even if those issues were properly before the court?

9. admitting and relying on certain evidence at trial?
10. finding that Sam breached his fiduciary duty in any respect whatsoever?
11. removing Sam as trustee of the Family Trust and as trustee of the Second Codicil Trust?
12. appointing J S Holt as successor trustee of the Family Trust?
13. appointing J S Holt as successor trustee of the Second Codicil Trust?
14. ignoring and amending the procedure for appointing a successor trustee as set forth in the Trust Agreement and its amendments?
15. ignoring the finality and conclusive effect of the Probate Court's final judgment, on 12-6-1993, in Sophia's conservatorship which approved the final accounting, discharged Sam from any liability associated with performance of his conservator duties, and terminated the conservatorship?
16. determining that the affirmative defenses asserted by Sam did not bar Mark's claims, specifically, but not limited to, claims regarding Scott Partners, 2519 Walnut Corp, and the Walnut Street property?
17. its determinations related to Sophia's alleged interest in a purported entity referred to as Scott Partners and in awarding the "Scott Partners Surcharge"?
18. finding Sam liable for failure to fund the GST and awarding the "GST Trust Surcharge"?
19. awarding statutory interest on the GST Trust Surcharge?
20. awarding the "Surcharge for Failure to Maintain and Render Accounting"?
21. awarding the "Surcharge For the Costs of Reconstructing Trust Funding and Accounting"?
22. determining that the "Surcharge For the Costs of Reconstructing Trust Funding and Accounting"?
23. awarding the "Surcharge For Malfeasance in Administration and Investments"?
24. determining that Sam purportedly engaged in self-dealing and in entering the "Surcharge for Self-Dealing"?
25. awarding the "Surcharge For Unauthorized Gifts"?
26. awarding "Mark's Attorney's Fees and Reimbursement Costs"?
27. the assessing pre-judgment interest on the award of Mark's attorney fees?
28. determining that Mark's attorney fees and costs were reasonable and necessary and incurred for the benefit of the Scott Family Trust and beneficiaries?
29. denying Sam the right to a hearing on the amounts of attorney fees assessed against him in the Final Order and Judgment?

30. **determining that certain claims were legal and certain claims were equitable and in entering exemplary damages against Sam?**
31. **determining that there were statutory grounds for awarding exemplary damages?**
32. **determining that Sam acted as W.C.'s attorney-in-fact, agent, and sole trustee from April, 1996 until W.C.'s death?**
33. **adopting the Holt Report, with various amendments, which was not final, contained errors acknowledged by Holt, was beyond the scope of the appointment, was speculative, and was prepared using unauthorized and impermissible procedures?**
34. **its orders and ruling with respect to the Cherry St property, the Family Trust's most valuable asset?**
35. **denying Sam's motions for recusal?**

The appellate court limits the number of words in a brief. Sam was granted an expanded brief, but still couldn't address all of the questions of law. So, his appeal was limited to the issues that related to the surcharges.

The most important question was the Statute of Limitations. Mark clearly had an understanding of his grandfather's wishes and all activities relating to W.C.'s trust for more than three years before he filed his lawsuit. There were no secrets about assets or trust transactions. He not only had knowledge, but all through the 1990s he had personally researched and consulted professionals about his chances of getting his father removed as trustee. If this statute had been upheld there would have been no case.

When the Court of Appeals ruled against Sam, he asked for reconsideration on three important issues:

Statute of Limitations and Laches

Inexplicably, the Court concluded that Sam did not provide "any support" and that there was "an absence of any support in the record? Re: Mark's knowledge of his claims prior to initiating the Trust Case.

There is, however, uncontroverted evidence in the record that Mark discovered or by the exercise of reasonable diligence should have discovered his claims more than three years before he brought the Trust Case and that he intentionally waited until W.C. died to bring such claims.

Moreover, the law is clear that the death of a witness . . . an inability to present a full and fair defense . . . constitute prejudice.

Surcharges are only permitted to remedy harm or loss to a trust

A "surcharge is an equitable penalty imposed when a trustee breaches his or her fiduciary duties resulting in harm to the trust." . . . there must be a finding that he failed to exercise common prudence, common skill and common caution in his management of the estate, and that these failures resulted in loss to the estate and prejudice to the person in interest.

Sam maintains that he did not breach any fiduciary duties. . . .this Court overlooked uncontroverted evidence in the record that the purported \$400,000 corpus of the GST Trust was placed in the Spousal Trust. . . .Even Holt recognized

this fact and discounted the amount of the GST surcharge by \$400,000. . .but failed to take this to its logical conclusion that there should be no surcharge: The probate court, based on Holt's recommendation, then incredibly surcharged Sam \$835,970.80 in statutory interest

The probate court has not finally determined Sam's Petitions and Objections

This Court concluded that Sam's Petitions and Objections were finally resolved by the probate court, but that Holt's Petition to Allocate and Assess Fees/Expenses Against Sam Scott and His Counsel ("Holt's Petition"), which was filed in direct response to Sam's Petitions and Objections has not yet been resolved. The Court reasoned that the denial of Sam's Request for a Hearing on Surcharges and Attorney Fee Awards and adoption of Holt's Report . . . in the Final Order encompassed a final determination of the issues raised in (Sam's) Petitions and Objections.

This Court, however, misapprehends the effect of that ruling. The (probate) court only denied Sam's request for a hearing regarding surcharges and fees. The (probate) court did not hold a hearing or rule on the merits of Sam's Petitions and Objections and makes no mention of them in the Final Order. . . This Court's holding improperly deprives Sam of the opportunity to present evidence and constitutional due process right to be heard regarding those issues and . . . the opportunity to appeal the court's judgments as appropriate.

Sam's Petitions and Objections and Holt's Petition do not relate to the set of claims raised by Mark and Sam in the Petitions in Trust and Will Cases, which were finally resolved: they involve different parties, pertain to an entirely different subject matter, and present distinct legal issues. (Petition for Rehearing October 14, 2010)

In response to Sam's Petition for Rehearing the Court of Appeals, breaking with the trend of publishing decisions over the years in the Scott case, issued a very long, unpublished decision ruling to the effect that although Mark may have known the issues he didn't understand them or know the value at the time.

Colorado Supreme Court

After the very disappointing decision by the Court of Appeals there was much optimism that the Colorado Supreme Court would hear the issues on:

- 1. Whether the lower courts erred in surcharging a trustee when there ultimately was no loss to the trust . . . ?***
- 2. Whether the court of appeals erred in construing a permissive provision of a trust in such a way that it effectively nullifies a testator's testamentary capacity under the Cunningham test and contravenes long-standing Colorado law and policy governing trust and estates?***
- 3. Whether the court of appeals' holding regarding the knowledge required for accrual of claims under the statute of limitations is not in accord with Colorado precedent?***

(Petition for Writ of Certiorari May 2, 2011)

Unfortunately the Colorado Supreme Court refused Sam's Petitions for Writ of Certiorari. So, Sam is out of options. Holt and his minions have spent all of W.C.'s cash. Sam has endured these many years of stress and spent an incredible amount of money to defend his father's estate and himself against Mark's awful lawsuit. The beneficiaries are left with having Holt and his gang trying to squeeze out of Sam the inheritance that was theirs before Mark dissipated it pursuing his personal vendetta.

Update

Since the start of Judge Stewart's tenure in 1995 she has had a great deal of negative press. In April 2011 just after gaining another six-year term, she resigned from the bench without explanation. This may or may not have been her choice. As one judge explained, "When there are problems with a judge the public will not hear about it. The judge will be asked to leave quietly with their reputation and pension intact."

Stewart must have hired a public relations firm because she is getting better press since her resignation. One of the more surprising recognitions was "attorney of the decade."

Petrie and Campbell claim that Judge Stewart not only violated Letty's rights, but also Colorado's Probate Code and Code of Judicial Conduct. . . is not just the closed hearing, but a secret visit . . . And then Stewart took it upon herself to act as "counsel, expert witness and fact finder" as well as judge, the lawyers charge. "I've never seen anything like it," adds Campbell. "Everyone I talk to can't believe it." —"To Grandmother's House We Go," Westword, June 12, 1997

Stewart is being sued by a former employee of the Probate Court for wrongful termination. The plaintiff must feel like Sisyphus going against "The Branch," as the Colorado judiciary likes to be called. Stewart has the full resources of the state while the former employee has only her attorney and her wit.

Stewart declined to discuss the court's decision to fire Cammack, who contends she is a whistle-blower terminated one month after she started complaining about the court's failure to monitor a ward with the AIDS virus. — "Probate court rife with lapses in training and oversight," Denver Post, February 21, 2010

Despite Stewart's departure, there are several families left in distress in the wake of her tenure. This chronicle is only one story of the extreme injustice served by Denver's probate system. There are many more innocent, trusting souls who have been mistreated. The elderly, incapacitated and uninformed are particularly vulnerable, and most folks do not have the wherewithal to protect themselves.

Victims are rallying and discussing future actions. If you or someone you know has had an unjust experience in Judge Stewart's court and/or with her favored professionals during the past sixteen years, you may be interested in these conversations. At the very least, there should be a demand for an investigation into the conduct of the probate court.

If you are concerned that the Statute of Limitations might prevent your participation in some type of action, know that you may not be bound by it based on the Court of Appeals' recent interpretation of the law in *Scott v. Scott* (2008 CA 242 - ruling dated 9-30-2010 and modified 3-10-2011). Simply put, the appellate court said: If you can demonstrate that although you had prior knowledge of certain facts, you did not understand them or their value at the time, then the Statute of Limitations does not apply. This is a convoluted ruling when one considers the long history of Mark Scott's strategic activities.



A bad day on the golf course is better than any day in court.