

## The Living Will Controversy — What Is It All About?

by Robert B. Levine, Esq.

**T**he well publicized Terri Schiavo case reminds us to consider our medical treatment choices regardless of our political or religious persuasion. Terri Schiavo became gravely ill at age 25 and was kept alive by artificial means for approximately 15 years. This case reinforces my professional responsibility, as an experienced estate planning lawyer, to inform our clients of the specific considerations in determining whether a living will is appropriate for you as well as your loved ones.

A living will, also known as an Advance Medical Directive, is a document that allows you to indicate your wishes for medical treatment. This document is created when you are capable of making such decisions, so that if you should become seriously ill and kept alive by life support systems, including artificially or technologically supplied nutrition and hydration, your wishes not to be kept alive under such circumstances will be carried out. The State of Connecticut authorizes the appointment of a health care agent who is directed to ensure that your wishes are fulfilled.

In addition, you can grant your health care agent the authority to receive and review your medical records without violating the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). This is important because health care providers are reluctant to disclose an individual's medical records for fear of violating HIPAA regulations. Receipt and review of your medical information could be critical to determine as to whether your medical condition is permanent and irreversible, a finding that must be established before life support systems can be terminated.

The lesson learned from the Terri Schiavo case is that you should decide for yourself whether you would want to be kept alive indefinitely by artificial means if you are in a permanent vegetative state rather than the decision being made by a judge, politician, legislature or any other individual attempting

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*The lesson to be learned from the Terri Schiavo case is that you should decide for yourself whether you would want to be kept alive indefinitely by artificial means if you are ever in a permanent vegetative state...*

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to impose their personal beliefs over your desires in determining your fate.

If you have never given thoughtful consideration to a living will, I strongly urge you to do so, regardless of your age, for your sake and for those close to you.

Please feel free to contact any of the members of Levy & Droney's Asset Succession and Planning department to discuss issues relating to a living will or any other estate planning matters of importance to you. *LD*

*If you have any questions on living wills or any other estate planning questions, please contact one of the following attorneys in our Asset Succession and Planning Department:*

<i>Robert B. Levine, Chairman</i>	<i>(860) 676-3259</i>
<i>Marvin H. Lapuk</i>	<i>(860) 676-3106</i>
<i>Howard I. Gross</i>	<i>(860) 676-3102</i>
<i>George A. Baker</i>	<i>(860) 676-3183</i>
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# “Adultery, Acrimony and Millions...”

*Hartford Courant 3/25/05*

*by Robert B. Katz*

The above headline screams more about a public’s apparent thirst for lurid details rather than something newsworthy in the strictest sense of the word. The above headline was on page 1, placed higher on the page than any other article.

However, an analysis of the case in the *Courant* article, *Sosin vs. Sosin*, illustrates a number of issues which are the subject of many discussions between a client and their divorce attorney regarding the state of divorce law in Connecticut. The case of *Wendt vs. Wendt* made similar headlines several years ago and also provides a reference point when the basics of divorce law in Connecticut are being discussed.

*Sosin* and *Wendt* contain a number of similar elements which a court must typically address when entering orders.

**Personal Issues.** Connecticut is considered a “No Fault” divorce state. This means that the underlying basis for the divorce need not be an allegation that someone has done something wrong. Many years ago, before the “No Fault” concept became part of Connecticut law, there had to be a reason alleged as to why the marriage had broken down and that the reason was the fault of one of the parties. The reason also had to be convincing enough for a judge to grant the divorce. There are many instances in the pre “No Fault” era when the judge decided there was not enough reason to grant the divorce. For example, “Intolerable Cruelty,” “Habitual Intemperance” or “Adultery” was alleged against one of the parties as the foundation for the request to the court to dissolve the marriage. If the court did not feel that the reasons alleged were sufficient, the judge was under no obligation to grant the divorce. This all changed when the “No Fault” concept was introduced. The only allegation necessary for the court to divorce the parties is now that the marriage has “broken down irretrievably.” If one party can make this allegation, a divorce shall enter. HOWEVER, if there are issues in

dispute between the parties, the dispute allows either of the parties to introduce information and allegations similar to the old fault concept. If the parties are in agreement regarding the terms of their divorce, the court need only hear that the marriage has broken down irretrievably. If the parties are disputing an issue (money, children related issues) each party is then free to introduce fault factors.

**Asset Valuation Issues.** It is frustrating to many clients that a discussion with their attorney regarding the possible outcomes if a case is litigated is not black and white and is usually prefaced with the words “it’s possible that the court could . . .” There are many, many facets of a divorce judgment which allow significant discretion for the court. These include the dollar value of the particular item as well as how the court is going to apportion the dollar value between the parties. Connecticut is an “equitable” state in that the court is given great discretion to do what the court deems is “fair.” Clearly, “fair” is in the mind of the beholder. Some of the issues which a court must deal with cannot be determined by a simple formula and are often dealt with on a case by case, judge by judge, basis. This type of uncertainty is unsettling for an individual accustomed to having control over personal life decisions and control of financial decisions in their complex business world. The following are often considered “grey areas” when discussing the potential outcomes of a divorce case:

- 1) The value of an enterprise of a self-employed individual;
- 2) In the corporate world the value of stock options both vested and unvested;
- 3) The value of a multitude of deferred compensation vehicles available in the corporate world; and
- 4) The value of closely held businesses, etc.

It is very common that each party in a divorce case involving these issues will have their own expert

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accountant or similar financial person who will present their interpretation of the value of these types of assets to the court. A judge is free to accept either of the expert opinions or even create a value based upon the court's own analysis rather than either of the experts. Inheritances, gifts, trusts often also fall into the category of "well, it's possible that the court could . . ."

**Is Enough, Enough?** A court in a long-term marriage case may divide property or award alimony in a fashion that it deems "equitable." The classic arguments often involve the following:

1) "When is enough, enough?" In the *Wendt* case, Judge Kevin Tierney discussed that the court was not limited to provide solely for the "needs" of Mrs. Wendt which clearly would have been "enough" for her to enjoy a certain lifestyle into the future. Judge Tierney was very clear to indicate that a judge should be allowed to consider any number of "equitable" factors to determine an appropriate financial award. In other words, a prediction regarding the outcome of a high-asset/high-income case is fraught with uncertainty.

2) Judge Tierney also addressed the issue raised by Mr. Wendt, given *his* (Mr. Wendt's) high level corporate position, that it "was *his* extraordinary skill in business acumen which led to the accumulation of the marital estate now in dispute." The court referred to this argument as the "Genius Factor." Judge Tierney found no statutory basis for a claim of the "Genius Factor." The arguments of "enough is enough" and the "Genius Factor" are, of course, sex neutral.

The complex financial disputes in a divorce case go beyond the screaming headlines and often cheap-shot tabloid analysis. There are significant financial issues and interpretations available to the court which require complex analysis and an understanding of the varied approaches to dealing with them. **L&D**

*If you have any questions regarding family law matters, please contact:*

*Robert B. Katz* (860) 676-3182  
*Kenneth J. Levine* (860) 676-3140

## Firm Happenings

**DANIEL KLEINMAN** was the featured speaker at the Farmington Rotary Club. He spoke about the history of the Buick Championship golf tournament and plans for the coming year. Kleinman serves as Counsel and Chairman of the Buick Championship Management Committee.

**ROBIN MESSIER PEARSON** was a featured presenter at a seminar entitled "Zoning & Land Use in Connecticut," presented by Lorman Education Services.

**JOEL MANDELL** was a moderator for the Real Estate Exchange Blue Ribbon Awards presented on March 9, 2005 at the Farmington Marriott.

**WILLIAM C. STOKESBURY** has been elected a trustee of the Avon Land Trust. He also has been appointed to the CBA Standards of Title Committee.

**DANE KOSTIN** is the co-chairman of the Commission on Jewish Education Task Force of the Jewish Federation of Greater Hartford.

**BOB ZELINGER** recently completed his two-year term as Chairman of the Waterbury Regional Chamber at the annual meeting on April 4, 2005. He will continue serving on the executive committee and board of directors as immediate past chairman.

Levy & Droney, P.C. is pleased to announce that **GLENN G. RYBACKI** has joined the firm as Principal and focuses his practice in Public Finance and Tax. Mr. Rybacki's tax practice focuses on state and local tax matters with multi-state experience. He deals extensively in tax planning and structuring of entities' operations and transactions to achieve maximum tax savings. Glenn was formerly with the law firm of Robinson & Cole.

Levy & Droney, P.C. is pleased to announce that **GARY D. JONES** has joined the firm as Principal in the Business & Finance Department. Mr. Jones' emphasis is in the area of commercial finance, corporate mergers and acquisitions, real estate transactions and public development. He was a partner at Schatz, Schatz, Ribicoff & Kotkin and is involved in numerous community organizations. **L&D**


## Client Highlight

**LynxMedia USA**, P.O. Box 291, Avon



When Judy Bloom's kids went off to school full time, the former commercial real estate executive wanted to find a unique product to sell part-time from home, with the flexibility that a mom of three needs. A close (but far away!) friend was building community websites in Vancouver, and agreed to develop one for Avon, Connecticut for Judy to dabble with.

Well, it is no longer a part-time job — or a two-person operation! [www.AvonCT.US](http://www.AvonCT.US) was immediately successful, and soon led to the birth of [www.SimsburyCT.US](http://www.SimsburyCT.US), [www.CantonCT.US](http://www.CantonCT.US), with many more to follow. These websites are a user-friendly resource for finding virtually anything one could be looking for in a given town. Local businesses enjoy the free business listings and announcements of new business openings. Small firms without websites especially benefit from a very unique idea: they purchase webpages, which provide the benefits of a website, but are actually part of the community websites. Big impact, with instant widespread exposure for a small price!

LynxMedia USA now consists of graphic artists, database programmers, website designers, and outside salespeople. They also build, host and maintain websites for third parties at extremely competitive rates. For more information, visit [www.AvonCT.US](http://www.AvonCT.US), [www.SimsburyCT.US](http://www.SimsburyCT.US), [www.CantonCT.US](http://www.CantonCT.US) or contact: Judy Bloom, at P.O. Box 191, Avon, CT 06001. Phone: (860) 675-6800. Email: [lynxmediausa@comcast.net](mailto:lynxmediausa@comcast.net). 

*If you would like to be considered for this column in a future issue of In Brief, please contact Risa Brownstein.*