

José Fernández's Untimely Death Raises Estate Planning Issues

José Fernández was a talented, young pitcher for the Miami Marlins. His death, on September 25, 2016 at the age of 24, was a tragic loss for the baseball community, the Cuban-American community and, most importantly, his family. The loss was made more tragic by the reports that, shortly before his death, Fernández announced, on Instagram, that his girlfriend was pregnant with their child. If Fernández was like most 24-year olds, despite the fact that he was potentially worth millions, he likely had done no estate planning. This will present real challenges for his family in the days to come.

We have previously discussed the dangers of failing to plan - for celebrities and non-celebrities alike. For celebrities, the implementation of trusts becomes even more critical because these devices can shield their estate from becoming public. Assuming Fernández had not retained an attorney or created estate planning documents, the disposition of his assets will follow state law, regardless of what Fernández may have wanted. Disputes among family members, and the nature and disposition of his assets will all be in the public eye. The failure to plan is exacerbated by the relationship between Fernández and his girlfriend and because of their unborn child. Those whom Fernández held most dear during life will now be engaged in a battle to control his estate rather than comforting and supporting each other.

In New York, a girlfriend has no right to inherit from a decedent. Fernández and his girlfriend may have owned assets jointly, with right of survivorship. Fernández may have designated his girlfriend as a beneficiary on one or more of his accounts or insurance policies. He may have implemented a Last Will and Testament or trust designating his girlfriend as a beneficiary. However, in New York, if he did none of the above, his girlfriend would not inherit a penny from Fernández's estate.

For his unborn child, the situation is more complex. A child conceived before Fernández's death but born after his death can inherit. However, in New York, if the mother and father are not married, as in the case of Fernández and his girlfriend, this right of inheritance is not automatic. It requires "clear and convincing evidence" (a higher standard than in most civil cases) that Fernández was the father of the child. Under New York law, clear and convincing evidence can be established by a DNA test or Fernández's open and notorious acknowledgment that this child is his. Whether making an announcement on Instagram or on any other social media site before a child is born would be considered open and notorious acknowledgment is likely a question that only the courts will decide.

If Fernández did no estate planning, in New York his estate would pass according to the laws of "intestacy" - when a decedent has no Will that meets the required formalities. Under New York law, if it can be established that the unborn child was Fernández's or that he or she was openly and notoriously acknowledged, this would be his only child and, as Fernández was never married, this child would inherit the *entire* estate. The rest of Fernández's family, including his mother and grandmother, with whom he was seemingly very close, and any other family members Fernández might have been supporting, would inherit absolutely nothing. In New York, a guardian would be appointed to hold the inherited property on the child's behalf until he or she reaches 18, the age of majority, at which time the funds would be released to the child outright.

Naturally, most parents would not want their child to receive what may be millions of dollars as an inheritance at the age of 18, without oversight or supervision as to the management or utilization of those funds. If Fernández did no estate planning, that would be the result. With planning, he could have protected the assets by establishing a trust for the child and naming a trustee to manage the assets and use them for the benefit of the child. The trustee would ultimately distribute the estate when the child was old enough to manage the assets.

This tragedy highlights the importance of having an estate plan at every age and stage of life. Call now for an appointment. Berwitz & DiTata LLP will be happy to help you ensure that your family is protected and that your wishes are carried out.