Who said this?

“All happy families are alike: each unhappy family is unhappy in its own way.”
Estate litigation battles are often outgrowths of unhappy families
TYPICAL THINGS THAT CAN GO WRONG

- Invalidity of Will of Trust
- Lack of capacity
- Lack of legal formalities
- Undue influence
PROBLEMS WITH DOCUMENT DRAFTING

- Ambiguities
- Settlor’s intent is not clear
- Inappropriate tax apportionment provisions
- Unenforceable or conflicting provisions
UNFORESEEN CIRCUMSTANCES

- Changes in family relationships
- Changes in asset values
- Inaccurate forecast of income and/or appreciation
- When a family member does something you don’t expect
UNINTENDED CONSEQUENCES

- Poor tax advice or planning
- Problems with disclaimers
- Unworkable tax apportionment clauses
- Poor cash-flow planning
FIDUCIARY ISSUES

- Improper administration
  - Failure to account and inform
  - Self-dealing/conflicts of interests
  - Actions contrary to law or governing document
FIDUCIARY ISSUES CONT:

- Other breaches of fiduciary duties
  - Imprudent investing
  - Lack of impartiality

- Principal and income disputes
  - Lack of attention to the UPIA

What is the UPIA????
AVOIDING PROBLEMS - 1

- Building the collaborative team
  - Fiduciaries
  - Advisors
    - Legal and accounting
    - Investments
    - Trust protector
    - Beneficiary Coach/Advisor
  - Designation of successors
  - Removal and replacement
AVOIDING PROBLEMS - 2

- Avoiding surprises through proactive communication
  - Set expectations about what will/won’t happen when the plan is enacted
    - Don’t avoid just because it is uncomfortable
  - Declaration of grantor’s intent:
    - Desired consequences
    - Shared values
    - Encouraged conduct
    - Discouraged conduct
AVOIDING PROBLEMS - 3

Avoiding surprises through proactive education

- Grantor education
- Beneficiary education
- Build foundational trust/estate/financial skills and vernacular
AVOIDING PROBLEMS - 4

Have the courage to build and strengthen relationships before it’s too late

- Invest in family meetings
- Hire trained facilitators to help everyone build the skills to have tough conversations
- Be sure to celebrate the gifts of the individuals within the family
- Be sure to celebrate the strength of the family
CASE STUDY #1: DR. DAN

- Surgeon; profitable surgical centers
- Wyoming “hobby ranch”; cattle and bison
- 12-year second marriage to Wilma
- Sons involved in ranch, but not daughter

- Desires for $25 million estate:
  - Medical school to build new wing in Dan’s honor;
  - $1.5 million to Wilma;
  - Children receive balance.
DR. DAN’S PLAN

Dr. Dan implements a plan so that:

- Part of ranch is to be sold for bequests to medical school and Wilma;
- Balance of ranch to be retained and run by his sons.
- Provisions for daughter are vague.

Dan implements plan without telling his children.
AFTER DR. DAN’S DEATH

- Sons challenge gift to wife and medical school, asserting
  - Lack of sufficient mental capacity
  - Undue influence on part of estate-planning attorney

- Potential problems with share for daughter.
CASE STUDY #2: SCIENTIST RONALD

- Ron is a successful research scientist.
- Ron pledges millions of dollars to a university, and the university builds a building that is named in his honor.
- Only some of the funds are paid prior to Ron’s death.
- Ron engages an attorney to prepare a trust, and the trust does not mention the charitable pledge. Children are residuary beneficiaries.
AFTER RON’S DEATH

- Ron’s daughter is the trustee.
- What are the trustee’s responsibilities to the university?
- Possible options:
  - Post-death judicial actions for instructions, reformation, and/or declaratory relief.
  - Mediation and arbitration among all interested parties.
  - Malpractice against drafting attorney.
CASE STUDY #3: SAMUEL & LISA

- No children; few relatives; charitably inclined.
- Charitable remainder unitrust (NIMCRUT)
- Kerfuffle with bank trustee:
  - Bank resigns;
  - Substitute bank is designated;
- Things change:
  - Charities fall into disfavor;
  - Beneficiaries die and also fall out of favor;
  - Frank comes into the picture.
PLAN CHANGES

- Frank is designated trustee and residuary beneficiary of revocable trust.
- Frank is the trustee of the NIMCRUT, and charities created by his wife are the beneficiaries.
- Advice of attorney to take steps to reduce litigation are ignored.
LISA DIES; SAMUEL IS INCOMPETENT

- Frank is challenged as Samuel’s guardian.

- NIMCRUT trustee challenges changes:
  - Undue influence by Frank;
  - Lack of mental capacity.

- Eliminated beneficiaries challenge the trust on the same grounds.
PREVENTION OR CURE?

➢ Preventative:
  ▪ Competency evaluation;
  ▪ Pre-mortem declaratory relief.

➢ Preparation for litigation:
  ▪ Declaration of intent;
  ▪ Second legal opinion;
  ▪ Video declaration;
  ▪ Affidavits of potential witnesses.
WHAT CAN GO WRONG & HOW TO FIX IT.

CONCLUSION

Thank you for your time and attention