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Death won't end legal battles

Baby's paternity, late husband's estate are still up in the air

By Maria Puente
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Anna Nicole Smith is dead, but the Anna Nicole Smith litigation will live on — and multiply.

Smith's long legal battle to gain some of the millions from her billionaire late husband's estate — a case that went to the Supreme Court and produced an important ruling in 2006 — will continue despite her sudden and mysterious death Thursday in Florida.

The man she battled for a decade, her husband's son, Pierce Marshall, died just a month after the Supreme Court ruled in Smith's favor.

"My reaction was shock and sadness and an overwhelming sense of how much tragedy has surrounded this case," says Kent Richland, Smith's Los Angeles-based appellate attorney, who argued her case at the Supreme Court. "I've never seen a case like this, with more unexpected events that you could imagine."

Smith's case, which seeks as much as \$474 million from her husband's estate, is back before the 9th Circuit Court of Appeals, Richland says, and there's no telling when it could issue a ruling.

Now that Smith is dead, the parties will be Pierce Marshall's estate (his wife and sons) vs. Smith's estate (her new baby, her other relatives and possibly the man who may be her new husband).

"The money claims can continue to be pursued by her estate," says Erwin Chemerinsky, a law professor at Duke University. "Some claims don't survive death — such as defamation and invasion of privacy — but her case did not involve those."

But now there are additional, and complicated, legal questions arising from Smith's messy and tragic life:

► Did she leave a will, and if so, what does it say about division of assets and custody of the baby girl, Dannielynn, to whom she gave birth five months ago in the Bahamas? If there is no will, which state (or country) has probate authority?

► Was Smith legally married to her lawyer, Howard K. Stern, who says they had a "commitment ceremony"? If legally married, Stern would be a beneficiary of her estate.

► Who is the father of Dannielynn: Stern or Smith's ex-boyfriend, Larry Birkhead? In determining custody, does DNA trump a will? Smith had been resisting a DNA test; will that go forward now that she's dead?

"In the USA, there are jurisdictions where it's a conclusive presumption that the husband is the father, even if a DNA test goes

the other way," says Christopher Cline, a partner in estate planning and administration at Holland & Knight in Portland, Ore.

► Where was Smith's official domicile — in a U.S. state or the Bahamas? The answer could have a bearing on both assets and custody.

"A case such as this, with these exact facts, are few and far between," says Joshua Forman, a partner in New York matrimonial firm Chemtob Moss Forman & Talbert. "It's so far beyond normal it's ridiculous."

Feverish speculation and what-if talk commenced immediately after the news of Smith's death broke.

"If the marriage (to Stern) is proven to be legal, that does not necessarily mean he gets custody (of the baby) if the paternity is someone else," CNN legal analyst Jeffrey Toobin declared on the network Thursday evening.

"We want to make sure people realize this is not a law school hypothetical — the complexity is enormous."

And what about the TrimSpa litigation? The diet-products company, for which Smith was a spokeswoman, has been sued in a class-action lawsuit that claims its marketing is false or misleading. Last month, the Federal Trade Commission announced TrimSpa would pay \$1.5 million to settle allegations that the company's claims about weight loss were untrue, although TrimSpa denies any wrongdoing.