

RAYMOND CARVER'S KIDS KISS ROYALTIES GOODBYE

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Douglas Unger remembers what Raymond Carver told him two months before Carver died of cancer.

"The last thing he said to me," Unger recalled, "was, 'You can trust Tess to do the right thing.'"

Some of Carver's friends and admirers, though, believe his widow, poet Tess Gallagher, has allowed Carver's literary works to be distorted and has taken advantage of Carver's two children - possibly costing them tens of thousands of dollars in royalties.

Carver died in 1988, but in the past two years, four books of his works have been published or reissued, and the movie "Short Cuts" was released. Robert Altman's treatment of Carver's stories in the film appalls Unger, Carver's former brother-in-law who followed him to teach at Syracuse University in the 1980s.

But that's not all that troubles Unger.

"I'm still upset about the conditions his blood relatives are left in," he said.

Carver, who called himself a "paid-in-full member of the working poor," overcame years of alcoholism and financial problems. His stories are widely praised for their honest portrayals of the blue-collar people of his native Pacific Northwest.

On June 17, 1988, Carver married Gallagher, a poet who taught with him at SU. He died six weeks later.

In his will, Carver gave control of all his literary works - and the right to collect royalties from those works - to Gallagher.

Her control over hundreds of Carver's stories, poems and essays survived separate legal challenges in 1989 by Carver's first wife and two children, and appeared secure.

But in the summer of 1990, Gallagher paid Carver's children \$5,000 to sign away their right to collect future royalties from their father's early works. A little-known provision of the federal Copyright Act eventually would have given Vance and Christine Carver at least a 50-percent share in anything Carver wrote before 1978 - regardless of what his will dictated.

When Gallagher's transactions with Carver's children took place, Altman had been at work on a draft of a screenplay for "Short Cuts." Of the nine Carver stories Altman adapted, five were written before 1978.

Vance and Christine were not co-owners of any of their father's works when they assigned those copyright renewal rights to Gallagher in 1990. So Gallagher - even if she knew of Altman's draft - apparently was not obligated to inform them of any pending or future deals involving their father's pre-1978 works.

Daughter plans suit

It is possible Altman was working on "Short Cuts" without Gallagher's knowledge, but filmmakers usually don't invest time and money on a screenplay without first discussing film rights with the copyright owner. It is not known if Gallagher received any money from Altman before Carver's children signed over their rights to her in 1990.

This much is clear, however:

Altman and a co-writer had been working on a draft of a screenplay for "Short Cuts" two months before Vance and Christine signed over their rights to Gallagher.

Neither of Carver's children knew anything about the film at the time.

It is not clear whether they would have been entitled to any royalties from the sale of film rights to Altman. But Christine Carver believes Gallagher knew about Altman's work on "Short Cuts" prior to her assignment of future rights to Gallagher; she plans legal action to nullify that assignment.

According to several sources familiar with Hollywood book deals, Gallagher may have received up to \$350,000 for the film rights to

Carver's works.

"Nobody expected that when Ray died there would be huge dollar amounts forthcoming," said writer Richard Ford, a longtime friend of Carver's. "It's only because of this movie deal ... he became kind of a cultural hero."

Altman's work on "Short Cuts" has earned him an Oscar nomination for best director. The Academy Award ceremonies are Monday night in Los Angeles.

Even if they were not entitled to any money from "Short Cuts," Vance and Christine Carver eventually could have swung their own movie deals or publishing contracts, as long as they split the profits with Gallagher.

After Vance and Christine signed over their future rights in their father's pre-1978 works, four books of Carver's writings were published. Three of those books contain stories or poems Carver wrote in the early to mid-'60s - works from which Vance and Christine would have been entitled to royalties after the copyrights were renewed.

Gallagher, Carver's companion for the last 10 years of his life, refused to be interviewed for this article. Her attorney, Stephen Oliver of Port Angeles, Wash., and her agent, Amanda Urban, also declined comment, despite repeated requests.

The state of the estate

Carver was diagnosed with lung cancer in the fall of 1987. In June 1988, he married Gallagher in Reno, Nev. Five weeks later, Carver, 50, was hospitalized in Washington state, where he lived after leaving Syracuse. He was discharged July 30, signed his will the afternoon of Aug. 1, and died the next morning.

In that will, Carver named Gallagher personal representative of his estate, and gave her all rights to his works - hundreds of poems, stories and essays written over 30 years. In a 1982 will, drawn up in Onondaga County, Carver gave Gallagher those same rights.

In the 1988 will, Gallagher also inherited the rest of Carver's estate (valued at more than \$250,000), except for \$5,000 he gave to each to his two children; \$5,000 to his first wife, Maryann Carver; and \$1,500 to his mother, Ella Carver, who has since died. His father died in 1967.

In Washington state Superior Court in 1989, Vance and Christine Carver asked for a ruling on the meaning of a paragraph in their father's will that reads:

"I express my desire to my spouse, Theresa J. Gallagher, my intention that ultimately, after her death, the then remaining interest which had been owned by me at my death to all literary, dramatic and cinematic (sic) works and properties of any kind or nature, without limitation, pass to my two children, Christine L. Carver and Vance L. Carver, or the survivor."

Gallagher asked the court for a ruling in her favor, on the grounds that the language was not strong enough to be legally binding.

Superior Court Judge Grant Meiner agreed, saying the wording was "suggestive only" and did not give Carver's children any present or future interest in his literary works. A week before that ruling, Vance Carver withdrew from the proceeding.

In December 1989, more than 16 months after Carver died, his "first family" received their inheritances from his will. On the same day those inheritances were distributed, Christine Carver - a single mother of three on public assistance in Washington state - received an additional \$5,000 (minus attorney's fees of \$2,100) for signing a release of "any and all claims" against Gallagher or Carver's estate.

Maryann Carver, Carver's wife from 1957 to 1982, also accepted an additional \$5,000 after losing a bid for support payments and a share of Carver's early writings.

A month later, Vance Carver, now 35, and his grandmother, Ella Carver, also waived their right to make any future claims against Gallagher or the Carver estate. They did not receive additional money for signing waivers.

Carver's estate was closed on March 7, 1990. Carver's mother, first wife and children had received the inheritances designated in his will. Gallagher's hold on "all right, title, copyright and other interest" in Carver's writings until well into the 21st century appeared firm.

How a will gets 'bumped'

Four months after Carver's estate was closed, however, Vance and Christine Carver say they were asked by Gallagher to sign another document giving her their renewal rights to all of Carver's works.

"As I recall, (signing the document) was necessary for the will to be executed the way my father wrote it," said Vance. "It needed that gap to be closed."

That "gap" came courtesy of an obscure provision of the federal Copyright Act of 1976 called "will-bumping."

Here's how it works:

The initial copyright for works written before 1978 is 28 years, but a copyright can be renewed during the 28th year, protecting a written work for another 47 years. A copyright allows the holder to control how a work is used, as well as derive income from it.

The author has the right to renew a copyright for anything written before 1978, unless he gives up that right. If the author is dead, the renewal right next falls to a single class consisting of "the widow, widower or children of the author" - no matter what the author's will states.

So even though Gallagher received, from Carver's will, ownership of all his writings, his will does not govern stories Carver wrote before 1978 once their 28-year copyright term expires.

By signing their renewal rights over to Gallagher, Vance and Christine gave up their share of ownership and passed up the right to collect - from now until the middle of the 21st century - at least 50 percent of royalties on dozens of stories and poems Carver wrote before 1978, in their 47-year renewal term.

Both Carver children said they consulted with attorneys before signing the renewal document. Vance signed it on July 18, 1990, and was paid \$2,000.

Christine, now 36, said she balked at first, telling Gallagher she wanted to find out more about its effects. On Aug. 8, she signed in exchange for \$3,000.

For Gallagher, this was the final step in carrying out Washington state Superior Court's interpretation of Carver's will.

Renewal confusion

Vance insists he was not misled by Gallagher, that he assigned his renewal rights to her because he felt his father would have wanted him to. He says, however, that he did not completely understand the document's impact.

When asked if he knew he was accepting \$2,000 in exchange for part-ownership and potential royalties to some of his father's works - well into the 21st century - he said, "That's not exactly the way I saw it at the time ... I didn't know all of the exact details."

Christine insists she would not have assigned her rights to Gallagher if she'd fully understood what her signature would bring about. She now wants to challenge the document's validity.

She'll have to go it alone. Vance said he would never consider any kind of legal action.

"I don't view things in strictly monetary terms like maybe some people would," he said in a telephone interview from his home in Wiesbaden, Germany, where he teaches English. "I have to respect what (my father) did. He signed the will. I can't be a second-guesser."

Carver's children do agree on one thing: They didn't know about "Short Cuts" when they signed over their rights in the summer of 1990.

Altman's movie was released last year, but had been in the works since early 1990.

History of 'Short Cuts'

Frank Barhydt, Altman's co-writer on the "Short Cuts" screenplay, said he and Altman started talking about the project in April 1990, and began writing a script in late May or early June.

Filming was delayed until Altman found financial backing, but they had completed a first draft by the end of July 1990, Barhydt said in a telephone interview.

In publicity material from the film's distributor, Fine Line Features, Altman says he had never read any of Carver's stories until February 1990, during a flight from Europe to the U.S.

"When I got off the plane, I thought, 'God, I can do something with these.' So I immediately pursued the rights," Altman said.

"I went to Tess Gallagher, who owned the rights, and I made a deal to option the stories ..." he told The New York Times.

Richard Heller, Altman's attorney in New York City, said he handled "clearing the chain of title" to Carver's works for "Short Cuts" but wouldn't elaborate.

In a Knight-Ridder Newspapers story last fall, Altman was asked about the possibility of a sequel. "Why not?" he said. "We have the rights to the rest of the Carver stories."

If Vance and Christine had held onto their renewal rights, they would have come into partial ownership of five of the nine Carver stories adapted in Altman's film, as well as others that may be adapted in a sequel.

The oldest of the five pre-1978 stories adapted in "Short Cuts" was copyrighted in 1966. Vance and Christine would have each owned at least 25 percent of that story upon renewal this year until the year 2041. The current Copyright Act says each co-owner of a copyright has an independent right to use or license a work, along with a duty to notify other co-owners of any profit. Therefore, Christine, Vance and Gallagher would have split royalties during the 47-year renewal period.

Vance wouldn't say whether he would have signed over his rights if he had known about "Short Cuts," but said, "Obviously there was no mention of the film at that time."

Christine said she didn't know about the movie until she read about it last year in a magazine. She said she would not have signed away her rights had she known Altman had been working on a screenplay based on her father's stories.

Altman, who has been in France on another film project, is not granting interviews, according to assistant Sylvie Forestier. Altman's agent, Johnny Planco, also did not respond to interview requests.

When a moviemaker options the rights to an author's works, money usually changes hands, said Keith Fler, a Beverly Hills, Calif., attorney who represented author John Grisham on "The Client."

An option ensures the film rights will not be sold to anyone else - often for one or two years - and typically involves payment of 10 percent of an agreed-upon purchase price, Fler said. Full payment is due when filming begins.

"Short Cuts" has grossed \$6 million in the U.S. and more than \$4 million abroad. It reportedly cost \$12 million to make. It is scheduled for a June 1 release on videocassette.

Altman upsets purists

In his introduction to the companion paperback of "Short Cuts," Altman acknowledges that "some purists and Carver fans may be upset" by his film.

"I know Ray Carver would have understood that I had to go beyond just paying tribute," wrote Altman. "Something new happened in the film, and maybe that's the truest form of respect. But it all began here. I was a reader turning these pages. Trying on these lives."

Gallagher, in Esquire magazine, said she believes Altman has "not simply scalped Ray's material ... He's engaged Ray's stories on a very deep level."

Altman's three-hour film, which played at the Westcott Cinema in Syracuse earlier this year, has indeed upset Carver fans. Several have said "Short Cuts" simply doesn't have much in common with Carver's stories; others are bitter over Altman's treatment of Carver's art - a treatment that Gallagher has embraced and promoted in national publications.

Robert Coles, a Pulitzer Prize-winning scholar who teaches Carver's fiction and poetry at Harvard University, trashed Altman's film Oct. 17 in an essay in The New York Times.

"As I watched 'Short Cuts' and took note of its harsh, derisive tone, its mean and bitter attitude toward women, its almost frenzied pace, I had no trouble distinguishing between Carver's world and Mr. Altman's," Coles wrote. "The former is not to be found in the latter."

"It's a scandal," Unger said. "I don't believe for a minute Ray in his right mind would have let this happen. It appalled me ... to see mere caricatures drawn out of the stories of Raymond Carver and treated in a very surreal and strange way."

Stephen Dobyns, director of the Creative Writing Program at SU, doesn't even want to see "Short Cuts."

"Everything I've read and heard about it makes it seem like it's a distortion," Dobyns said. "I don't want to have a memory of the movie interfere with my memory of the stories, which are important to me."

Others disagree, saying "Short Cuts" is true to Carver and is helping to spread his work to a larger audience.

In Esquire magazine, writer Tom Jenks, who co-edited a short story anthology with Carver in 1987, compared Altman's interpretation of one story, "A Small, Good Thing," to the original.

"It is a more fatal ending than Carver's, a darker ending. But watching it, we have no way of disentangling what's Carver's from what's Altman's. Altman has retained Carver's vision and layered it with his own," Jenks wrote.

In Gallagher's control

Gallagher has taken the necessary legal steps to gain control of Carver's works, but her relationships with some members of the publishing world have been strained.

Sam Halpert, a longtime Carver fan and retired typographer in Miami, interviewed Gallagher and nine other people for his book, " ... When We Talk About Raymond Carver," published in 1991 by a small press in Utah.

One of the other nine interviewees was Maryann Carver, the author's first wife.

"(Gallagher) was in favor of it until she found out Maryann was in the book, then she went crazy," Halpert said. "She forgot she was in America. She's kind of denying Maryann's existence."

Before Halpert's book was published, it drew the interest of the Paris Review, a prominent literary journal co-founded and edited by George Plimpton.

The Paris Review obtained Halpert's manuscript, rearranged it and added more material, then published it in its Spring 1991 issue. Plimpton wanted to include Gallagher's memories of Carver, but she objected when she discovered Maryann Carver's reminiscences would also be included.

"She said she would not allow her own material in that interview unless we published two poems of hers," Plimpton said. "We were quite outraged and sent the poems back. We've had no more dealings with her since. She is just trying to remove Maryann Carver from the scene and substitute herself, which is nonsense."

Halpert is working on an expanded version of his book. Maryann Carver also is writing a book covering her early years with Carver - years she spent editing his stories and holding down steady jobs, she said.

"He wrote half of everything when he was with me, the other half in the last 10 years ... when it was much easier to write," she said, referring to the financial awards and university positions Carver landed. "Six of those last 10 years, he didn't have to work a lick."

Gallagher has said Carver's writing career began to flourish after he met her - a time of "new sobriety and stability of life provided in our mutually supportive relationship." Carver had been treated for alcoholism several times before he stopped drinking in June 1977, five months before he met Gallagher.

Another of Carver's friends, author William Kittredge, said Gallagher is "a wonderful woman and a great poet," but there's no denying that Maryann Carver is responsible for much of Raymond Carver's success.

"Maryann supported Ray for a long time, both emotionally and financially," he said. "Ray was like a tin soldier. He kept falling down and she'd put him back together again. ... She's been portrayed in unflattering ways, and that's unfortunate. He'd have been dead if it hadn't been for Maryann."

But Carver lived long enough, and wrote well enough, to secure a prominent position in 20th-century literature. A dozen of his books are still in print in the U.S., his stories and poems are studied in colleges across the country, and his works have been translated into more than 20 languages.

Those written words are how Carver should be remembered, Douglas Unger says, not the celluloid images in "Short Cuts" or a dispute over his estate.

"That's the real legacy - the work," he said. "I don't think anything Tess Gallagher can do will affect that."

• Caption: PHOTO Robert Sorbo/Special to the Herald American CHRISTINE CARVER, LEFT, Raymond Carver's daughter, and Maryann Carver, his first wife, both lost legal battles in 1989 with poet Tess Gallagher, who now holds all copyrights to Carver's works. BETTY UDESEN/Seattle Times POET Tess Gallagher spends a quiet moment in this July 1989 photo at the Port Angeles, Wash., grave of her late husband, author and Syracuse University teacher Raymond Carver. Color. GRAPHIC: Since Carver's Death Steve Dorsey/Herald American (Note: for text of graphic, see microfilm.)

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