

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT,
DIVISION THREE

O'Grady v. Boldt

No. B197196, California Court of Appeal, Second Appellate District, Division Three

SUMMARY

Heir hunter contracts that grant a non-lawyer the power to select and pay for an attorney and control the litigation are void as against public policy under *Estate of Butler* (1947) 29 Cal.2d 644, even if the heir hunter does not personally act as the attorney. The court affirmed summary judgment voiding a 35% assignment agreement obtained by a private investigator, distinguishing *Estate of Wright* (2001) 90 Cal.App.4th 228, where the contract was limited to genealogical services. Void contracts cannot be ratified, and laches does not bar a challenge to void agreements.

CASE DETAILS

COURT	California Court of Appeal, Second Appellate District, Division Three
WRITING FOR THE COURT	Aldrich, J.; Croskey, Acting P. J.; Kitching, J.
JURISDICTION	California
DOCKET	B197196
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a summary judgment of the probate court.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. (Code Civ. Proc., § 437c, subd. (c); <i>Wiener v. Southcoast Childcare Centers, Inc.</i> (2004) 32 Cal.4th 1138, 1142.)
PRECEDENTIAL VALUE	published
PARTIES	Kevin O'Grady v. Connie Boldt, Frank Hernandez, Ignacio Hernandez

TOPICS

- probate
- probate procedure
- contracts
- estate litigation
- summary judgment
- civil procedure

PRACTICE AREAS

- Probate
- Contracts

QUESTIONS PRESENTED

1. Whether the May 1997 assignments are enforceable as valid assignments.
2. Whether the assignments are void as against public policy because they authorized O'Grady to select and pay for an attorney and control litigation, constituting the unlawful practice of law.
3. Whether O'Grady can rely on ratification or laches to enforce the assignments.

HOLDINGS

1. The assignments are void as against public policy and unenforceable.
2. Void contracts cannot be ratified.
3. Laches does not apply because O'Grady cannot show unreasonable delay and prejudice.

KEY QUOTATIONS

"I understand that Kevin O'Grady has located assets that may belong to me. At no risk or expense to myself, I appoint Kevin O'Grady as my agent and authorize him to act on my behalf in attempting to obtain such assets. ... Kevin O'Grady shall be compensated only if he is successful in recovering any assets for me. I agree and assign thirty-five percent (35%) of the recovered asset[s] to Kevin O'Grady. Kevin O'Grady will pay for all ordinary attorney fees, for the attorney of his choice, incurred in the recovery of the assets." (at 4)

"Such procedure amounts to 'commercial exploitation' of the legal profession and is contrary to public policy." (at 9)

"The result ... may have been different had the heir hunter succeeded in inducing [the heir] to employ Boessenecker as her attorney. In such event, all the documents may have been so inextricably tied to one other that the taint of Boessenecker's power of attorney may have rendered them all void for reasons of public policy." (at 11)

FACTUAL BACKGROUND

Kevin O'Grady, a private investigator, located respondents as half-siblings of deceased Guadalupe Molino. In May 1997, he obtained assignments from each respondent agreeing to pay him 35% of any inheritance in exchange for his efforts to challenge the will and secure their shares. The assignments gave O'Grady the power to select and pay for an attorney and control litigation. O'Grady preserved testimony and Siegel, as conservator/administrator, distributed funds to O'Grady before a court order. Respondents later challenged the assignments.

PROCEDURAL HISTORY

The probate court granted respondents' motion for summary judgment, holding that the assignments were void. O'Grady appealed.

DISPOSITION

affirmed

CASES CITED

- Wiener v. Southcoast Childcare Centers, Inc. (2004) 32 Cal.4th 1138, 1142
- Pacific Shore Funding v. Lozo (2006) 138 Cal.App.4th 1342, 1348-1349
- Crouse v. Brobeck, Phleger & Harrison (1998) 67 Cal.App.4th 1509, 1520
- Estate of Wright (2001) 90 Cal.App.4th 228
- Estate of Butler (1947) 29 Cal.2d 644
- Estate of Collins (1968) 268 Cal.App.2d 86
- Estate of Larson (1949) 92 Cal.App.2d 267
- Government Employees Ins. Co. v. Superior Court (2000) 79 Cal.App.4th 95, 98-99, fn. 4
- FPI Development, Inc. v. Nakashima (1991) 231 Cal.App.3d 367, 382-383
- Fewel & Dawes, Inc. v. Pratt (1941) 17 Cal.2d 85
- Russell v. Soldinger (1976) 59 Cal.App.3d 633, 644-646
- Industrial Indem. Co. v. Golden State Co. (1953) 117 Cal.App.2d 519, 540
- Bono v. Clark (2002) 103 Cal.App.4th 1409, 1417-1418
- In re Marriage of Plescia (1997) 59 Cal.App.4th 252, 256