

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

DeMaris v. Asti

426 So. 2d 1153 (Fla. Dist. Ct. App. 1983) · No. Nos. 82-555, 82-559 · Decided February 8, 1983

SUMMARY

The Florida Third District Court of Appeal held that an attorney who prepares a will may owe duties to intended beneficiaries, who may bring legal malpractice claims based on negligence or contract theories. The court affirmed dismissal because the alleged professional negligence did not frustrate testamentary intent as expressed in the will, and the deficiency could not be cured by amendment.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Ferguson, Judge; Barkdull; Ferguson; Jorgenson
JURISDICTION	Florida
DECIDED	February 8, 1983
DOCKET	Nos. 82-555, 82-559
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final judgment dismissing a complaint for legal malpractice and from the denial of leave to amend the complaint.
STANDARD OF REVIEW	Appellate review of dismissal of a complaint and denial of leave to amend; the court determined whether the pleadings stated a viable cause of action and whether the proposed amendment could cure the deficiency.
PRECEDENTIAL VALUE	Published opinion; precedential value under Florida District Court of Appeal precedent rules.
PARTIES	Demetra DeMaris v. Robert Asti, individually, Blackwell, Walker, Gray, Powers, Flick and Hoehl, a partnership engaged in the practice of law

TOPICS

- professional negligence
- negligent misrepresentation
- third party beneficiary
- probate
- estate planning

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an intended beneficiary may maintain a legal-malpractice action against an attorney who prepared a will on theories of negligence or breach of contract.
2. Whether liability to a testamentary beneficiary arises when the alleged negligence frustrates the testamentary intent expressed in the will and causes the beneficiary's legacy to be lost or diminished.
3. Whether the complaint was properly dismissed when the alleged testamentary intent depended on evidence totally extrinsic to the will.
4. Whether the trial court abused its discretion by denying leave to amend when the proposed amendment could not cure the pleading deficiency.

HOLDINGS

1. An attorney preparing a will owes a duty not only to the testator-client but also to the testator's intended beneficiaries, who may maintain a legal-malpractice action under either a negligence theory or a contract theory as third-party beneficiaries.
2. Liability to a testamentary beneficiary can arise only when the attorney's professional negligence frustrates testamentary intent as expressed in the will and directly causes the beneficiary's legacy to be lost or diminished.
3. Dismissal was proper because the deficiency in the amended complaint and proposed second amended complaint could not be cured by amendment.

KEY QUOTATIONS

“An attorney preparing a will has a duty not only to the testator-client, but also to the testator's intended beneficiaries, who may maintain a legal malpractice action against the attorney on theories of either tort (negligence) or contract (as third-party beneficiaries).” (1153)

“However, liability to the testamentary beneficiary can arise only if, due to the attorney's professional negligence, the testamentary intent, as expressed in the will, is frustrated, and the beneficiary's legacy is lost or diminished as a direct result of that negligence.” (1153)

“There is no authority the reasons being obvious for the proposition that a disappointed beneficiary may prove, by evidence totally extrinsic to the will, the testator's testamentary intent was other than as expressed in his solemn and properly executed will.” (1153-1154)

FACTUAL BACKGROUND

The appellee attorney prepared a will for a testator. DeMaris, an intended testamentary beneficiary, alleged that professional negligence caused her legacy to be lost or diminished and sought recovery on negligence and breach-of-contract theories. The pleadings apparently relied on evidence extrinsic to the properly executed will

to establish testamentary intent different from the intent expressed in the will; the opinion notes that there was no challenge to testamentary capacity and that each page of the will was signed by the testator.

PROCEDURAL HISTORY

DeMaris filed a complaint alleging legal malpractice against the attorney who prepared a will and the attorney's law firm, asserting negligence and breach-of-contract theories. The Circuit Court, General Jurisdiction Division, dismissed the complaint and denied leave to amend. The Third District Court of Appeal considered both the dismissed amended complaint and the proposed second amended complaint and affirmed.

DISPOSITION

affirmed

CASES CITED

- McAbee v. Edwards, McAbee v. Edwards, 340 So. 2d 1167 (Fla. 4th DCA 1976)
- Ventura County Humane Society for the Prevention of Cruelty to Children and Animals, Inc. v. Holloway, 40 Cal. App. 3d 897, 115 Cal. Rptr. 464 (1974)
- Affordable Homes, Inc. v. Devil's Run, Limited, 408 So. 2d 679 (Fla. 1st DCA 1982)

OPINION

DeMaris v. Asti

426 So. 2d 1153

PER CURIAM.

426 So.2d 1153 (1983) Demetra DeMARIS, Appellant, v. Robert ASTI, Individually, and Blackwell, Walker, Gray, Powers, Flick and Hoehl, a Partnership Engaged in the Practice of Law, Appellees. Nos. 82-555, 82-559. District Court of Appeal of Florida, Third District. February 8, 1983. Rehearing Denied March 16, 1983. Don G. Nicholson, Miami, and Nancy Little Hoffman, Fort Lauderdale, for appellant. Kimbrell, Hamann, Jennings, Womack, Carlson & Kniskern and Joanne V. Kacin, Miami, for appellees. Before BARKDULL, FERGUSON and JORGENSEN, JJ. FERGUSON, Judge. This appeal is taken from a final judgment of the Circuit Court, General Jurisdiction Division, which dismissed appellant's complaint. The contentions here are that the court erred in (1) dismissing the complaint where no adequate remedy existed in probate and the complaint alleged a cause of action for legal malpractice based on negligence or breach of contract, and (2) denying plaintiff's motion for leave to amend her complaint where additional facts *1154 could be alleged to show that she had no adequate remedy in probate. An attorney preparing a will has a duty not only to the testator-client, but also to the testator's intended beneficiaries, who may maintain a legal malpractice action against the attorney on theories of either tort (negligence) or contract (as third-party beneficiaries). McAbee v. Edwards, 340 So.2d 1167 (Fla. 4th DCA 1976). However, liability to the testamentary beneficiary can arise only if, due

to the attorney's professional negligence, the testamentary intent, as expressed in the will, is frustrated, and the beneficiary's legacy is lost or diminished as a direct result of that negligence. [e.s.] *Ventura County Humane Society for the Prevention of Cruelty to Children and Animals, Inc. v. Holloway*, 40 Cal. App.3d 897, 115 Cal. Rptr. 464 (1974). There is no authority the reasons being obvious for the proposition that a disappointed beneficiary may prove, by evidence totally extrinsic to the will, the testator's testamentary intent was other than as expressed in his solemn and properly executed will.[1] From the face of the Amended and Recast Complaint, which was dismissed, and the Proposed Second Amended Complaint, which we have also considered, it is clear that there is a deficiency which cannot be cured by amendment. See *Affordable Homes, Inc. v. Devil's Run, Limited*, 408 So.2d 679 (Fla. 1st DCA 1982). Affirmed.

NOTES

[1] There is no challenge here to testamentary capacity. Further, each page of the will was signed by the testator.