

SUPREME COURT OF WYOMING

In the Matter of the Estate of Vernon R. Drwenski

2004 WY 5, 83 P.3d 457 (Wyo. 2004) · No. Nos. 03-29, 03-30 · Decided January 28, 2004

SUMMARY

The Wyoming Supreme Court considered whether a divorce attorney owed a duty of care to the client's daughter or the client's estate when the client died before the divorce was finalized. The court adopted a limited, case-by-case approach for attorney liability to intended nonclient beneficiaries, incorporating a threshold inquiry into whether the transaction was intended to directly benefit the plaintiff and additional public-policy factors. The court affirmed summary judgment for the attorney because the record did not show that the decedent intended the divorce representation to benefit his daughter, and the estate did not establish damages.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Kite, Justice; Hill, C.J.; Golden, J.; Lehman, J.; Kite, J.; Voigt, J.
JURISDICTION	Wyoming
DECIDED	January 28, 2004
DOCKET	Nos. 03-29, 03-30
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the district court's grant of summary judgment to a divorce attorney on claims brought by the decedent's daughter individually and as personal representative of the estate.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, using the same standards and materials as the district court, viewing the record in the light most favorable to the nonmoving party and giving that party the benefit of favorable reasonable inferences. Questions of law receive no deference. Summary judgment is appropriate when no genuine issue of material fact exists and the prevailing party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential.
PARTIES	Erin Marie Connely, as Personal Representative of the Estate of Vernon R. Drwenski, Erin Marie Connely, individually, Drwenski,

TOPICS

professional negligence estate litigation probate procedure standard of review appellate procedure

PRACTICE AREAS

professional negligence legal malpractice probate estate litigation appellate procedure

QUESTIONS PRESENTED

1. Whether a divorce attorney may owe a duty of care to a nonclient who claims to have been an intended beneficiary of the attorney-client relationship.
2. Whether Connely could pursue an attorney-malpractice claim on behalf of the estate under Wyoming's survival statute.
3. Whether the estate suffered damages from the failure to finalize Drwenski's divorce before his death.

HOLDINGS

1. Wyoming recognizes that an attorney may owe a duty to a nonclient in limited circumstances. The threshold inquiry is whether the nonclient was an intended beneficiary of the transaction; if so, the court applies a six-factor balancing test. An attorney owes no actionable duty to a nonclient when imposing the duty would conflict with the attorney's obligations to the client.
2. The estate could not pursue the alleged attorney-malpractice claim under Wyoming's survival statute because no cause of action accrued during Drwenski's lifetime. The alleged malpractice was the failure to finalize the divorce before Drwenski died, and his death triggered the alleged harm.
3. The estate suffered no damages because finalizing the divorce before Drwenski's death would not have increased the estate's assets; it would only have changed how those assets were distributed.

KEY QUOTATIONS

“Whether a limited duty to a nonclient exists must be assessed on a case-by-case basis utilizing the following factors: (1) the extent to which the transaction was intended to directly benefit the plaintiff; (2) the foreseeability of harm; (3) the degree of certainty that the plaintiff suffered injury; (4) the closeness of the connection between the defendant's conduct and the injury suffered; (5) whether expansion of liability to the nonclient would place an undue burden on the legal profession; and (6) the policy of preventing future harm.” (83 P.3d at 464-465)

“For a duty to exist, the transaction must have been intended to benefit the plaintiff; it is not enough that the plaintiff may be an “incidental beneficiary” of the transaction.” (83 P.3d at 467)

“The statutory language is clear that a cause of action must arise before death to survive after death.” (83 P.3d at 468)

“The estate has no interest in how its assets are distributed; stated another way, the estate has no damages.”
(83 P.3d at 468)

FACTUAL BACKGROUND

Vernon Drwenski retained M. Scott McColloch in April 1999 to obtain a divorce from Trudy Drwenski. Drwenski later executed a will naming his daughter Erin Connely as personal representative and leaving her the bulk of his estate, but he died on November 30, 1999, before the divorce was finalized; under Wyoming's elective-share statute, his widow received twenty-five percent of the estate. Connely alleged that McColloch failed to advance the divorce proceeding despite Drwenski's fragile health and terminal illness, and she sued individually and as personal representative of the estate.

PROCEDURAL HISTORY

Vernon Drwenski's daughter sued his divorce attorney, alleging professional negligence and related claims based on the attorney's failure to finalize Drwenski's divorce before his death. The district court granted partial summary judgment, ruling that the attorney owed no duty to Connely as a nonclient and that the estate suffered no damages. The Wyoming Supreme Court affirmed, relying on the merits of its newly adopted test for attorney duties to intended third-party beneficiaries and on the absence of a surviving, accrued claim and estate damages.

DISPOSITION

affirmed

CASES CITED

- Mathewson v. City of Cheyenne, 2003 WY 10, 61 P.3d 1229
- Andersen v. Two Dot Ranch, Inc., 2002 WY 105, 49 P.3d 1011
- Roitz v. Kidman, 913 P.2d 431 (Wyo. 1996)
- DeHerrera v. Memorial Hospital of Carbon County, 590 P.2d 1342 (Wyo. 1979)
- Hozian v. Weathermon, 821 P.2d 1297 (Wyo. 1991)
- Bancroft v. Jagusch, 611 P.2d 819 (Wyo. 1980)
- Schuler v. Community First National Bank, 999 P.2d 1303 (Wyo. 2000)
- Daily v. Bone, 906 P.2d 1039 (Wyo. 1995)
- Woodard v. Cook Ford Sales, Inc., 927 P.2d 1168 (Wyo. 1996)
- Cordero Mining Co. v. United States Fidelity and Guarantee Insurance Co., 2003 WY 48, 67 P.3d 616
- Whipple v. Northern Wyoming Community College Foundation of Sheridan (Estate of Roosa), 753 P.2d 1028 (Wyo. 1988)
- Savings Bank v. Ward, 100 U.S. 195 (1879)
- Biakanja v. Irving, 49 Cal. 2d 647, 320 P.2d 16 (1958)
- Wilson-Cunningham v. Meyer, 16 Kan. App. 2d 197, 820 P.2d 725 (1991)
- Pizel v. Zuspann, 247 Kan. 54, 795 P.2d 42 (1990)

- Lucas v. Hamm, 56 Cal. 2d 583, 15 Cal. Rptr. 821, 364 P.2d 685 (1961)
- Pelham v. Griesheimer, 93 Ill. App. 3d 751, 49 Ill. Dec. 192, 417 N.E.2d 882 (1981), aff'd, 92 Ill. 2d 13, 64 Ill. Dec. 544, 440 N.E.2d 96 (1982)
- Goerlich v. Courtney Industries, Inc., 84 Md. App. 660, 581 A.2d 825 (Ct. Spec. App. 1990)
- Franko v. Mitchell, 158 Ariz. 391, 762 P.2d 1345 (Ct. App. 1988)
- Brooks v. Zebre, 792 P.2d 196 (Wyo. 1990)
- Bowen v. Smith, 838 P.2d 186 (Wyo. 1992)
- Bevan v. Fix, 2002 WY 43, 42 P.3d 1013
- Erpelding v. Lisek, 2003 WY 80, 71 P.3d 754
- Trask v. Butler, 123 Wash. 2d 835, 872 P.2d 1080 (1994)
- Strait v. Kennedy, 103 Wash. App. 626, 13 P.3d 671 (2000)
- Ahrenholtz v. Laramie Economic Development Corp., 2003 WY 149, 79 P.3d 511
- Heilig v. Wyoming Game and Fish Commission, 2003 WY 27, 64 P.3d 734
- Nevin v. Union Trust Co., 726 A.2d 694 (Me. 1999)
- Beastall v. Madson, 235 Ill. App. 3d 95, 175 Ill. Dec. 865, 600 N.E.2d 1323 (1992)
- Granquist v. Sandberg, 219 Cal. App. 3d 181, 268 Cal. Rptr. 109 (1990)

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