

COURT OF APPEALS OF TEXAS, HOUSTON (FIRST DISTRICT)

Leroy Barcelo III, Terri Jo Barcelo, Cecil Wayne Barcelo, Jr.,
Christopher Lee Barcelo, and Frances Michelle Barcelo Schock v.
David J. Elliot and Eikenburg & Stiles, P.C.

927 S.W.2d 28 (Tex. App.—Houston [1st Dist.] 1995) · No. 01-94-00830-CV · Decided March 2, 1995

SUMMARY

The Texas Court of Appeals considered whether intended beneficiaries of an invalid trust could sue the drafting attorney for negligence or breach of contract despite lacking privity with the attorney-client relationship. Applying then-existing Texas law, the court held that only the client could sue the attorney for negligent preparation of estate-planning documents and that the beneficiaries could not recover under a third-party-beneficiary theory. The court affirmed summary judgment for the attorney and law firm.

CASE DETAILS

COURT	Court of Appeals of Texas, Houston (First District)
WRITING FOR THE COURT	Hutson-Dunn, Justice; Wilson; O'Connor; Hutson-Dunn
JURISDICTION	Texas
DECIDED	March 2, 1995
DOCKET	01-94-00830-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Beneficiary plaintiffs appealed a summary judgment rejecting their negligence and breach-of-contract claims against an attorney and his law firm for negligently preparing an invalid estate-planning trust.
STANDARD OF REVIEW	The appellate court reviewed the summary judgment by taking evidence favorable to the plaintiffs as true, indulging every reasonable inference in their favor, and resolving doubts in their favor. A defendant seeking summary judgment must establish as a matter of law that no genuine issue of material fact exists on one or more essential elements of the plaintiff's claims; once that showing is made, the plaintiff must present contradictory evidence raising a fact issue.
PRECEDENTIAL VALUE	Published Texas Court of Appeals opinion

PARTIES

Leroy Barcelo III, Terri Jo Barcelo, Cecil Wayne Barcelo, Jr.,
Christopher Lee Barcelo, Frances Michelle Barcelo Schock v. David J.
Elliot, Eikenburg & Stiles, P.C.

TOPICS

professional negligence

estate planning

standard of review

appellate procedure

contracts

PRACTICE AREAS

professional negligence

estate planning

trusts

probate

appellate procedure

QUESTIONS PRESENTED

1. Whether intended beneficiaries of an invalid estate-planning trust may sue the drafting attorney for negligence when they were not the attorney's clients and lacked privity with the attorney-client relationship.
2. Whether the intended beneficiaries could avoid the privity rule by asserting a contractual third-party-beneficiary theory.
3. Whether summary judgment was proper because the plaintiffs had no valid cause of action under existing Texas law.

HOLDINGS

1. Under existing Texas law, an attorney is subject to suit for negligent preparation of estate-planning documents only by the attorney's client; intended beneficiaries who lack privity with the attorney-client relationship may not recover from the attorney.
2. The plaintiffs could not proceed under a contractual third-party-beneficiary theory because existing Texas law also precluded recovery on that theory by persons lacking privity with the attorney.
3. Summary judgment was proper because the undisputed evidence established that plaintiffs were not clients of the attorney or law firm and plaintiffs failed to raise a fact issue or state a valid cause of action under existing Texas law.

KEY QUOTATIONS

"In this case, we are confronted with a single issue: When an attorney negligently drafts an invalid trust instrument on behalf of his client, may the beneficiaries who would have received property under the trust sue the attorney even though they are not the attorney's clients?" (at 29)

"Under current Texas law, an attorney is only subject to suit by his client for negligent preparation of estate planning documents." (at 30)

"Therefore, we overrule their sole point of error. We affirm the judgment of the trial court." (at 31)

FACTUAL BACKGROUND

In August 1990, Frances Barcelo retained attorney David Elliot to prepare and oversee the execution of estate-planning documents, including a will and inter vivos trust. Frances died on January 22, 1991, and a Brazoria County probate court later declared the trust invalid and unenforceable as a matter of law. The plaintiffs, grandchildren and intended trust beneficiaries, sued Elliot and his law firm for negligence and breach of contract. Although they submitted evidence of Elliot's negligence and their beneficiary status, they did not contradict Elliot's affidavit stating that he and his firm had not represented them.

PROCEDURAL HISTORY

Frances Barcelo retained David Elliot to prepare estate-planning documents, including a will and inter vivos trust. After her death, a Brazoria County probate court declared the trust invalid and unenforceable. Her intended beneficiaries sued Elliot and his law firm for negligence and breach of contract. The trial court granted defendants' summary-judgment motion on the ground that plaintiffs lacked privity with the attorney-client relationship and ordered that plaintiffs take nothing. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Gibbs v. General Motors Corp., 450 S.W.2d 827, 828 (Tex. 1970)
- Pinckley v. Gallegos, 740 S.W.2d 529, 531 (Tex. App.—San Antonio 1987, writ denied)
- Montgomery v. Kennedy, 669 S.W.2d 309, 311 (Tex. 1984)
- Thompson v. Vinson & Elkins, 859 S.W.2d 617, 620-22 (Tex. App.—Houston [1st Dist.] 1993, writ denied)
- Thomas v. Pryor, 847 S.W.2d 303, 304-05 (Tex. App.—Dallas 1992), writ dismissed by agreement, 863 S.W.2d 462 (Tex. 1993)
- Dickey v. Jansen, 731 S.W.2d 581, 582-83 (Tex. App.—Houston [1st Dist.] 1987, writ ref'd n.r.e.)
- Berry v. Dodson, Nunley & Taylor, P.C., 717 S.W.2d 716, 718-19 (Tex. App.—San Antonio 1986), writ dismissed by agreement, 729 S.W.2d 690 (Tex. 1987)
- Pham v. Nguyen, 763 S.W.2d 467, 469 (Tex. App.—Houston [14th Dist.] 1988, writ denied)
- Sledge v. Alsup, 759 S.W.2d 1, 2-3 (Tex. App.—El Paso 1988, no writ)

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