

NEBRASKA COURT OF APPEALS

Reilly v. Pansing Hogan Ernst & Bachman

34 Neb. Ct. App. 285 (2026) · No. A-25-216 · Decided May 19, 2026

SUMMARY

The Nebraska Court of Appeals affirmed summary judgment for an attorney and law firm in an action brought by an heir and trust beneficiary seeking recovery of fees incurred in prior estate litigation. The court held that the plaintiff lacked standing to sue derivatively on behalf of the estate or trust because she was not the appointed representative or trustee and had not pursued available procedures to obtain representative authority. The court also addressed the alleged attorney-client relationship and duty owed to the plaintiff individually.

CASE DETAILS

COURT	Nebraska Court of Appeals
WRITING FOR THE COURT	Riedmann, Chief Judge; Bishop, Judge; Welch, Judge
JURISDICTION	Nebraska Court of Appeals
DECIDED	May 19, 2026
DOCKET	A-25-216
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Douglas County District Court order granting appellees' motion for summary judgment in an attorney-malpractice action.
STANDARD OF REVIEW	Standing and the existence of a legal duty are reviewed as questions of law independently. Evidentiary rulings are reviewed for abuse of discretion. Summary judgment is reviewed de novo, viewing the record in the light most favorable to the nonmoving party and drawing reasonable inferences in that party's favor.
PRECEDENTIAL VALUE	published
PARTIES	Christine K. Reilly, individually and derivatively on behalf of the George J. Kubat Revocable Trust and the Estate of George J. Kubat v. Pansing Hogan Ernst & Bachman LLP, Thomas R. Pansing

TOPICS

- probate procedure
- trust administration
- standing
- professional negligence
- summary judgment

PRACTICE AREAS

probate

trusts

professional negligence

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether Reilly had standing to sue individually for attorney fees and costs incurred in prior litigation.
2. Whether Reilly had standing to bring a derivative action on behalf of the Estate without serving as its personal representative or special administrator.
3. Whether Reilly had standing to bring a derivative action on behalf of the Trust when the trustee declined to participate but Reilly did not show that the refusal was improper.
4. Whether the district court erred in admitting Pansing's affidavit over Reilly's evidentiary objections.
5. Whether an attorney-client relationship existed between Reilly and Pansing concerning George Kubat's estate planning.
6. Whether Pansing and his firm owed Reilly, a nonclient beneficiary, a professional duty under the factors identified in *Perez v. Stern*.
7. Whether genuine issues of material fact precluded summary judgment.

HOLDINGS

1. Reilly had standing to commence the action in her individual capacity because she alleged that she personally incurred the attorney fees and costs for which she sought recovery.
2. An heir or devisee who has not been appointed as the estate's personal representative or special administrator lacks standing to sue on behalf of the Estate to recover estate property.
3. Reilly lacked standing to bring a derivative action on behalf of the Trust because the trustee is ordinarily the proper party to enforce claims belonging to the Trust, and Reilly did not show that the trustee's refusal to sue was improper.
4. The district court did not err in admitting Pansing's affidavit, and Reilly could not assert on appeal a different ground for exclusion than the grounds presented below.
5. No attorney-client relationship existed between Reilly and Pansing concerning George's estate planning merely because Reilly attended informational meetings, had prior dealings with the firm, or believed that a relationship existed.
6. Pansing and his firm owed no professional duty to Reilly concerning George's estate planning.
7. Summary judgment for Pansing and his law firm was proper because Reilly failed to establish a genuine issue of material fact concerning an attorney-client relationship or a duty owed to her.

KEY QUOTATIONS

“Under the Nebraska Probate Code, the right and duty to sue and recover assets for an estate reside not in the devisees, but in the estate’s appointed personal representative, or, if the personal representative cannot or should not act, the appointed special administrator.” (293)

“As a general rule, a trust is not a legal personality, and the trustee is the proper person to sue or be sued on behalf of such trust.” (297)

“The Perez court identified six factors to be balanced in determining whether an attorney owes a duty to a nonclient.” (305-306)

“As a general rule, the duty to exercise reasonable care and skill which a lawyer owes his client ordinarily does not extend to third parties in an estate planning context.” (307)

FACTUAL BACKGROUND

George J. Kubat retained Thomas R. Pansing to prepare and amend his estate-planning documents. While Kubat was hospitalized and seriously ill in April 2021, Pansing prepared or facilitated amendments increasing Maureen Walsh's benefits to approximately \$6 million; Kubat married Walsh and died the same day. Kubat's children successfully challenged the April 12 trust amendment and will on undue-influence grounds. Reilly then demanded that Security National Bank, acting as trustee and special administrator, sue Pansing and his firm for malpractice, but Security National declined; Reilly subsequently filed this action seeking her own attorney fees and costs.

PROCEDURAL HISTORY

Reilly sued Pansing and his law firm individually and derivatively on behalf of the George J. Kubat Revocable Trust and Estate of George J. Kubat, seeking reimbursement of attorney fees and costs incurred in prior probate and declaratory-judgment litigation. The Douglas County District Court ruled that Reilly lacked standing to pursue derivative claims for the Estate and Trust and that the attorneys owed her no duty individually, and it granted summary judgment to appellees. The Nebraska Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Estate of Schurman, 30 Neb. App. 259, 967 N.W.2d 734 (2021)
- Elbert v. Young, 312 Neb. 58, 977 N.W.2d 892 (2022)
- Perez v. Stern, 279 Neb. 187, 777 N.W.2d 545 (2010)
- Czech v. Allen, 318 Neb. 904, 21 N.W.3d 1 (2025)
- Kellogg v. Mathiesen, 320 Neb. 223, 26 N.W.3d 651 (2025)
- Kimball v. Rosedale Ranch, 319 Neb. 650, 24 N.W.3d 841 (2025)
- In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009)
- Beachy v. Becerra, 259 Neb. 299, 609 N.W.2d 648 (2000)
- Prusa v. Everett, 78 Neb. 250, 113 N.W. 571 (1907)
- Back Acres Pure Trust v. Fahnlander, 233 Neb. 28, 443 N.W.2d 604 (1989)
- In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021)

- Matter of Estate of Calvin, 963 N.W.2d 319 (S.D. 2021)
- Matter of Estate of Mouchague, 56 Kan. App. 2d 983, 442 P.3d 125 (2019)
- Browning v. Brunt, 330 Conn. 447, 195 A.3d 1123 (2018)
- Momsen v. Nebraska Methodist Hospital, 210 Neb. 45, 313 N.W.2d 208 (1981)
- Ford v. Estate of Clinton, 265 Neb. 285, 656 N.W.2d 606 (2003)
- Richardson v. Griffiths, 251 Neb. 825, 560 N.W.2d 430 (1997)
- Heckman v. Marchio, 296 Neb. 458, 894 N.W.2d 296 (2017)
- McVaney v. Baird, Holm, McEachen, 237 Neb. 451, 466 N.W.2d 499 (1991)
- Swanson v. Ptak, 268 Neb. 265, 682 N.W.2d 225 (2004)
- Dunmire v. Cool, 195 Neb. 247, 237 N.W.2d 636 (1976)
- Lilyhorn v. Dier, 214 Neb. 728, 335 N.W.2d 554 (1983)
- St. Mary's Church v. Tomek, 212 Neb. 728, 325 N.W.2d 164 (1982)

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