

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT,
DIVISION TWO

Gordon v. Ervin Cohen & Jessup, LLP

Gordon v. Ervin Cohen & Jessup, LLP · No. B313903 · Decided March 20, 2023

SUMMARY

The California Court of Appeal affirmed summary judgment for Ervin Cohen & Jessup LLP and attorney Reeve Chudd in a legal malpractice action brought by beneficiaries of the Gordon Family Trust. The court held that a lawyer’s duty to nonclient beneficiaries requires clear, certain, and undisputed evidence that the client intended to benefit them in the manner alleged, and that Claire Gordon’s intent to disinherit certain grandchildren under her testamentary trust did not establish an intent to prevent them from inheriting LLC interests. The document also includes a March 20, 2023 order modifying the February 23, 2023 opinion and denying rehearing, without changing the judgment.

CASE DETAILS

COURT	California Court of Appeal, Second Appellate District, Division Two
WRITING FOR THE COURT	Hoffstadt, J.; Lui, P. J.; Ashmann-Gerst, J.
JURISDICTION	California Court of Appeal, Second Appellate District, Division Two
DECIDED	March 20, 2023
DOCKET	B313903
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from a superior court judgment granting defendants summary judgment in a legal-malpractice action. The Court of Appeal affirmed.
STANDARD OF REVIEW	The existence of a duty is reviewed independently as a question of law, and the grant of summary judgment is reviewed independently. Summary judgment is proper when the moving party is entitled to judgment as a matter of law and the opposing party cannot establish one or more elements of the cause of action.
PRECEDENTIAL VALUE	Published and certified for publication; precedential under California law.

PARTIES

Bruce Gordon, Steven Gordon, Brian Gordon v. Ervin Cohen & Jessup LLP, Reeve Chudd

TOPICS

professional negligence

duty of care

standard of review

appellate procedure

trusts

PRACTICE AREAS

professional negligence

appellate procedure

trusts

estate planning

QUESTIONS PRESENTED

1. Whether the lawyers owed nonclient beneficiaries a duty to draft the LLC operating agreements to prevent Kenneth's children from obtaining LLC interests based on Claire's prior intent to disinherit them under her testamentary trust.
2. Whether the trial court properly granted summary judgment because plaintiffs could not establish the duty element of legal malpractice.
3. Whether plaintiffs' expert testimony concerning the integrated estate plan and alleged breach of the standard of care created a triable issue of material fact on duty.

HOLDINGS

1. A lawyer owes a nonclient third party a duty only when the client's intent to benefit that third party, in the manner asserted in the malpractice claim, is clear, certain, and undisputed.
2. A client's intent to disinherit a person under a testamentary trust does not, by itself, constitute clear, certain, and undisputed intent to disinherit that person from every subsequent inter vivos transaction involving property formerly held in the trust.
3. Expert testimony cannot establish the existence of a legal duty, and an expert's opinion that the lawyers breached the standard of care cannot create a duty where the duty otherwise does not exist.

KEY QUOTATIONS

"A lawyer has a duty to a nonclient third party only if the client's intent to benefit that third party (in the way the third party asserts in their malpractice claim) is "clear," "certain" and "undisputed." (12-13)

"If, as plaintiffs urge, a client's intent regarding who should inherit their property at the time of death creates an inference of the same intent for any and all inter vivos transfers, then the client's previously expressed testamentary intent would forever after operate as a sort of "super-intent" that would seemingly be controlling unless and until the client affirmatively expressed a contrary intent." (22-23)

"The only "element" at issue is duty; intent is but one of many factors bearing on whether to recognize such a duty." (26)

FACTUAL BACKGROUND

Claire Gordon amended her testamentary trust in 2006 to disinherit Kenneth's three children from property passing under the trust. Soon afterward, with attorney Reeve Chudd's assistance, she formed three LLCs, transferred trust-held real estate into them, and gave each of her three sons a membership interest. The LLC operating agreements permitted a member to transfer membership interests to descendants of Claire and Arnold, and Claire never told Chudd that she wanted to prevent Kenneth's children from receiving LLC interests; she also never expressed dissatisfaction with the agreements before her death. After Claire's death, Bruce Gordon and his sons sued, claiming the lawyers negligently failed to draft the agreements to bar Kenneth's children from inheriting LLC interests.

PROCEDURAL HISTORY

Plaintiffs sued the attorney and law firm that prepared limited liability company operating agreements, alleging that the agreements failed to prevent Kenneth Gordon's children from inheriting LLC interests contrary to Claire Gordon's testamentary-disinheritance intent. The trial court granted summary judgment because plaintiffs had no evidence of a clear intent by Claire to disinherit Kenneth's children from the LLC interests and therefore defendants owed no duty of care. Plaintiffs timely appealed; the Court of Appeal affirmed and denied rehearing after modifying the opinion without changing the judgment.

DISPOSITION

affirmed

CASES CITED

- *Coscia v. McKenna & Cuneo* (2001) 25 Cal.4th 1194, 1199
- *Heyer v. Flaig* (1969) 70 Cal.2d 223, 228-229
- *Laird v. Blacker* (1992) 2 Cal.4th 606
- *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1097-1100
- *Moore v. Anderson Zeigler Disharoon Gallagher & Gray* (2003) 109 Cal.App.4th 1287, 1290, 1294-1299
- *Bucquet v. Livingston* (1976) 57 Cal.App.3d 914, 918-921
- *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 57
- *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 273
- *Budd v. Nixen* (1971) 6 Cal.3d 195, 200
- *Borissoff v. Taylor & Faust* (2004) 33 Cal.4th 523, 529
- *Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2004) 131 Cal.App.4th 802, 826
- *Lucas v. Hamm* (1961) 56 Cal.2d 583, 588-591
- *Ventura County Humane Society v. Holloway* (1974) 40 Cal.App.3d 897, 902-907
- *Boranian v. Clark* (2004) 123 Cal.App.4th 1012, 1014, 1017-1020
- *Radovich v. Locke-Paddon* (1995) 35 Cal.App.4th 946, 954-965
- *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 344
- *Dillon v. Legg* (1968) 68 Cal.2d 728, 734

- Brown v. USA Taekwondo (2021) 11 Cal.5th 204, 221
- Chang v. Lederman (2009) 172 Cal.App.4th 67, 82-84
- Garcia v. Borelli (1982) 129 Cal.App.3d 24, 29, 32
- Osornio v. Weingarten (2004) 124 Cal.App.4th 304, 321, 329, 334
- Genger v. Delsol (1997) 56 Cal.App.4th 1410, 1420-1422
- Burch v. George (1994) 7 Cal.4th 246, 251-263
- Hall v. Kalfayan (2010) 190 Cal.App.4th 927, 929, 935-938
- Minish v. Hanuman Fellowship (2013) 214 Cal.App.4th 437, 455
- QDOS, Inc. v. Signature Financial, LLC (2017) 17 Cal.App.5th 990, 1004
- Issakhani v. Shadow Glen Homeowners Assn., Inc. (2021) 63 Cal.App.5th 917, 935

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