

SUPREME COURT OF WISCONSIN

Tensfeldt v. Haberman

2009 WI 77 (Wis. 2009) · No. 2007AP1638 · Decided July 14, 2009

SUMMARY

The Supreme Court of Wisconsin reviewed claims against attorneys arising from estate plans that allegedly violated a divorce judgment and failed to account for Florida elective-share law. The court held that Attorney LaBudde was liable as a matter of law for intentionally aiding and abetting a client's violation of the enforceable judgment and was not entitled to qualified immunity or the good faith advice privilege. It also held that the children could not establish causation for their negligence claim against LaBudde and affirmed summary judgment for Attorney Haberman because the children's negligence claim lacked sufficient evidence of harm.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Ann Walsh Bradley, J.
JURISDICTION	Wisconsin
DECIDED	July 14, 2009
DOCKET	2007AP1638
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Wisconsin Supreme Court accepted certification of cross-appeals from an order granting and denying cross-motions for summary judgment in an action by estate beneficiaries against attorneys involved in the decedent's estate planning.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, using the same methodology as the circuit court. Legal questions and whether the evidence establishes a genuine issue of material fact are independently reviewed.
PRECEDENTIAL VALUE	Published, precedential Wisconsin Supreme Court opinion
PARTIES	Robert William Tensfeldt, John F. Tensfeldt, Christine L. Tensfeldt, Roy C. LaBudde v. F. William Haberman, Roy C. LaBudde, Michael Best & Friedrich LLP

TOPICS

estate planning

probate procedure

professional negligence

negligence

trusts

PRACTICE AREAS

estate planning

probate

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professional negligence

torts

QUESTIONS PRESENTED

1. Whether the divorce judgment requiring Robert to maintain a will benefiting his adult children was enforceable when LaBudde assisted Robert in preparing noncompliant estate plans.
2. Whether LaBudde's conduct constituted intentional aiding and abetting of Robert's unlawful violation of the divorce judgment.
3. Whether LaBudde was protected from third-party liability by qualified attorney immunity or the good faith advice privilege.
4. Whether the children could maintain a third-party negligence claim against LaBudde under the will-beneficiary exception recognized in *Auric*.
5. Whether Haberman could be liable to the children for negligent estate-planning advice when he neither drafted nor supervised execution of the estate plan.
6. Whether the evidence of harm caused by Haberman's negligence was sufficient to create a genuine issue of material fact.

HOLDINGS

1. The divorce judgment was enforceable when entered and during the period from 1980 through 1992 when LaBudde drafted the noncompliant estate plans.
2. LaBudde was liable as a matter of law for intentionally aiding and abetting Robert's unlawful violation of the divorce judgment.
3. LaBudde was not entitled to qualified immunity from the children's aiding-and-abetting claim.
4. The good faith advice privilege did not protect LaBudde because he drafted documents that effectuated a violation of a court judgment rather than merely providing advice concerning a contractual breach.
5. The children could not maintain their negligence claim against LaBudde because they could not establish that his negligence thwarted Robert's clear testamentary intent.
6. Haberman was not liable to the children for negligent advice because he neither drafted nor supervised execution of the estate plan, and the *Auric* exception does not extend to negligent advice alone.
7. The children failed to present evidence sufficient to create a genuine issue of material fact concerning harm caused by Haberman's negligent advice.

KEY QUOTATIONS

“[T]he immunity of an attorney who is acting in a professional capacity is qualified rather than absolute. The immunity from liability to third parties extends to an attorney who pursues in good faith his or her client's interest on a matter fairly debatable in the law. However, the immunity does not apply when the attorney acts

in a malicious, fraudulent or tortious manner which frustrates the administration of justice or to obtain something for the client to which the client is not justly entitled.” (768 N.W.2d 657)

“We conclude that, under these facts, LaBudde is not entitled to this privilege.” (768 N.W.2d 658)

“Being named in the instrument is a necessary but not a sufficient condition for overcoming the general rule that attorneys are immune from liability for negligence to third parties.” (768 N.W.2d 659)

FACTUAL BACKGROUND

Robert Tensfeldt's 1974 Wisconsin divorce judgment incorporated a stipulation requiring him to maintain a will leaving at least two-thirds of his net estate outright to his three adult children. Despite knowing of the judgment, Attorney LaBudde drafted successive estate plans that did not comply with it, including a 1992 plan. Attorney Haberman later negligently failed to advise Robert about the effect of a Florida decision allowing his surviving spouse to take an elective share while continuing to receive trust income. After Robert's death, the children litigated their rights in Florida and then sued LaBudde, Haberman, and their law firm in Wisconsin.

PROCEDURAL HISTORY

The circuit court held as a matter of law that Attorney LaBudde aided and abetted Robert Tensfeldt's violation of a divorce judgment and denied LaBudde summary judgment on a negligence claim. It granted summary judgment dismissing the claims against Attorney Haberman. The children appealed, LaBudde cross-appealed, and the court of appeals certified the case to the Wisconsin Supreme Court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Dane County Circuit Court for further proceedings on the aiding-and-abetting claim and related civil-conspiracy claim, including any unresolved limitations and damages issues. Summary judgment was to be entered for LaBudde on the third-party negligence claim and for Haberman on the claims against him.

CASES CITED

- Novell v. Migliaccio, 2008 WI 44, 309 Wis. 2d 132, 749 N.W.2d 544
- State v. Ford, 2007 WI 138, 306 Wis. 2d 1, 742 N.W.2d 61
- AccuWeb, Inc. v. Foley & Lardner, 2008 WI 24, 308 Wis. 2d 258, 746 N.W.2d 447
- Vaccaro v. Vaccaro, 67 Wis. 2d 477, 227 N.W.2d 62 (1975)
- Estate of Barnes v. Hall, 170 Wis. 2d 1, 486 N.W.2d 575 (Ct. App. 1992)
- Bliwas v. Bliwas, 47 Wis. 2d 635, 178 N.W.2d 35 (1970)
- Rintelman v. Rintelman, 118 Wis. 2d 587, 348 N.W.2d 498 (1984)
- Ross v. Ross, 149 Wis. 2d 713, 439 N.W.2d 639 (Ct. App. 1989)

- State v. Ramsay, 16 Wis. 2d 154, 114 N.W.2d 118 (1962)
- Cline v. Whitaker, 144 Wis. 439, 129 N.W. 400 (1911)
- Maness v. Meyers, 419 U.S. 449, 95 S. Ct. 584, 42 L. Ed. 2d 574 (1975)
- Yorgan v. Durkin, 2006 WI 60, 290 Wis. 2d 671, 715 N.W.2d 160
- Strid v. Converse, 111 Wis. 2d 418, 331 N.W.2d 350 (1983)
- Langen v. Borkowski, 188 Wis. 277, 206 N.W. 181 (1925)
- Auric v. Continental Cas. Co., 111 Wis. 2d 507, 331 N.W.2d 325 (1983)
- Beauchamp v. Kemmeter, 2001 WI App 5, 240 Wis. 2d 733, 625 N.W.2d 297
- Bravo v. Sauter, 727 So. 2d 1103 (Fla. Dist. Ct. App. 1999)
- In re Estate of Robert C. Tensfeldt, Deceased. Robert William Tensfeldt, John Tensfeldt, and Christine Tensfeldt, Appellants, v. Constance M. Tensfeldt, Appellee., Tensfeldt v. Tensfeldt, 839 So. 2d 720 (Fla. Dist. Ct. App. 2003)