IN THE COURT OF APPEALS OF IOWA

No. 2-941 / 12-0627
Filed January 9, 2013

DIEAN SABIN,
Plaintiff-Appellant,

vs.

IVAN ACKERMAN,
Defendant-Appellee.

Appeal from the Iowa District Court for Bremer County, Rustin Davenport, Judge.

Executor/beneficiary of an estate appeals the district court's summary dismissal of her legal malpractice claim. **REVERSED.**

David Hanson and John W. Hofmeyer III of Hofmeyer & Hanson, P.C., Oelwein, for appellant.

Robert M. Hogg and Patrick M. Roby of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellee.

Heard by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

EISENHAUER, C.J.

Diean Sabin, a beneficiary and also the executor of the estate of her father, Elmer Gaede, filed a legal malpractice action against attorney Ivan Ackerman.[1] The district court granted summary judgment in favor of Ackerman, ruling "it is clear Ackerman's client was Diean in her capacity as executor" and "Ackerman owed Diean no duty regarding her potential claims as beneficiary." [2] We reverse.

I. Background Facts and Proceedings.

Elmer Gaede executed a will in 1999 naming son James Gaede, son Steven Gaede, and daughter Diean Sabin equal beneficiaries of the residue of his estate. In 2001, attorney Ackerman prepared a long-term farm lease between landlord Elmer and tenant James. This lease also granted James a sixteen-year option to buy the farmland for $200,000. On the face of the lease, Ackerman is the attorney who prepared the lease, but the record does not reflect whom Ackerman was representing at the time the lease was drafted.

Elmer died in February 2005, his wife having predeceased him. Diean, the executor of the estate, hired Ackerman to be the attorney for the estate. James and his spouse exercised their option to buy under the 2001 lease and, in

[1] Attorney Ackerman died in 2011 while his motion for summary judgment was pending. The parties have agreed not to substitute his estate as the defendant herein.

[2] Ackerman asserted two additional grounds for summary judgment that were resolved by the district court and not appealed. Ackerman argued, even assuming he had a duty to Diean individually: (1) any malpractice did not proximately cause damage because Diean had received a financial settlement from James; and (2) Diean released her malpractice claim "in the release she executed to settle her claim against James." The court denied summary judgment on those grounds, ruling: "[I]f Ackerman had a duty to Diean in her capacity as a beneficiary" (1) her settlement "with James would not preclude her" malpractice recovery, and (2) "Ackerman was not identified in the release [and] the release did not operate to absolve or protect Ackerman from malpractice."

March 2006, the residuary beneficiaries and their spouses signed a warranty deed and also executed an "Escrow for Deed and Abstract." Ackerman was involved in this transaction and notarized the documents.

After Diean signed over the farmland, she became aware there may have been improprieties regarding the option to buy. The sale to James for $200,000 priced the farmland for much less than the open-market price.[3] Diean hired a new attorney, and Diean and Steven subsequently settled their farmland option dispute with James for $20,000. Diean and Steven signed a document releasing James from claims "by reason of the lease, option, purchase, transfer, and ownership" of the farmland.

In January 2011, Diean sued Ackerman for malpractice, alleging she hired him "to represent her in the Probate of her father's Estate and regarding legal matters surrounding that Estate and her inheritance." Diean asserted Ackerman was negligent:

> D. in giving advice to [Diean] without advising [her] of the relevant considerations necessary to make an informed decision, in entering into the escrow agreement and signing the Deed and papers involved with the decedent Elmer Gaede's Lease to James Gaede; And/Or
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> E. in failing to inform [Diean] of all potential conflicts of interest and advising [her] regarding the effects of legal enforceability of the lease option . . . and in failing to advise [her] of the potential need for her to consult with another attorney regarding this matter.

[3] *See Trecker v. Langel*, 298 N.W.2d 289, 292 (Iowa 1980) (finding thirty-year preemption for purchase of farmland invalid where "pre-emptive right requires that the property be offered at much less than its value at the time of proposed sale").

Ackerman moved for summary judgment, claiming he represented Diean as executor and did not represent her individually. In an interrogatory answer, Ackerman states:

> My sole representation of [Diean] was to represent her in her capacity as executor of the estate of her [deceased] father, Elmer Gaede. I am unable to reconstruct the meetings that I had with [Diean] due to the loss of the firm's records in the flood of 2008. It is my best guess that I had fewer than half a dozen meetings with [her] and each of the meetings dealt only with her discharging her duties as executor of her father's estate.

Diean resisted summary judgment and filed an affidavit stating:

> 2. I viewed [Ackerman] as my attorney without limitation, not only in my capacity as the Executor of my father's Estate, and relied upon [him] to give me legal advice regarding my father's Estate. [Ackerman] certainly did not ever inform me of any limitations on his representation of me, nor inform me that I should be consulting with other counsel to represent my personal interests in the Estate.
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> 3. When I signed the Deed and Escrow Agreement, I did so without legal advice. At no time did [Ackerman] suggest that I contact another attorney, and I assume he was representing me as my attorney . . . .

The district court granted Ackerman's motion for summary judgment, ruling Ackerman did not have a duty to Diean as an individual to advise her about any action that could be taken to challenge the lease because his duty was to Diean solely as the executor. Diean now appeals.

II. Scope and Standards of Review.

We review rulings on summary judgment motions for correction of legal error. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). "Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Emp'rs Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d 17, 22 (Iowa 2012). We view the entire

record in a light most favorable to the nonmoving party. *Crippen*, 618 N.W.2d at 565. "Because the issue of whether a duty arises out of a party's relationship is a legal question, it is susceptible to summary judgment." *Ruden v. Jenk*, 543 N.W.2d 605, 607 (Iowa 1996).

III. Professional Malpractice.

To establish a prima facie claim of legal malpractice, Sabin must produce substantial evidence showing the existence of an attorney-client relationship giving rise to a duty. *See Schmitz v. Crotty*, 528 N.W.2d 112, 115 (Iowa 1995). A lawyer's duty in specific cases varies with the circumstances presented. Iowa courts have discussed the scope of the duty owed by an attorney retained to assist in the administration of an estate to the executrix and to estate beneficiaries. In *Schmitz*, co-executors and sole co-beneficiaries sued the attorney for the estate alleging malpractice. *Id*. In reversing the district court's dismissal of the petition, the court stated: "we conclude [the attorney for the estate] breached *the duty he owed to the plaintiff beneficiaries* to exercise reasonable skill and care as a matter of law." *Id*. at 116 (emphasis added). Therefore, the court recognized the attorney designated by the co-executors as the attorney for an estate also had a duty to the beneficiaries of the estate. *See id*.

The duty owed by the attorney for the estate to individual beneficiaries was also discussed in *Ruden*, 543 N.W.2d at 610-11. Plaintiffs were co-administrators and two of six heirs. *Id.* at 610. They designated attorney Jenk as the attorney for the estate and subsequently filed a legal malpractice against him. *Id*. The district court granted Jenk's motion for summary judgment, ruling "Jenk's

legal duty was as attorney for [decedent's] estate. He did not have a duty to advise the plaintiffs of any possible claims against" another attorney who had prepared an invalid assignment. *Id*. at 610. The Iowa Supreme Court disagreed, ruling:

> An attorney designated for an estate is charged with the duty of commencing probate proceedings in a timely manner and overseeing administration of the estate. *Although the estate attorney is hired by an executor* or administrator, *his obligations*, like those of the fiduciary, *extend to the estate and all other distributees*.
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> . . . .
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> We agree Tom Jenk had a duty to advise the administrators as to the legal validity of the assignment . . . .
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> Although the Iowa Code of Professional Responsibility for Lawyers does not undertake to define standards of civil liability, it constitutes some evidence of negligence. . . . A lawyer must exercise independent professional judgment on behalf of a client . . . . [A] lawyer must withdraw as counsel if the exercise of independent professional judgment on behalf of a client is likely to be adversely affected by the representation of another client unless each consents after full disclosure. See DR 5-105(C) . . . .
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> *Clearly there is a factual issue as to the existence of an attorney-client relationship between Jenk and the plaintiffs personally*. Likewise, there is a factual issue as to whether the duties arising from the relationship were violated or breached. Both parties identified experts in support of their position on the existence of the attorney-client relationship and the breach of the duties arising from the relationship. Jenk would not be entitled to summary judgment upon these elements of the malpractice claim.

Id. at 610-11 (citations omitted) (emphasis added). *See Estate of Leonard v. Swift*, 656 N.W.2d 132, 145 (Iowa 2003) (stating *Ruden* considered the extent of the duty owed by the attorney for the administrator of an estate and recognized the attorney's obligations "extend to the estate and all other distributees").

In addition to the case law, as of July 1, 2005, the Iowa Rules of Professional Conduct, Rule 32:1.2, provided:

> **Scope of representation and allocation of authority between client and lawyer.**
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> (a) Subject to paragraph (c) . . . a lawyer shall abide by a client's decisions concerning the objectives of representation . . . .
>
> . . . .
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> (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

Further guidance is found in the Restatement:

> A relationship of client and lawyer arises when:
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> (1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either
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> (a) the lawyer manifests to the person consent to do so; or
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> (b) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services . . . .

Restatement (Third) of the Law Governing Lawyers § 14, at 125 (2000). The Restatement comments explain: "In trusts and estates practice a lawyer may have to clarify with those involved . . . whether the client is an executor, an estate, or its beneficiaries. In the absence of clarification the inference to be drawn may depend on the circumstances and the law of the jurisdiction." *Id*. at 131, cmt. f.

We reverse the district court's grant of summary judgment to Ackerman and conclude Ackerman's relationship (and the resulting duties owed) to Diean individually as a beneficiary is unclear and a question of fact. Ackerman's interrogatory answer does not state he expressly advised Diean his representation was limited to her duties and responsibilities as executrix, irrespective of the impact on her as an individual, and she consented to the limitation. In contrast, Diean's affidavit asserts she hired Ackerman as her attorney in a broad context and he "did not ever inform me of any limitations on

his representation of me, nor inform me that I should be consulting with other counsel to represent my personal interests in the Estate." *See id*. § 19, at 162 (stating a client and lawyer may agree to limit a duty the lawyer would otherwise owe if "the client is adequately informed and consents").

We conclude, on the record before us and when viewing the evidence in the light most favorable to Diean as the nonmoving party, Diean may have had a reasonable expectation of Ackerman's representation of her as an individual. *See Estate of Albanese v. Lolio*, 923 A.2d 325, 336 (N.J. Super. Ct. App. Div. 2007) (ruling attorney had an obligation to define the scope of representation more clearly). As in *Ruden*, "[c]learly there is a factual issue as to the existence of an attorney-client relationship between [attorney Ackerman] and [Diean] personally." *See Ruden*, 543 N.W.2d at 611. Accordingly, we reverse.

REVERSED.

Vaitheswaran, J., concurs; Vogel, J., dissents.

VOGEL, J. (dissenting)

I must respectfully dissent because I find the district court was correct in holding, under the facts of this case, Ackerman owed no duty to Diean as a beneficiary of her father's estate.

Diean's father executed a lease agreement with Diean's brother, James, in 2001, which provided James the option to purchase the land at the price of $200,000. When Diean's father died, the lease, as an asset of the estate, passed to the residual beneficiaries, Diean, James, and Steven, in equal shares. James executed his option to purchase the land after his father died. After conveying her interest in the land to James under the option to purchase, Diean became concerned that there were improprieties regarding the lease agreement and alleged James exercised undue influence over their father. Diean obtained separate legal counsel and sued James, obtaining a settlement of $20,000, which she shared with her other brother, Steven. Diean also sued Ackerman, who acted as Diean's attorney in her role as executor, alleging Ackerman committed malpractice by, among other things, failing to inform her of "all potential conflicts," the "legal enforceability of the lease option," and the need "to consult with another attorney."

While generally an attorney is only liable to a client, there has been a relaxation in the privity requirement "'under severely limited circumstances.'" *Estate of Leonard*, 656 N.W.2d at 145 (*citing Ruden*, 543 N.W.2d at 610). A court will recognize a duty to a third party, such as a beneficiary or heir, when the testamentary instrument is rendered invalid as a direct result of attorney error. *Ruden*, 543 N.W.2d at 610; *see also Schreiner v. Scoville*, 410 N.W.2d 679, 682

(Iowa 1987). "Although the estate attorney is hired by an executor or administrator, his obligations, like those of the fiduciary, extend to the estate and all other distributees." *Ruden*, 543 N.W.2d at 610. "[A] lawyer owes a duty of care to the direct, intended, and specifically identifiable beneficiaries of the testator as expressed in the testator's testamentary instruments." *Schreiner*, 410 N.W.2d at 682. However, a further limitation applies: "[A] cause of action ordinarily will arise only when as a direct result of the lawyer's professional negligence the testator's intent as expressed in the testamentary instruments is frustrated in whole or in part and the beneficiary's interest in the estate is either lost, diminished, or unrealized." *Id.* at 683. "If the testator's intent, as expressed in the testamentary instruments, is fully implemented, no further challenge will be allowed." *Id.*

The district court did not find that Ackerman had mishandled the estate in any manner. It distinguished this case from those cases permitting a third party to maintain a malpractice action against the executor's attorney because here the intent of the decedent was not frustrated by any mishandling of the estate. *Id.* The lease with the option to buy was clearly intended to provide Elmer's son, James, with the option to purchase the land being leased. James exercised this right, and Ackerman did not owe a duty to Diean, as one of three residual beneficiaries, to scrutinize the lease her father executed to try to maximize her share of the residual of her father's estate. "[A] beneficiary who is simply disappointed with what he or she received from the estate will have no cause of action against the testator's lawyer." *Id.* To find such a duty exists here would put Ackerman in an impossible conflict where he would have to choose between

carrying out the express intent of the testator—his former client—and benefitting two of the three residual beneficiaries—Diean and Steven—at the expense of the third—James.

This case is unlike those of *Ruden* and *Schmitz*, cited by the majority. In *Ruden*, the decedent executed an assignment with the assistance of an attorney, transferring his interest in the real estate contract upon his death to two of his six heirs, Gertrude and Rosella. 543 N.W.2d at 607–08. Gertrude and Rosella were also appointed as the administrators of the estate upon the decedent's death. *Id.* at 607. After the estate was open, two of the other heirs challenged the validity of the assignment, and it was found by the court to be ineffective because of a drafting error. *Id.* at 609. The interest in the real estate contract was then divided amongst all six heirs. *Id.*

Gertrude and Rosella filed a lawsuit alleging the attorney for the estate was negligent in not advising them of the invalidity of the assignment and the potential for a claim against the attorney who prepared the assignment for the decedent. *Id.* at 610. The court found there was a factual dispute regarding the existence of a duty and whether that duty was breached, but ultimately affirmed the district court's grant of summary judgment because the alleged breach was not the proximate cause of Gertrude and Rosella's damages. *Id.* at 611–12. The clear intent of the decedent was frustrated by the work of the attorneys in *Ruden*—to properly transfer the interest in the real estate contract to Gertrude and Rosella; therefore, there was a factual dispute regarding the existence of a duty when Gertrude and Rosella, as beneficiaries, did not receive an asset the decedent had intended for them. *See id.* at 611.

In this case, the intent of the decedent—Elmer Gaede—was not frustrated, but accomplished when the option to purchase in the lease was exercised by James. Favorable to the other beneficiaries or not, it was part of Elmer's estate plan. Ackerman represented Diean as executor, overseeing the administration of the estate, including the handling of the lease.

In the other case relied upon by the majority, the decedent left land to her sole beneficiaries who were also co-executors, Clyde and Connie. *Schmitz*, 528 N.W.2d at 113. The attorney representing the executors used incorrect legal descriptions of the land on the federal estate tax return, as well as the Iowa inheritance tax return, and failed to compute the correct value per acre resulting in the estate paying higher taxes than owed. *Id.* at 114. A few months after the estate was closed, the attorney was notified of the inaccuracy in the legal descriptions of the land and attempted, but failed, to correct the error in the probate file. *Id.* The attorney did not attempt to amend the tax returns within the statute of limitations to do so, nor did he return the excess attorney fee he received as a result of the erroneously high value of the real estate in the estate. *Id.* at 114–15.

Clyde and Connie filed suit alleging the attorney was negligent in administering the estate, which resulted in them overpaying death taxes, inflated attorney fees, and interest. *Id.* at 115. The case proceeded to trial where the district court found the attorney did not breach his duty of care. *Id.* The court did not specifically address the issue of duty, proximate cause, or damages because the defendant did not contest these issues on appeal. *Id.* at 115. However, the supreme court did reverse the district court's decision and found the attorney

breached his duty because his handling of the estate fell below the standard of a reasonably prudent attorney. *Id.* at 116. It was the attorney's inaccurate preparation of the estate's tax returns that wrongfully depleted the estate of assets that ultimately would have passed through to the only heirs—Clyde and Connie.

Schmitz is clearly factually distinguishable from the case at hand. Diean is not alleging Ackerman mishandled an asset of the estate or made a mistake in any of the work he was hired by the executor to do in administering Elmer's estate. Instead Diean is alleging Ackerman should have told her she may have a claim to invalidate a lease her father executed before his death, which benefited another beneficiary. The holding of *Schmitz* does not create such a duty.

As noted in the Report and Inventory of Elmer's estate, Ackerman was designated by Diean to represent her in carrying out her duties as executor of the estate. He owed a duty to her to properly advise her on all matters pertaining to the effective administration of the estate. Absent negligent handling of the estate, he did not owe her any separate duty as one of the beneficiaries of the estate, when he was clearly following Elmer's directives. Ackerman's answer to interrogatories confirmed his role as he "dealt only with [Diean] discharging her duties as executor of her father's estate." To expand on this duty, so that an attorney who represented a client in drafting a will or setting up an estate plan would need to later defend the plan because of a "duty" to would-be beneficiaries, would put attorneys in Iowa in an untenable position. It was not Ackerman's duty to advise the beneficiaries of the wisdom of any of Elmer's estate plan. As the district court aptly noted, "Ackerman would have no greater

duty to scrutinize the lease between Elmer and James than he would have to scrutinize any item distributed by Elmer's estate."

Because I find the district court was correct in holding Ackerman represented Diean as executor of the estate, and absent any mishandling of the estate proceedings, he did not owe a separate duty to Diean as one of three beneficiaries in her father's residual estate, I would affirm the district court's ruling granting summary judgment to Ackerman.