

STATE OF MICHIGAN
COURT OF APPEALS

JANET A. PAULOWEIT,

Plaintiff-Appellant,

v

VICTOR J. MARTIN, and VICTOR J. MARTIN,
P.C.,

Defendants-Appellees.

UNPUBLISHED

May 22, 1998

No. 197880

Wayne Circuit Court

LC No. 95-520495 NM

Before: Whitbeck, P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendants' motion for summary disposition and denying plaintiff's motion for leave to amend the complaint in this legal malpractice case. We affirm.

I. Duty by a Lawyer

Plaintiff alleges that her husband, Walter Pauloweit, consulted with defendants to prepare a will naming plaintiff as the sole residuary beneficiary and that he expressed his intention that plaintiff should receive all proceeds from Pauloweit's "basic" life insurance policy plus \$130,000 from his "optional" life insurance policy. After Pauloweit's death, plaintiff received nothing under the "optional" policy because the policy did not designate her as a beneficiary. Plaintiff alleges that this was due to defendants' failure to either implement an estate plan consistent with Pauloweit's wishes, or to instruct Pauloweit on how to implement his own estate plan through beneficiary designations. Plaintiff filed a claim against defendants for malpractice claiming that she was a reasonably foreseeable beneficiary of Pauloweit's relationship with defendants.

Plaintiff argues that the trial court erred in granting defendants' motion for summary disposition because defendants clearly owed plaintiff a duty of care. We disagree. This Court reviews the trial court's decision on an MCR 2.116(C)(8) motion de novo to determine if the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. *Smith v Kowalski*, 223 Mich App 610, 612-613; 567 NW2d 463 (1997).

Generally, a client may only bring a legal malpractice action if that client has been damaged by counsel's negligence. Absent special circumstances, the attorney cannot be held liable to anyone else. *Beatty v Hertzberg & Golden, PC*, 456 Mich 247, 253-255; 571 NW2d 716 (1997). In Michigan, beneficiaries named in a will may in certain circumstances properly bring a malpractice action against the attorney who drafted the will. *Mieras v DeBona*, 452 Mich 278, 308; 550 NW2d 202 (1996).

Plaintiff claims that, under *Mieras*, any reasonably foreseeable third-party beneficiary of the attorney-client relationship can sue for malpractice. We disagree. Throughout its opinion, the *Mieras* Court carefully confined its analysis to the duty owed to beneficiaries named in a will. The *Mieras* Court reasoned that the relationship did not present a conflict of interest because the beneficiaries named in the will were also third-party beneficiaries of the contract between the attorney and the testator. *Id.* at 298-299. Therefore, the attorney owed the beneficiaries a tort-based duty to draft the documents with the requisite standard of care. *Id.* at 299.

In the present case, plaintiff was named in the will, but does not allege that Pauloweit's intent, as expressed in that will, was frustrated. Rather, plaintiff alleges that she was an unnamed but intended beneficiary of Pauloweit's optional life insurance policy and thus defendants owed her a duty. We again disagree. In *Ginther v Zimmerman*, 195 Mich App 647, 655; 491 NW2d 282 (1992), this Court affirmed the dismissal of an action for legal malpractice because the plaintiffs were not named in the will. Similarly, because plaintiff was not named as a beneficiary of Pauloweit's "optional" life insurance policy, and because she cannot show that the intent expressed in his will was frustrated, defendants did not owe her a duty that would give rise to a legal malpractice claim. The trial court, in its well-reasoned opinion, therefore did not err in granting defendants' motion for summary disposition.

II. Denial of the Motion to Amend

Plaintiff argues that the trial court erred in denying her motion to amend the complaint to add Pauloweit's estate as a party plaintiff. We decline to consider this argument because plaintiff relies on grounds which she specifically waived below. *People v Shuler*, 188 Mich App 548, 551-552; 470 NW2d 492 (1991) (a party may not harbor error as an appellate parachute).

Affirmed.

/s/ William C. Whitbeck
/s/ Barbara B. MacKenzie
/s/ William B. Murphy