

STATE OF MICHIGAN  
COURT OF APPEALS

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BETTY SORKOWITZ, Trustee for the MORRIS  
& SARAH FRIEDMAN IRREVOCABLE TRUST  
and the SARAH FRIEDMAN TRUST, and  
Personal Representative of the ESTATE OF  
SARAH FRIEDMAN, Deceased, BETMAR  
CHARITABLE FOUNDATION, INC., JULIE  
SHIFFMAN, JANET JACOBS, CAROLYN  
JACOBS, RENEE JACOBS, JODIE SHIFFMAN  
and JEFFREY SHIFFMAN,

Plaintiffs-Appellants,

v

LAKRITZ, WISSBRUN & ASSOCIATES, P.C.,  
a/k/a LAKRITZ, WISSBURN & ASSOCIATES,  
P.C., GERALD LAKRITZ and KENNETH  
WISSBRUN, a/k/a KENNETH WISSBURN,

Defendants-Appellees.

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FOR PUBLICATION  
April 27, 2004  
9:10 a.m.

No. 242016  
Oakland Circuit Court  
LC No. 01-037192-NO

Updated Copy  
July 2, 2004

Before: Fitzgerald, P.J., and Neff and White, JJ.

FITZGERALD, P.J. (*dissenting*).

I respectfully dissent from the majority's conclusion that the trial court erred by granting summary disposition in favor of defendants.

Plaintiffs, who are primarily the beneficiaries of the Friedmans' estates, filed this legal malpractice action against the attorneys who drew up the Friedmans' estate-planning documents, asserting that they rendered inadequate advice concerning the tax consequences of various estate-planning options. The trial court ruled that Sarah Friedman's estate, which was not a beneficiary, lacked standing to sue and that the named beneficiaries could not maintain a cause of action because they relied on extrinsic evidence to prove that the Friedmans' intent had been frustrated. We review *de novo* the trial court's ruling on a motion for summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

"An attorney's primary duty in drafting a will is to draft a document that legally accomplishes the testator's intent regarding disposition of the testator's property. Drafting a

document that fulfills the testator's desire to transfer property to named beneficiaries . . . creates a corresponding duty to the named persons because of their third-party beneficiary status." *Mieras v DeBona*, 452 Mich 278, 299; 550 NW2d 202 (1996). That duty is limited "and only requires the attorney to draft a will that properly effectuates the distribution scheme set forth by the testator in the will." *Id.* at 302. However, the named beneficiaries must show that "the intent of the testator, as expressed within the four corners of the instrument, has been frustrated." *Ginther v Zimmerman*, 195 Mich App 647, 655; 491 NW2d 282 (1992). A disappointed beneficiary cannot "use extrinsic evidence to prove that the testator's intent is other than that set forth in the will." *Mieras, supra* at 303. The same rules apply to other estate-planning documents. *Bullis v Downes*, 240 Mich App 462, 467-469; 612 NW2d 435 (2000).

Where, as here, the alleged negligence relates to the tax consequences of estate planning, the beneficiaries can maintain a cause of action if the estate-planning documents conflict or are ambiguous regarding payment of taxes. If the intent expressed in the documents is clear and unambiguous, plaintiffs cannot maintain a cause of action, even if the intent expressed in the documents is not the decedents' true intent. *Karam v Law Offices of Ralph J Kliber*, 253 Mich App 410, 425-427; 655 NW2d 614 (2002).

Rather than provide the estate-planning documents and demonstrate some conflict or inconsistency among them or some ambiguity within them, plaintiffs provided excerpts that shed no light on the issue and an affidavit from an expert who purported to interpret the documents. The interpretation of the estate-planning documents is a question of law for the Court to decide, *In re Bem Estate*, 247 Mich App 427, 433; 637 NW2d 506 (2001); *Karam, supra*, and an expert cannot testify regarding questions of law or legal conclusions. *Carson Fisher Potts & Hyman v Hyman*, 220 Mich App 116, 122-123; 559 NW2d 54 (1996). Because plaintiffs failed to show that the estate-planning documents did not comport with the decedents' intent as expressed within those documents, the trial court did not err in granting defendants' motion as to the various beneficiaries.

I likewise find no error with respect to dismissal of Sarah Friedman's estate. Although the decedent's cause of action for legal malpractice survived her death, MCL 600.2921, and may be pursued by the personal representative of her estate, *Mieras, supra* at 297, the only loss suffered by the decedent was, at most, deficient legal advice for which she could recover the attorney fees paid. The only significant injury, and the one for which plaintiffs seek recovery, was some untoward tax consequences that affected how much money the beneficiaries ultimately received from the decedent's estate. Because neither the decedent nor the estate suffered that loss, the personal representative cannot pursue a cause of action to recover it. *Id.*

/s/ E. Thomas Fitzgerald