

Fiduciary Watch

Case Update for Trust & Estate Professionals

June 2018

Texas Supreme Court: No Cause of Action For Tortious Interference With Inheritance

In a 5 to 4 decision, the Supreme Court of Texas, on June 22, 2018, rejected the tort of intentional interference with inheritance. *Archer v. Anderson*, No. 16-0256, 2018 WL 3077302 (Tex. June 22, 2018). The following facts are set forth in the Court's opinion:

Jack Archer executed a will in 1991, leaving the bulk of his substantial estate to his brother and his brother's children (collectively, the "family beneficiaries"). Seven years later, Jack suffered a stroke from which he never fully recovered. Jack "regularly misidentified people, was delusional, and was sometimes disoriented." Still, Jack's longtime friend and an attorney, Ted Anderson, drafted durable and medical powers of attorney appointing himself as Jack's attorney-in-fact. After unsuccessfully attempting to convince Jack to change his estate plan disinheriting the family beneficiaries, Anderson hired two estate planning lawyers to draft new estate planning documents. One of those lawyers advised Anderson that the execution of further estate planning documents would have to await the termination of a guardianship obtained by the family beneficiaries. Anderson then hired new counsel for Jack and convinced Jack to sign estate planning documents disinheriting the family beneficiaries and leaving Jack's estate to charitable organizations.

The family beneficiaries brought suit against the charities. In a settlement, the charities agreed not to probate Jack's post-1991 wills. After Anderson's death, the family beneficiaries sued Anderson's estate for tortious interference with inheritance, seeking as damages the amount paid to the charities in the settlement and the attorneys' fees incurred in the litigation against the charities. The trial court entered judgment on a jury verdict in favor of the family beneficiaries, but the Austin court of appeals reversed the judgment, finding that no cause of action for tortious interference with inheritance exists under Texas law. 490 S.W.3d 175. The Supreme Court affirmed.

The Court noted that it had never directly decided whether the tort of tortious interference with inheritance existed and that the courts of appeals were split. After discussing the disparate views of commentators and the approaches outlined in the Restatements (Second) and (Third) of Torts, the Court stated that prospective beneficiaries have no right to an inheritance or even a "right to fairness." The Court concluded that existing Texas law, including challenges under Texas probate law to wills executed as a result of undue influence and/or without capacity and the common law remedy of constructive trust based on the "established torts" of fraud, duress, undue influence, or "other intentional misconduct," provide adequate remedies. Accordingly, the Court concluded that tortious interference with inheritance was not necessary to "fill gaps" in probate and other law.

Four justices concurred in the result, but dissented from the Court's blanket rejection of the tort. The minority did not directly argue that the Court should recognize the tort, instead stating that, at this time on the facts of the present case, the Court should not preclude all future claims for interference with inheritance under any and all circumstances. The minority expressed concern that existing remedies may not provide adequate relief, and it disagreed with the majority's view that relief on tortious interference grounds necessarily would conflict with Texas probate law. Pointing to the increasing number of Texas'

elderly citizens, the minority stated that the majority's ruling placed too much confidence in existing remedies to redress all circumstances in which persons "prey on the elderly."

The impact of the Court's ruling could be significant. On the one hand, it would appear to be a rare situation where tortious interference claims are not coupled with claims of undue influence, lack of capacity, or independent wrongdoing under existing theories of liability. But, the Court's holding could insulate a person from liability in instances, for example, where an elderly person, although competent and not subject to undue influence, relents to repeated demands to leave his or her estate to a person or charitable organization instead of heirs or persons previously designated as beneficiaries of a will. According to the Court's ruling, the person making the demands would not face liability if he or she acted free of fraud, breach of fiduciary, or other independent misconduct.

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