

FIDUCIARY WATCH

Case Update for Trust & Estate Professionals

June 2017

Tortious Interference with Inheritance Rights in Texas? Still an Unanswered Question

Inheritances can be disappointing. When people believe another family member, an attorney, a financial advisor or some other third party wrongly caused their inheritance to be reduced or eliminated, they often file a claim for “tortious interference with inheritance rights.” But the Texas Supreme Court has never expressly said whether such a cause of action exists under Texas law. Texas appellate courts have split on the issue.

On May 26, 2017, in a much-anticipated (but ultimately anti-climactic) opinion, the Texas Supreme Court passed on the opportunity to provide a definitive answer. Instead, the court in *Kinsel v. Lindsey*, held that the equitable remedy of a “constructive trust,” based on jury findings of mental incapacity and undue influence, was sufficient to protect the rights of the parties, and therefore recognizing a new cause of action for “tortious interference with inheritance rights” was unnecessary. Nevertheless, parts of the opinion are instructive for professional fiduciaries, estate planners, and financial advisors seeking to protect their client’s estate plan and themselves.

Kinsel involved the sale of a ranch owned in part by Mrs. Kinsel’s living trust, which had made a bequest of the trust’s ranch interest to her step-children and step-grandchildren. Mrs. Kinsel’s niece, Jane, was the trust’s residual beneficiary. The grandchildren, who owned minority interests in the ranch, later asserted they agreed to the sale of the ranch based on representations, including by Jane, that Mrs. Kinsel needed the sale proceeds for support, when she in fact did not. Following the execution of the ranch sale documents and Mrs. Kinsel’s execution of further estate planning documents in connection with the sale, Mrs. Kinsel’s grandchildren no longer had a prospective inheritance in the trust’s interest in the ranch and had no prospective inheritance in the sale proceeds. Instead, Jane received the trust’s portion of the sale proceeds as residual beneficiary.

After Mrs. Kinsel died, the grandchildren sued Jane, Mrs. Kinsel’s nephew, and the attorney (and his firm) who handled the sale and prepared certain of Mrs. Kinsel’s estate planning documents. The grandchildren asserted claims for fraud, conspiracy, and tortious interference with inheritance rights. They also contended the defendants unduly influenced Mrs. Kinsel and that she lacked capacity to execute her later estate planning documents and the sale documents. The grandchildren sought damages and a constructive trust on the sale proceeds. The jury found for the Plaintiffs on all claims, and the trial court entered a judgment awarding \$3 million in damages, declaring certain estate planning and sale documents void based on lack of capacity and undue influence, and imposing a constructive trust on the sale proceeds in Jane’s possession.

In relevant part, the court of appeals reversed the damages award, including by ruling that in Texas there is no recognized cause of action for tortious interference with inheritance rights, but affirmed the lack of capacity finding and the imposition of the constructive trust. The supreme court rejected the grandchildren’s contention that there was sufficient evidence that the attorney had unduly influenced Mrs. Kinsel, but concurred with the court of appeals that there was sufficient evidence that Mrs. Kinsel lacked capacity. However, the supreme court declined to rule on whether there is a cause of action for tortious interference with inheritance rights, saying “we see no compelling reason to consider a previously

unrecognized tort if the constructive trust proved to be an adequate remedy.” And the court considered the constructive trust imposed upon Jane’s residual share of the sale proceeds (which initially was the same amount as the jury’s damages award) to be an adequate remedy despite the fact that Jane had been allowed to spend a portion of the proceeds on her litigation attorneys’ fees.

Here are some of the important takeaways for professional fiduciaries, financial advisors, and estate planners from the supreme court’s opinion in *Kinsel*:

- The supreme court clarified that it had never recognized intentional interference with inheritance rights as an actionable tort (resolving a debate over whether it had done so implicitly). The court also left open the possibility that such a cause of action could be recognized in an appropriate set of facts. So while a claim for damages based on tortious interference with inheritance rights is not dead in Texas, it is probably on life support, particularly in cases where there is another remedy available, such as constructive trust.
- Despite an estate planning professional’s best efforts to assure himself or herself of a client’s capacity, and to collect proof of it, a jury might still properly find lack of capacity. All a professional can do, as the court pointedly noted the attorney in this case had done, is “[take] his responsibilities seriously and executef] his duties carefully and ably.”
- Estate planners can take some comfort that courts will likely cast a wary eye, as the supreme court did here, on claims that an estate planner engaged in undue influence in the absence of any evidence the attorney’s actions in fact caused the client to implement decisions the client might otherwise not implement. The court also made clear that a jury finding of incapacity does not mean the estate planner, who reasonably believed the client had capacity, was acting improperly in assisting the client in the implementation of planning documents and transactions.

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