

IN THE CIRCUIT COURT OF MACON COUNTY, MISSOURI

MARY KATHRYN CROCKER-
WYSS
a/k/a MARY KATHRYN WYSS

Plaintiff,

v.

PHILIP P. BRISCOE, as Personal
Representative of the ESTATE OF
JOHN WILFORD BRISCOE, *et al.*,

Defendants.

Case No.: 23MA-CC00020

SECOND AMENDED PETITION FOR DAMAGES

Plaintiff, Mary Kathryn Crocker-Wyss a/k/a Mary Kathryn Wyss, through counsel, for her Second Amended Petition for Damages, states as follows:

Parties, Jurisdiction and Venue

1. Plaintiff, Mary Kathryn Crocker-Wyss a/k/a Mary Kathryn Wyss (also more commonly known as Mary Kay Wyss), is an individual resident of Audrain County, Missouri.

2. Originally named Defendant John W. Briscoe was an individual licensed to practice as an attorney in the State of Missouri, who passed away on or about January 1, 2024. Philip P. Briscoe, as Personal Representative of the Estate of John Wilford Briscoe, was substituted as a party Defendant in place of John W. Briscoe by Order of this Court on or about February 22, 2024.

3. Defendant, Joseph A. Brannon, is an individual licensed to practice as an attorney in the State of Missouri.

4. Defendant Briscoe & Brannon is a general partnership existing under the laws of the State of Missouri. Individual Defendants John W. Briscoe and Joseph A. Brannon were general partners under the general partnership of Briscoe & Brannon at all times relevant herein.

5. This Court has jurisdiction over this matter and venue is proper in this Court in that Plaintiff was first injured in Ralls County, Missouri and venue has been changed to Macon County by agreement of the Parties.

Facts Common to All Counts

6. Plaintiff is the daughter of Margaret Caldwell (“Margaret”), deceased, and a non-probate transfer beneficiary of Margaret.

7. Margaret was married to Edmond C. Caldwell from 1951 until his passing in 2005.

8. Margaret and Edmond C. Caldwell had three children: Plaintiff, Mary Kay Wyss; Rebecca (“Becky”) Caldwell; and Edmond Briscoe (“Eddie B.”) Caldwell.

9. Eddie B. predeceased Margaret, survived by his widow, Teresa Caldwell and his and Teresa’s two adult children, Champ Caldwell and Cannon Caldwell.

10. During her lifetime, Margaret owned various parcels of real estate, including a 268 acre tract in Ralls County referred to as the “Judy Place.”

11. In 1979, John W. Briscoe prepared for Margaret and Edmond C. Caldwell a deed to multiple tracts of real estate which included the Judy Place (the “1979 Deed”) dated

May 31, 1979 and recorded June 1, 1979 with the Ralls County Recorder of Deeds at Book 212, page 801. A correct copy of the 1979 Deed is attached hereto as **Exhibit 4** and incorporated herein by this reference.

12. In that 1979 Deed, the Judy Place boundaries were not set out in one continuous description, but were interrupted by descriptions of unrelated parcels, thus (the highlighted text being the Judy Place):

to-wit: All of the Southeast Quarter (SE-1/4) of the Southeast Quarter (SE-1/4) of Section Eight (8) and the Northeast Quarter (NE-1/4) of the Northeast Quarter (NE-1/4) of Section Seventeen (17) in Township Fifty-four (54), Range Seven (7) West. Also: The Northwest Quarter (NW-1/4) of the Northeast Quarter (NE-1/4) of Section Seventeen (17); and the South 51-1/2 acres of the West Half (W-1/2) of the Southeast Quarter (SE-1/4) of Section Eight (8) being the land set apart to Nancy J. Bear in the division of the estate of George Shaver; and 11-1/2 acres in the Northwest corner of said West Half (W-1/2) of the Southeast Quarter (SE-1/4) of said Section Eight (8) being the land set off to Louisa Rouse in said Division of said George Shaver's Estate all in Township Fifty-four (54), Range Seven (7) West the last described tract being 103 acres, more or less. Also: All of the Southwest Quarter (SW-1/4) of the Southeast Quarter (SE-1/4) and Twenty (20) Acres the West Half (W-1/2) of the Northwest Quarter (NW-1/4) of the Southeast Quarter (SE-1/4) and Thirty (30) acres off the East side of the Southwest Quarter (SW-1/4) being in Section Ten (10), Township Fifty-four (54), Range Seven (7) West except a certain road or gateway along the branch which runs through said tract of land, said roadway being established by long usage. Also: All of the North Half (N-1/2) of the Northwest Quarter (NW-1/4) of Section Sixteen (16), Township Fifty-four (54), North, Range Seven (7) West comprising 80 acres, more or less. Also: the North Half (N-1/2) of the West 130 acres of the Southwest Quarter (SW-1/4) of Section Ten (10), Township Fifty-four (54), Range Seven (7) West contain-

See Exhibit 4.

13. By Beneficiary Deed dated January 22, 2010 and recorded January 26, 2010 as Document No. 2010-47298 with the Ralls County Recorder of Deeds (the "2010 Beneficiary Deed"), Margaret named Plaintiff and her sister, Rebecca Caldwell, as transfer-on-death beneficiaries of the entirety of the Judy Place. A correct copy of the 2010 Beneficiary Deed is attached hereto as **Exhibit 1** and incorporated herein by this reference.

14. Defendant John Briscoe drafted the 2010 Beneficiary Deed for Margaret.

15. In the 2010 Beneficiary Deed, John Briscoe used a different, more modern legal description that did not include the 1979 Deed's odd references to "land set apart to Nancy J. Bear" and "George Shaver's estate," etc. The area described in the below highlighted language from the 2010 Beneficiary Deed corresponds (by color) with the area described in the highlighted language in the 1979 Deed, even though the wording and order are quite different.

The North Half (N½) of the Northwest Quarter (NW¼) of Section Sixteen (16), Township Fifty-Four (54) North, Range Seven (7) West; the North Half (N½) of the Northeast Quarter (NE¼) of Section Seventeen (17), Township Fifty-Four (54) North, Range Seven (7) West; all of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section Eight (8), Township Fifty-Four (54) North, Range Seven (7) West; and all of the West Half (W½) of the Southeast Quarter (SE¼) of said Section Eight (8), Township Fifty-Four (54) North, Range Seven (7) West, excepting seventeen (17) acres, more or less, in the Northeast corner of the West Half (W½) of the Southeast Quarter (SE¼) of said Section Eight (8), Township Fifty-Four (54) North, Range Seven (7) West. All of said property being subject to rights-of-way of record.

See Exhibit 1.

16. By Beneficiary Deed dated July 3, 2012 and recorded of even date with the Ralls County Recorder of Deeds as Document No. 2012-52191 (the "2012 Beneficiary Deed"), Margaret expressly revoked the 2010 Beneficiary Deed to the Judy Place, and named Plaintiff as sole beneficiary-grantee of the tract of land described in the 2012 Beneficiary Deed. A correct copy of the 2012 Beneficiary Deed is attached hereto as **Exhibit 2** and incorporated herein by this reference.

17. John Briscoe drafted the 2012 Beneficiary Deed for Margaret.

18. Plaintiff is not and was not in an adversarial relationship to Margaret Caldwell.

19. The 2012 Beneficiary Deed did not simply re-use the description from the 2010 Beneficiary Deed, but reverted back to the description from the 1979 Deed, except that it omitted the description of the 80 acre frontage (the “orange” text), which had lacked continuity in the 1979 Deed. The yellow and green highlighted text from the 2012 Beneficiary Deed depicted here corresponds with the yellow and green highlighted text from the 1979 Deed depicted at ¶ 12 above, and describes the same areas as the yellow and green highlighted text depicted at ¶ 15 above:

All of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section Eight (8) and the Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of Section Seventeen (17) in Township Fifty-Four (54), Range Seven (7) West. Also: The Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) of Section Seventeen (17); and the South 51½ acres of the West Half (W½) of the Southeast Quarter (SE¼) of Section Eight (8) being the land set apart to Nancy J. Bear in the division of the Estate of George Shaver; 11½ acres in the Northwest corner of said West Half (W½) of the Southeast Quarter (SE¼) of said Section Eight (8) being the land set off to Louisa Rouse in said Division of said George Shaver's Estate all in Township Fifty-Four (54), Range Seven (7) West the last described tract being 103 acres, more or less.

See Exhibit 2.

20. The legal description in the 2012 Beneficiary Deed encompassed 188 acres of the Judy Place and omitted 80 acres of it. The orange highlighted language depicted at

¶¶ 12 and 15 above pertains to the 80-acre frontage that ultimately was left off the 2012 Beneficiary Deed.

21. John W. Briscoe does not work from old drafts of documents to create new documents, because he does not keep document drafts on a computer but deletes them; therefore, he created each deed described herein from scratch.

22. On information and belief, John Briscoe procured a copy of the 1979 Deed from which to create a description of the Judy Place for the 2012 Beneficiary Deed, and neglected to note that the description of the 80 acre frontage (depicted as orange highlighted text herein) was separated from the remaining description of the Judy Place tract by an unrelated description, and as a result omitted the description of the 80 acre frontage.

23. The omitted 80 acres were not specifically disposed of by any other instrument but became estate residue at Margaret's death.

24. Margaret died testate on or about August 26, 2020.

25. Following Margaret's death, on behalf of Teresa Caldwell, Defendants filed an Application for Letters of Administration with Will Annexed in *In the Estate of Margaret B. Caldwell*, Estate No. 20RL-PR00071.

26. In the aforementioned Application for Letters, filed December 1, 2020, John W. Briscoe and Briscoe & Brannon represented that there was no real property in Margaret's estate.

27. As evidenced by Notice filed with the Ralls County Circuit Court, Probate Division, as of June 10, 2021, John W. Briscoe and Briscoe & Brannon were preparing to

submit a final settlement and petition for an order of distribution based on their understanding that there was no real estate in Margaret's estate.

28. Around the week prior to August 15, 2021, Plaintiff learned from the Ralls County Assessor that the 80 acre frontage was not included in the 2012 Beneficiary Deed, whereupon she notified , John W. Briscoe and Briscoe & Brannon of the omission.

29. Margaret's will disposed of the residue of her estate, including the 80 acres omitted from the 2012 Beneficiary Deed, to her three children, per stirpes.

30. All other real estate of Margaret Caldwell's passed by beneficiary deed, including:

- a. Teresa Caldwell received from Margaret a complete tract called the Baker Place outside of probate pursuant to beneficiary deed recorded with the Ralls County Recorder January 10, 2013 as Document #2013-53376;
- b. Rebecca Caldwell received from Margaret a life estate in trust (due to concerns over Rebecca's ability to manage assets) in a complete tract known as the Quinn Place, outside of probate pursuant to beneficiary deed recorded with the Ralls County Recorder July 3, 2012 (the same date as the beneficiary deed revoked her interest in the Judy Place) as Document #2012-52819, remainder to her two children free and clear of trust.

31. Margaret Caldwell had long and repeatedly stated before her death that it was her desire to leave the Judy Place to Mary Kay, the Quinn Place to Rebecca, and for Edmond/Teresa to get the Baker Place.

32. Plaintiff was the only beneficiary or devisee of Margaret's who received an incomplete tract by beneficiary deed. Rather, she received only a portion of the Judy Place outside of probate, and had to share its 80-acre frontage with Rebecca Caldwell and Champ and Cannon Caldwell due to the requirement that the frontage go through probate as part of the estate residue.

33. Because the 80-acre frontage had to pass through probate as mere "residue," Rebecca received an interest in a portion of the Judy Place in fee simple, free and clear of the control of a trustee, something Margaret wanted to avoid as shown by the beneficiary deed that gave Rebecca only a beneficial life interest in the Quinn Place.

34. Following Plaintiff's notification to John W. Briscoe of the omission of 80 acres from the 2012 Beneficiary Deed, Mr. Briscoe wrote to estate Personal Representative Teresa Caldwell on August 23, 2021, to notify her of the need to dispose of the 80 acres through probate:

It has recently come to light that an 80 acre parcel of the Judy Place was omitted from Mary Kay's Beneficiary Deed on the Judy Place.

Originally, there had been a Beneficiary Deed from Marge to Mary Kay and Becky for the entire Judy Place. That deed was dated January 22, 2010, and recorded January 26, 2010, as Document #2010-47298 in the Deed Records of Ralls County, Missouri. When Marge made a new Beneficiary Deed on July 3, 2012, it was to Mary Kay only, omitting Becky. I am not sure whether it was intentional on Marge's part or a mistake on my part that one parcel containing 80 acres was omitted from the 2012 Beneficiary Deed, which did in fact revoke the 2010 Beneficiary Deed. Accordingly, that leaves that particular 80 acre parcel as a portion of Marge's residuary estate.

Accordingly, when the order of distribution is made, Mary Kay will own an undivided one-third interest in that 80 acre parcel; Becky will own an undivided one-third; and Champ and Cannon will each own an undivided one-sixth interest in that 80 acre parcel.

I have prepared the amended inventory, on which I need your signature. * * *

A correct copy of Mr. Briscoe's August 23, 2021 letter is attached hereto as **Exhibit 3** and incorporated herein by this reference.

35. On September 3, 2021, Defendants filed a Second Amended Inventory in Margaret's Estate to account for the 80 acres as part of the estate residue.

36. On September 21, 2021, Defendants filed a Third Amended Inventory in Margaret's Estate to correct the date-on-death value of the 80 acres.

37. To obtain title to a complete fee simple interest the 80 acres, Plaintiff purchased the interests of Rebecca, Champ and Cannon Caldwell, for the aggregate purchase price of \$292,000.

38. To purchase the interests of Rebecca, Champ and Cannon Caldwell, Plaintiff incurred a \$520 processing fee for her loan, and legal fees and expenses of \$14,070.80, to bring the purchases of Rebecca's, Champ's and Cannon's interest to a close, which closing took place on or about June 20, 2022.

39. John W. Briscoe performed all actions described in this Petition in his capacity as a general partner in Briscoe & Brannon and in the ordinary course of business of Briscoe & Brannon.

COUNT I

40. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

41. An attorney-client relationship existed between Margaret Caldwell and Defendants whereby Defendants performed services which Margaret Caldwell specifically intended to benefit Plaintiff directly through a donative document executed by Margaret Caldwell naming Plaintiff as beneficiary. It was Defendant John Briscoe's own understanding and belief that such intended benefit was accomplished by the 2012 Beneficiary Deed, until he learned otherwise from Plaintiff.

42. In incorporating an incomplete and incorrect legal description of the Judy Place into the 2012 Beneficiary Deed, John W. Briscoe and Briscoe & Brannon failed to use that degree of care, skill and learning as that used under the same or similar circumstances by attorneys, and Defendants were therefore negligent.

43. The harm to Plaintiff as a result of the negligence of John W. Briscoe and Briscoe & Brannon was readily foreseeable and marked by a high degree of certainty, in that failure to identify the property correctly would and did result in its disposition to other and additional persons, resulting in Plaintiff and the decedent's estate having interests inconsistent with each other.

44. Defendants' negligence was the direct and proximate cause of Plaintiff's injury.

45. Defendants are and should be held liable to Plaintiff because future harm may only be prevented by allowing intended beneficiaries of failed transfers some avenue of recovery in malpractice claims, particularly where the decedent's estate has interests inconsistent with that of the intended beneficiary.

46. The legal profession will not be unduly burdened by being required to act competently toward identifiable persons that a client specifically intends to benefit when such persons have no other viable remedy and where such persons are not in an adversarial relationship to the client.

47. Plaintiff has been damaged in the principal sum of \$306,590.80 (purchase price plus fees and expenses) as a result of the failure of John W. Briscoe and Briscoe & Brannon to include the correct full legal description of the Judy Place in the 2012 Beneficiary Deed, and Plaintiff's damages continue to increase as she continually incurs interest charges on her real estate purchase loan.

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants, jointly and severally, in the principal amount of \$306,590.80 plus prejudgment interest at the maximum legal rate, post-judgment interest at the maximum legal rate, costs, expenses and attorneys' fees, and for such other and further relief as the Court deems just and proper.

McDOWELL RICE SMITH & BUCHANAN, PC

/s/ Hugh L. Marshall

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 15, 2025, the above and foregoing was filed with and served via the court's electronic filing system with notice to all attorneys of record.

/s/ Hugh L. Marshall