

IN THE CIRCUIT COURT OF MACON COUNTY, MISSOURI

MARY KATHRYN CROCKER-WYSS)

Plaintiff,)

vs.)

Case No. 23MA-CC00020

PHILIP BRISCOE, Personal Representative)

of the Estate of John Wilford Briscoe,)

JOSEPH A. BRANNON, and)

BRISCOE & BRANNON,)

Defendants.)

**DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS
DUE TO PLAINTIFF'S FAILURE TO STATE A CLAIM**

COME NOW Defendants Philip Briscoe, Personal Representative of the Estate of John W. Briscoe, Joseph A. Brannon, and Briscoe & Brannon, pursuant to Rule 55.27, and move the Court for judgment in their favor due to Plaintiff's failure to state a claim upon which relief can be granted because Missouri law does not permit a cause of action for legal malpractice by non-clients against attorney defendants under the circumstances alleged, and because the applicable statute of limitations bars Plaintiff's action. In support thereof, Defendants state as follows:¹

Attorney Briscoe Owed No Duty to Plaintiff

1. An attorney-client relationship existed between Margaret Caldwell and attorney John Briscoe.²

¹ The facts set forth herein are taken from Plaintiff's First Amended Petition and the exhibits thereto. Such facts are treated by Defendants as true solely for the purpose of this motion for judgment on the pleadings.

² Attorney Briscoe died on January 1, 2024. Philip Briscoe as Personal Representative was named defendant in his stead. See Plaintiff's Motion to Substitute, filed on February 19, 2020, and Order sustaining said motion on February 22, 2024. Herein this Motion, for ease of reference, Defendant Personal Representative Philip Briscoe will be referred to as "attorney Briscoe."

2. In 2010, Attorney Briscoe drafted a Beneficiary Deed for Margaret Caldwell in which Caldwell's daughters, Plaintiff and her sister (Rebecca Caldwell), were named as beneficiaries of the property described therein (the "2010 Beneficiary Deed").

3. In 2012, Attorney Briscoe drafted a Beneficiary Deed that revoked the 2010 Beneficiary Deed and named Plaintiff as the beneficiary of the property described therein (the "2012 Beneficiary Deed").

4. The 2012 Beneficiary Deed did not include an 80-acre parcel that had been included in the 2010 Beneficiary Deed.

5. Client Margaret Caldwell died on August 26, 2020.

6. After Client Caldwell's death, the property identified in the 2012 Beneficiary Deed was transferred to Plaintiff.

7. The 80-acre parcel was disturbed through client Caldwell's will to Plaintiff, Caldwell's other daughter Rebecca, and to Caldwell's grandchildren Champ and Cannon.

8. Rebecca, Champ and Cannon sold their interests in the 80-acre parcel to Plaintiff.

9. In a letter dated August 23, 2021, attorney Briscoe acknowledged that the 80 acre parcel was not included in the 2012 Beneficiary Deed. However, he did not know recall whether Caldwell intended to omit the 80 acre parcel from the Beneficiary Deed, or whether it was mistakenly omitted.

10. On October 24, 2022, Plaintiff filed her petition against attorney Briscoe and Defendants. Plaintiff contends she was the intended sole beneficiary of the 80-acre parcel.

11. Plaintiff does not allege any testamentary or other estate planning document drafted by attorney Briscoe or Defendants failed to achieve its stated purpose. Rather, Plaintiff

alleges attorney Briscoe was negligent in not including the 80-acre parcel in the 2012

Beneficiary Deed.

12. Plaintiff does not allege that any testamentary or other estate planning document was drafted leaving the 80-acre parcel solely to Plaintiff.

13. Plaintiff was not a client of attorney Briscoe or Defendants. Defendants owed no duty to Plaintiff as a client.

14. Missouri law holds that attorneys owe a duty to intended beneficiaries of failed testamentary documents. See *Donahue v. Shughart, Thompson & Kilroy*, 900 S.W.2d 624 (Mo. banc 1995) and *Johnson v. Sandler, Balkin, Hellman & Weinstein*, 958 S.W.2d 42 (Mo. App. W.D. 1997).

15. Missouri law holds that attorneys do not owe any duty to “prospective” beneficiaries. *Alberts v Turnbull*, 641 S.W.3d 370, (Mo. App. W.D. 2022).

16. A client’s intent to benefit a non-client third-party must be determined from the four corners of the executed, but failed, testamentary document. *Donahue, Id.*; *Johnson, Id.*; and *Alberts, Id.*

17. Plaintiff does not allege any failed testamentary document; and Plaintiff does not allege any testamentary document which Plaintiff was the sole beneficiary of the 80-acre parcel.

18. Attorney Briscoe owed no duty to Plaintiff as a self-proclaimed prospective beneficiary of the 80-acre parcel.

19. Plaintiff has not alleged any facts that would allow her to proceed under the narrow exception to the attorney-client privity rule, and accordingly judgment should be entered in favor of Defendants.

The Five-Year Statute of Limitations has Expired

20. The 2012 Beneficiary Deed of which Plaintiff complains was signed by client

Margaret Caldwell, and filed with the Ralls County Recorder of Deeds, on July 3, 2012.

21. Legal malpractice claims are subject to a five-year statute of limitations.

§516.120(4), RSMo.

22. The time in which client Margaret Caldwell could have brought a malpractice action against attorney Briscoe ended on July 3, 2017.

23. Judgment must be entered in favor of Defendants because Plaintiff's action was not filed until October 24, 2022 – after the statute of limitations had expired.

WHEREFORE, based upon the foregoing and in Defendants' Suggestions in Support filed contemporaneously herewith, Defendants pray this Court enter judgment in their favor on Plaintiff's First Amended Petition, and for such further relief as this Court deems just and proper.

Respectfully submitted,



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Certificate of Service

On this 28th day of February 2025, the undersigned hereby certifies that the foregoing MOTION FOR JUDGMENT ON THE PLEADINGS was served through the Court's electronic filing system to parties with counsel of record registered to file and receive notices through said electronic filing system.

Hamp Ford

FORD, PARSHALL & BAKER