

IN THE CIRCUIT COURT OF MACON COUNTY, MISSOURI

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

Plaintiff,)
vs.)

JOHN W. BRISCOE)
423 South Main Street)
New London, MO 63459)

Case No.: 23MA-CC00020

and)

JOSEPH A. BRANNON)
423 South Main Street)
New London, MO 63459)

and)

BRISCOE & BRANNON)
423 South Main Street)
New London, MO 63459)

Defendants.)

**EXHIBIT
A**

FIRST AMENDED PETITION FOR DAMAGES

Plaintiff, Mary Kathryn Crocker-Wyss a/k/a Mary Kathryn Wyss, through counsel, for her
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. Defendant, John W. Briscoe, is an individual licensed to practice as an attorney in
the State of Missouri.

3. Defendant, Joseph A. Brannon, is an individual licensed to practice as an attorney
in the State of Missouri. He may be served as indicated above.

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 have been 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 had three children: Plaintiff, Mary Kay Wyss; Rebecca (“Becky”) Caldwell; and Edmond Caldwell.

8. Edmond Caldwell predeceased Margaret, survived by his widow, Teresa Caldwell and his and Teresa’s two adult children, Champ Caldwell and Cannon Caldwell.

9. During her lifetime, Margaret owned a 268 acre tract in Ralls County referred to as the “Judy Place.”

10. 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.

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

12. 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.

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

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

15. The legal description in the 2012 Beneficiary Deed encompassed 188 acres of the Judy Place and omitted 80 acres of it. The omitted 80 acres were not disposed of by any other instrument.

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

17. 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.

18. In the aforementioned Application for Letters, filed December 1, 2020, Defendants represented that there was no real property in Margaret's estate.

19. As evidenced by Notice filed with the Ralls County Circuit Court, Probate Division, as of June 10, 2021, Defendants 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.

20. Around the week prior to August 15, 2021, Plaintiff learned from the Ralls County Assessor that the 80 acres was not included in the 2012 Beneficiary Deed, whereupon she notified Defendant John Briscoe of the omission.

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

22. Following Plaintiff's notification to Defendant John 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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

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

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

30. In incorporating an incomplete and incorrect legal description of the Judy Place into the 2012 Beneficiary Deed, Defendants 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.

31. The harm to Plaintiff as a result of Defendants' negligence 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.

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

33. 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.

34. 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.

35. Plaintiff has been damaged in the principal sum of \$306,590.80 (purchase price plus fees and expenses) as a result of Defendants' failure 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, postjudgment interest at the maximum legal rate, costs, expenses and attorney 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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