



IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

DUSTIN MEYER,	)	
	)	
Appellant,	)	
	)	
v.	)	WD83488
	)	
CARSON AND COIL AND	)	Opinion filed: December 15, 2020
HAROLD WALTHER,	)	
	)	
Respondents.	)	

APPEAL FROM THE CIRCUIT COURT OF COOPER COUNTY, MISSOURI THE HONORABLE ROBERT L. KOFFMAN, JUDGE

Division Three: Edward R. Ardini, Jr., Presiding Judge,
Alok Ahuja, Judge and Gary D. Witt, Judge

Dustin Meyer appeals the judgment of the Circuit Court of Cooper County dismissing his claims of legal malpractice concerning the preparation of the Last Will and Testament of his late grandmother, Norma Jean Meyer, and the administration of her estate. As relevant to this appeal, Dustin¹ asserted one claim against the law firm Carson & Coil, P.C. relating to the drafting of Norma's Last Will and Testament and one claim against attorney Harold Walther regarding his legal representation during the administration of her estate. The trial court dismissed the claim against Carson & Coil finding that Dustin had no "cause of action in his individual capacity" and

¹ Because many individuals involved in this litigation share the same last name, we refer to those individuals by their first name. No disrespect or familiarity is intended.

lacked standing, and dismissed the claim against Walther on the ground that Dustin failed to allege facts demonstrating Walther “owed a duty to [Dustin] individually.” Dustin appeals. Finding no error, we affirm.

Factual and Procedural Background²

In 2001, Norma met Tommy Richardson at a bar in Jefferson City, Missouri. At that time, Norma was married with three adult children: Lisa Brinkley, Steven Meyer, and Jeffrey Meyer. Appellant Dustin Meyer is the sole child of Jeffrey. In 2003, Norma and her husband divorced, and Norma purchased approximately 300 acres of farmland in Cooper County, Missouri, upon which she intended to operate a ranch with Richardson. She built a home on the Cooper County property and moved there with Richardson.

In 2005, Norma executed the Norma J. Meyer Revocable Living Trust (the “Trust”). The Trust named Norma as trustee and provided that she would be succeeded as trustee by Richardson upon her death. The Trust also provided that upon Norma’s death, Richardson would receive the ranch property and daughter Lisa would receive the personal property placed in the Trust. Norma transferred the ranch, certain personal property, and title to her motor vehicles to the Trust. The Trust was recorded in March 2006. In May 2006, Norma ended her relationship with Richardson and they had no further contact.

In 2009, Norma contacted Michael Riley, an attorney employed by Carson & Coil, to provide estate planning services. Riley prepared a Last Will and Testament (the “Will”) for Norma,

² For purposes of our review, we “treat all of the factual allegations in [the] petition as true, and liberally grant to [the plaintiff] all reasonable inferences therefrom[.]” *McConnell v. W. Bend Mut. Ins. Co.*, 606 S.W.3d 181, 190 (Mo. App. W.D. 2020) (emphasis omitted). To provide context for some of the facts alleged, we include in this section background information as stated in our opinion affirming the judgment in the underlying estate case, *Estate of Meyer v. Presley*, 469 S.W.3d 857 (Mo. App. W.D. 2015), and as alleged in the petition of the underlying waste and conversion case, which is described more fully herein. *See Int’l Bhd. of Elec. Workers Local Union No. 53 v. City of Independence*, 582 S.W.3d 153, 160 n. 9 (Mo. App. W.D. 2019) (This Court is permitted to take judicial notice of its own records and the records of other cases.).

which provided that Norma's property would be divided between Lisa and Jeffrey, and if they were deceased, to their children. Specifically, the Will left to Lisa, or if she were deceased, to her children in equal shares, 30% of the remainder of the estate after payment of all estate administration expenses and taxes. The Will left to Jeffrey, or if he were deceased, to his children in equal shares, 70% of the remainder of the estate after payment of all estate administration expenses and taxes. Norma intentionally made no provision in the Will for her third child, Steven. Norma executed the Will in September 2009.

In creating the Will for Norma, Riley did not prepare or have Norma sign a revocation of the Trust, did not investigate whether any property or deed for any property existed in which Norma had an interest, did not inquire of Norma or investigate whether she had previously executed any other estate planning documents, and did not advise Norma that any assets she had previously transferred to the Trust would not pass under the Will to the beneficiaries of the Will. The Will did not mention or refer to the Trust or any property held by the Trust.

Norma died in August 2011. At the time of her death, the value of her assets, including those in the Trust, exceeded \$1,300,000.

In January 2012, the probate division of the Circuit Court of Cooper County (the "probate division") issued co-letters of administration to Lisa and Steven for the Estate of Norma Jean Meyer in Case No. 11CO-PR00094 (the "probate case").³ In the following months, the probate division revoked the co-letters of administration and issued letters testamentary to Jeffrey, naming

³ The probate process begins with the filing of an application for "letters" and the issuance of such "letters" by the probate division; "letters" refer to either letters of administration if the decedent died intestate, *i.e.*, without a will, or letters testamentary if the decedent died testate, *i.e.*, having a will when she died. *See* §§ 472.010(20) RSMo, 473.017, 473.120, 473.123.

him personal representative of Norma's estate.⁴ Attorney Walther entered his appearance for the personal representative.⁵

In October 2012, Jeffrey, as personal representative, filed a petition for discovery of assets against Richardson, asking the court to enter a judgment finding that the Trust had been revoked and all assets conveyed to the Trust be deemed assets of Norma's estate. Jeffrey died in March 2013. In April 2013, successor letters were granted to Dustin and he was named personal representative of Norma's estate.

In June and July 2014, the petition for discovery of assets was tried to the court. The probate division found that Norma did not revoke the Trust by executing the Will in 2009 or by any other means and concluded that the Trust assets were not part of Norma's estate. Dustin, as personal representative, appealed, and in September 2015 this Court issued its opinion affirming the judgment of the probate division. *See Estate of Meyer v. Presley*, 469 S.W.3d 857, 866 (Mo. App. W.D. 2015).

After this Court issued its opinion, Richardson went to the ranch and discovered that property held by the Trust had disappeared or been destroyed, and the home on the ranch "had been gutted, including appliances and fixtures removed." In August 2016, Richardson filed suit against Dustin individually and as personal representative of the estate, alleging claims of waste,

⁴ The personal representative is charged with the duty of taking possession of the estate and "administer[ing] it in accordance with [the] law." § 473.263.1; *see also Steiner v. Vatterott*, 973 S.W.2d 191, 194 (Mo. App. E.D. 1998) ("The duty of the personal representative is to secure the assets for the benefit of probate expenses, creditors and thereafter distribution under a will[.]"). The term "estate" refers to "the real and personal property of the decedent[.]" § 472.010(11). A decedent's estate is not a legal entity; "[i]t cannot sue or be sued as such," and thus acts through its personal representative. *See Steiner*, 973 S.W.2d at 194; *see also Estate of Ripley v. Mortg. One Corp.*, 16 S.W.3d 593, 596 (Mo. App. E.D. 1999) ("the estate operates through the personal representative").

⁵ "No personal representative, other than one who is an attorney, may appear in court except by attorney[.]" § 473.153.7.

conversion, and trespass, Case No. 16CO-CC00032 (the “waste and conversion case”).⁶ Walther entered his appearance on behalf of Dustin as personal representative and filed a motion to dismiss Richardson’s claims against the personal representative. Walther did not enter his appearance on behalf of Dustin individually, and no answer or motion to dismiss was filed on behalf of Dustin individually.

Richardson moved for a default judgment against Dustin individually. On November 14, 2016, the court held a hearing on the motion to dismiss and motion for default judgment, at which Dustin and Walther appeared. The following day, the court entered a judgment denying the motion to dismiss and finding Dustin, individually, was in default. The court entered a default judgment against Dustin, in his individual capacity, in the amount of \$90,320.

In the probate case, in January 2017, Walther filed a motion to withdraw as counsel for the personal representative. Later that month the probate division found that Dustin had not filed a settlement as ordered, revoked his letters testamentary, and ordered that he file a final settlement showing he transferred all assets of the estate to the new personal representative. On March 31, 2017, the probate division granted Walther’s motion to withdraw. Also on that date, the probate division held a hearing at which the new personal representative questioned Dustin regarding the location of estate property. The probate division found that Dustin had “lost all property shown on Appendix B to the Third Amended Inventory” and entered judgment against Dustin and in favor of the estate in the amount of \$100,151.

In November 2018, Dustin initiated this legal malpractice action by filing a two-count petition against attorneys Riley and Walther. Walther moved to dismiss for failure to state a claim

⁶ Richardson alleged that Dustin, in his individual capacity, removed fixtures from the real property on the ranch after Norma died, and that items of personal property inventoried by the personal representative and in his possession were missing or had been damaged so as to be worthless or greatly diminished in value.

upon which relief could be granted and for improper joinder of claims. Thereafter, Dustin requested and was granted leave to file an amended petition. Dustin named Carson & Coil as a defendant in the amended petition and asserted the law firm was vicariously liable for Riley's actions, but otherwise the amended petition was identical to the original petition.

In Count I of the amended petition Dustin alleged that:

62. Defendant Riley breached his duty to Norma Jean Meyer and her heirs and committed legal malpractice in the following manner:

- a. Failed to prepare or have Norma Jean Meyer sign a Revocation of the previously executed Trust;
- b. Failed to do an investigation of the existence of any property in which Norma Jean Meyer had an interest or investigation of the deed for any property in which Norma Jean Meyer had an interest;
- c. Failed to inquire of Norma Jean Meyer or do an investigation to determine whether Norma Jean Meyer had previously executed any other estate planning documents;
- d. Failed to advise Norma Jean Meyer that any assets that had been previously transferred to the Trust would not pass under the Will to the beneficiaries of the Will.

63. As a direct result of the malpractice of Michael Riley, the property held by the trust was not included as part of the Estate and therefore Dustin Meyer, as a beneficiary of the Will, sustained damages in the amount in excess of \$900,000.00 for the loss of his share of the value of the property contained in the Trust.

In Count II of the amended petition Dustin alleged that:

67. During his handling of the estate, defendant Harold Walther breached his duty to the Estate and committed legal malpractice in the following manner:

- a. Failed to pay taxes on property of the estate;^[7]
- b. Failed to ensure that that [sic] the real and personal property of the Trust and Estate were preserved;

⁷ Earlier in the amended petition, in the section titled "Facts Common to All Counts," Dustin alleged that "During pendency of the Estate, the Estate did not pay property taxes on the Ranch."

- c. Requested appointment of Dustin Meyer as the personal representative when it was known to defendant that Dustin Meyer was not competent to serve as personal representative;
- d. Failed to advise Dustin Meyer of the consequences of his failure to be represented at the March 3[1], 2017 hearing;
- e. Failed to request the hearing of March 3[1], 2017 be continued so that Dustin Meyer could retain counsel.

68. As a direct result of the malpractice of Harold Walther, the property held by the trust was allowed to [sic] converted and depreciated, the Trust was caused to incur taxes, and Dustin Meyer received a judgment against him in the amount of \$90,320.00.

Walther again moved to dismiss Dustin's claim against him, asserting the same grounds for dismissal that he had previously raised. Carson & Coil also moved to dismiss, arguing that Dustin, "in his individual capacity, lack[ed] standing or, in the alternative, [was] not the real party in interest" and that the statute of limitations had run on Dustin's legal malpractice claim.

After briefing and argument on the motions, the trial court entered an order sustaining the motions to dismiss on Count I as to Carson & Coil and on Count II as to Walther. Dustin appealed. This Court advised the parties that it appeared that "all parties and claims to the action may not have been disposed and that there is not a final and appealable judgment pursuant to Rule 74.01(b)," and gave the parties an opportunity to secure a final judgment from the trial court. Thereafter, Dustin filed a "Dismissal Without Prejudice Against Michael Riley" in the trial court and the trial court entered an "Amended Judgment," which provided as follows:

On Count II of plaintiff's amended petition, the Court finds that the plaintiff has not stated facts that, if true, would indicate that defendant Walther owed a duty to the plaintiff individually. That being a necessary element of the cause of action alleged, the plaintiff has not stated a cause of action against Mr. Walther. The Court finds for defendant Walther against plaintiff.

On Count I of plaintiff's amended petition, the Court finds that the facts stated in the plaintiff's petition, if true, do not show that he has a cause of action in

his individual capacity. He has no standing in the lawsuit. It is for this reason that the Court finds for the defendant Carson and Coil against the plaintiff.

Dustin raises two points in this appeal. His first point asserts the trial court erred in dismissing his claim against Walther; his second point asserts the trial court erred in dismissing his claim against Carson & Coil.

Standard of Review

We review a trial court's grant of a motion to dismiss for failure to state a claim or for lack of standing *de novo*. *Lynch v. Lynch*, 260 S.W.3d 834, 836 (Mo. banc 2008); *Salvation Army v. Bank of Am.*, 435 S.W.3d 661, 665 (Mo. App. W.D. 2014). In conducting our review, "the facts contained in the petition are treated as true and they are construed liberally in favor of the plaintiffs." *Lynch*, 260 S.W.3d at 836. However, "conclusory allegations of fact and legal conclusions are not considered in determining whether a petition states a claim upon which relief can be granted." *McConnell v. W. Bend Mut. Ins. Co.*, 606 S.W.3d 181, 190 (Mo. App. W.D. 2020) (internal marks omitted). A "petition states a cause of action if its averments invoke principles of substantive law that may entitle the plaintiff to relief." *Lynch*, 260 S.W.3d at 836 (internal marks omitted). "In reviewing a judgment of dismissal, this court must affirm the dismissal if it can be sustained on any ground which is supported by the motion to dismiss, regardless of whether the circuit court relied on that ground." *Salvation Army*, 435 S.W.3d at 665 (internal marks omitted).

Analysis

In both points on appeal, Dustin argues that the allegations in his amended petition, taken as true, sufficiently stated a claim for legal malpractice. Therefore, we begin our analysis by describing the elements of such a claim. "The elements necessary to establish a claim of legal malpractice are: '(1) an attorney-client relationship; (2) negligence or breach of contract by the defendant; (3) proximate causation of plaintiff's damages; (4) damages to the plaintiff.'" *Fox v.*

White, 215 S.W.3d 257, 260 (Mo. App. W.D. 2007) (quoting *Klemme v. Best*, 941 S.W.2d 493, 495 (Mo. banc 1997)). The first element—the existence of an attorney-client relationship between the plaintiff and the attorney—is an “essential element because from that relationship arises the duty to exercise reasonable care in the attorney’s practice of the profession.” *Id.* “The attorney, with limited exceptions, owes no actionable duty to strangers or non-parties to the attorney-client relationship in the way legal responsibilities are performed.” *Id.* (footnote omitted).

An exception to the attorney-client relationship requirement was set forth by the Missouri Supreme Court in *Donahue v. Shughart, Thomson & Kilroy, P.C.*, 900 S.W.2d 624 (Mo. banc 1995). In *Donahue*, the intended beneficiaries of failed testamentary transfers sued the donor’s attorney for legal malpractice, and the Missouri Supreme Court held the plaintiffs’ lack of an attorney-client relationship with the donor’s attorney was not fatal to their claim. 900 S.W.2d at 628-29. Specifically, “the Court conclude[d] that the first element of a legal malpractice action may be satisfied by establishing . . . an attorney-client relationship existed in which the attorney-defendant performed services specifically intended by the client to benefit plaintiffs.” *Id.* “As a separate matter,” the court continued, “the question of legal duty of attorneys to non-clients will be determined by weighing” the following factors:

- (1) the existence of a specific intent by the client that the purpose of the attorney’s services were [sic] to benefit the plaintiffs.
- (2) the foreseeability of the harm to the plaintiffs as a result of the attorney’s negligence.
- (3) the degree of certainty that the plaintiffs will suffer injury from attorney misconduct.
- (4) the closeness of the connection between the attorney’s conduct and the injury.
- (5) the policy of preventing future harm.

(6) the burden on the profession of recognizing liability under the circumstances.

Id. at 629. With this law in mind, we proceed to address Dustin’s points on appeal. For ease of analysis, we first address Dustin’s second point, which pertains to Carson & Coil.

Point II – Claim against Carson & Coil

Dustin asserts that the trial court erred in dismissing his claim against Carson & Coil “because [he] met the standards established by *Donahue v. Shughart, Thomson & Kilroy, P.C.* allowing a third party to bring forth a legal malpractice suit, in that [he] adequately argued that he was an intended beneficiary under the will at issue and suffered damages from [Riley and Carson & Coil’s] actions and inactions.” Dustin’s argument focuses exclusively on the six-factor balancing test fashioned in *Donahue*, contending each factor supported that Carson & Coil owed a legal duty to him. In response, Carson & Coil asserts that Dustin lacks standing to pursue this claim because “any legal malpractice claim relating to the preparation of Norma Jean Meyer’s will belonged to Jeffrey Meyer and, upon his death, survived only to the personal representative of the Estate of Jeffrey Meyer.” We agree that Dustin lacked standing to bring a legal malpractice claim relating to the preparation of Norma’s Will.

Although on appeal Dustin focuses on whether Carson & Coil owed him a legal duty under the factors set forth in *Donahue*, the more problematic issue for Dustin is that he did not allege facts showing he has a legally protectable interest in any malpractice claim against Carson & Coil. In other words, taking as true the facts alleged in Dustin’s amended petition (that Riley’s negligence diminished the value of Norma’s probate estate), Dustin suffered no injury as a result because he was not entitled to receive any share of Norma’s probate estate since he was not a beneficiary of Norma’s Will at the time of her death. As alleged, the Will left to Jeffrey, or if he were deceased, to his children in equal shares, 70% of Norma’s residuary estate. Jeffrey survived

Norma, and thus upon her death the portion of Norma's estate in which Dustin had a contingent interest vested in and passed to Jeffrey,⁸ a fact Dustin concedes in his brief by acknowledging that "the Estate passed to Jeffrey Meyer because he outlived his mother[.]" Dustin has not alleged any facts showing that, after the estate vested in Jeffrey, Dustin had any interest as a beneficiary of Norma's estate.

"Standing requires that a party have a personal stake arising from a threatened or actual injury." *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013). "The issue is whether plaintiff has a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief." *Id.* at 775 (internal marks omitted). "A party establishes standing, therefore, by showing that it has some legally protectable interest in the litigation so as to be directly and adversely affected by its outcome." *Id.* (internal marks omitted). In other words, "[t]o have standing to sue, a plaintiff must have an interest in the subject of the lawsuit which, if valid, gives plaintiff a right to relief." *In re Estate of Spencer*, 417 S.W.3d 364, 368 (Mo. App. E.D. 2013).

Here, Dustin's only asserted interest in this legal malpractice claim is as a beneficiary of Norma's Will. But as described above, he has not alleged facts showing he has a pecuniary or personal interest directly at issue, as the estate vested in and passed to Jeffrey upon Norma's death. Stated differently, accepting as true the facts alleged in Dustin's amended petition, he has no right to relief as a beneficiary under Norma's Will. Therefore, we find Dustin failed to establish he has standing to pursue his claim against Carson & Coil.⁹ See *Schweich*, 408 S.W.3d at 774 ("[P]arties

⁸ See *Wilson v. Rhodes*, 258 S.W.3d 873, 877-78 (Mo. App. S.D. 2008) (citing *Lehmann v. Janes*, 409 S.W.2d 647, 656 (Mo. 1966)).

⁹ We agree with Carson & Coil that, to the extent any legal malpractice claim exists relating to the preparation of Norma's Will and its effect on the amount of Jeffrey's inheritance, the only person that could bring such claim under Missouri's survival statutes would be the personal representative of Jeffrey's estate. See § 537.010; § 537.020; *Roedder v. Callis*, 375 S.W.3d 824, 828-31 (Mo. App. E.D. 2012) (deceased individual's claim for legal malpractice survived to the personal representative of her estate under Missouri's survival statutes); *State ex rel. Cunningham v. Wiggins*, 156 S.W.3d 473, 475-76 (Mo. App. S.D. 2005) (only a personal representative has standing to bring a survival action on behalf of the deceased, and thus widower who filed suit individually and not as the personal

seeking relief bear the burden of establishing that they have standing.” (internal marks omitted)); *see also Jackson v. Williams, Robinson, White & Rigler, P.C.*, 230 S.W.3d 345, 350 (Mo. App. S.D. 2007) (noting that decedent’s children “provide[d] no authority explaining why they would have standing to bring a claim of legal malpractice for breach of a duty owed to” decedent).

The trial court did not err in finding that Dustin lacked standing to assert his claim of legal malpractice against Carson & Coil. Point II denied.

Point I – Claim against Walther

In his first point, Dustin asserts the trial court erred in dismissing his claim against Walther in that he “sufficiently met the standards for alleging a claim against a defendant” in that his “allegations against [Walther], viewed in the light most favorable to Plaintiff, were sufficient and did not warrant dismissal.”¹⁰ We disagree, and find that Dustin failed to allege facts, taken as true, establishing all elements of a legal malpractice claim against Walther.

The only attorney-client relationship alleged in the amended petition between Walther and Dustin is that between Walther and Dustin in his capacity as personal representative of Norma’s estate. Dustin alleged that Walther “was the attorney for the Estate” and had a “duty to the Estate”; he did not allege that Walther owed him a legal duty in his individual capacity. Any legal duty Walther owed to the personal representative of the estate did not extend to Dustin as an individual, as these capacities are distinct parties in the eyes of the law. *See Singer v. Siedband*, 138 S.W.3d

representative of the decedent’s estate lacked standing to pursue decedent’s claim).

¹⁰ This point relied on fails to comply with Rule 84.04(d)(1), which requires that points relied on explain, in summary fashion, the claim of legal error in the context of the case. *See Olds v. Mo. Bd. of Prob. & Parole*, 162 S.W.3d 33, 34 (Mo. App. W.D. 2005) (point relied on failed to comply with Rule 84.04(d) where the point simply made “the general allegation” that the trial court erred in dismissing the appellant’s petition for failure to state claim upon which relief can be granted). “A deficient point relied on that cannot be understood without resorting to the argument portion of the brief or record fails to preserve the argument for appellate review.” *Kan. City Area Transp. Auth. v. Donovan*, 601 S.W.3d 262, 275 (Mo. App. W.D. 2020). Nonetheless, we exercise our discretion to review the merits of this point *ex gratia*. *See id.*

750, 755 (Mo. App. E.D. 2004) (“Proceeding in a representative capacity is different than proceeding as an individual.”); *Estate of Munzert v. Munzert*, 887 S.W.2d 764, 766 (Mo. App. E.D. 1994) (children of the decedent who were both co-personal representatives and beneficiaries of decedent’s estate had “two distinct roles in [the] lawsuit”); *Estate of Fowler v. Fowler*, 860 S.W.2d 380, 382-83 (Mo. App. S.D. 1993) (dismissing personal representative’s appeal for lack of standing; although personal representative was also the son of the decedent, he did not appeal in his individual capacity and he was not “aggrieved” or “adversely affected” in his representative capacity). In short, Dustin failed to allege Walther owed him a legal duty in his individual capacity.¹¹

Further, Dustin’s allegations, taken as true, fail to show he suffered damage as a result of Walther’s alleged negligence. Although on appeal Dustin argues that Walther’s conduct resulted in damage to estate property, and thus Dustin, as a beneficiary, suffered damage as a result, no such allegations were made in the amended petition.¹² Rather, in his amended petition Dustin asserted that “[a]s a direct result of the malpractice of Harold Walther, the property held by **the trust** was allowed to [sic] converted and depreciated, **the Trust** was caused to incur taxes, and Dustin Meyer received a judgment against him in the amount of \$90,320.00.” (emphasis added). Any damage to property held by the Trust, however, did not result in damage to estate property, as the assets of the Trust were not assets of Norma’s estate. *See Estate of Meyer*, 469 S.W.3d at

¹¹ We additionally note that Dustin has not alleged, or argued with supporting legal authority, that Walther’s representation of Norma’s estate was adverse to Dustin’s individual interests, and thus imposed a duty on Walther to explain the identity of his client to Dustin, or advise Dustin to seek separate representation of his personal interests. *Cf.* Rule 4-1.13(d) & cmts. 7-8.

¹² Dustin also argues on appeal, for the first time, that he was damaged because Walther “neglect[ed] to remove [him] as Personal Representative or inform him of his duties as Personal Representative.” We decline to address this argument, as it was not preserved for our review. *See Heifetz v. Apex Clayton, Inc.*, 554 S.W.3d 389, 397 n.10 (Mo. banc 2018) (“Issues raised for the first time on appeal are not preserved for appellate review.”).

863-64. To that end, the \$90,320 default judgment entered against Dustin, individually, relating to the waste and conversion of Trust property cannot be deemed damage to estate property. Dustin's amended petition does not identify any estate property that was damaged or devalued as a result of Walther's alleged negligence. Thus, even if Dustin had alleged facts showing that he was a beneficiary entitled to estate property and that Walther owed him a legal duty in that capacity, his failure to allege facts showing he suffered damage was fatal to his claim.¹³

The trial court did not err in dismissing Dustin's legal malpractice claim against Walther. Point I is denied.

Conclusion

The judgment of the trial court is affirmed.



EDWARD R. ARDINI, JR., JUDGE

All concur.

¹³ Walther's motion to dismiss Dustin's original petition asserted that Dustin failed to allege facts showing Walther owed any duty to Dustin individually or that Walther's conduct resulted in damage to Dustin. Dustin requested and was granted leave to file an amended petition, however, as described above, his amended petition did not cure these pleading deficiencies.