MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DUSTIN MEYER,
APPELLANT

vs.

CARSON AND COIL AND HAROLD WALTHER,
RESPONDENTS

DOCKET NUMBER WD83488

DATE: DECEMBER 15, 2020

Appeal from:

The Circuit Court of Cooper County, Missouri
The Honorable Robert L. Koffman, Judge

Appellate Judges:

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

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Attorneys:

Zaina Afrassiab, for Appellant

Jill R. Jackson, for Respondent Harold Walther

Ann E. Buckley, for Respondent Carson and Coil

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DUSTIN MEYER, APPELLANT,
v.
CARSON AND COIL AND HAROLD WALTHER, RESPONDENTS.

WD83488 Cooper County

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

This action involves legal malpractice claims brought by Appellant Dustin Meyer relating to the preparation of the Last Will and Testament of Dustin's late grandmother, Norma Jean Meyer, and the administration of her estate.

In 2005, Norma executed a revocable living trust naming herself as trustee and her boyfriend, Tommy Richardson, as successor trustee. Norma transferred her ranch and certain personal property to the trust. The trust provided that upon Norma's death, Richardson would receive the ranch. In 2006, Norma ended her relationship with Richardson and they had no further contact.

In 2009, Norma contacted Michael Riley, an attorney employed by Respondent Carson & Coil, P.C., to provide estate planning services. Riley did not inquire of Norma or investigate whether she had previously executed any other estate planning documents. Riley prepared a Last Will and Testament for Norma, which provided that Norma's property would be divided equally among her daughter Lisa and her son Jeffrey, and if they were deceased, to their children. Appellant Dustin Meyer is the sole child of Jeffrey. Norma executed the Last Will and Testament in September 2009.

Norma died in 2011. A probate case was opened and Jeffrey was appointed personal representative of Norma's estate. Respondent Harold Walther entered his appearance as attorney for the personal representative. In 2012, Jeffrey, as personal representative, filed a petition for discovery of assets against Richardson, asking the probate court to find that the trust had been revoked and all assets conveyed to the trust be deemed assets of Norma's estate. Jeffrey died in 2013 and Dustin was appointed personal representative of Norma's estate. In 2014, the petition for discovery of assets was tried to the court and the court found that the trust had not been revoked by execution of the Last Will and Testament and assets held by the trust were not assets of Norma's estate. In 2015, this Court affirmed the trial court's judgment on appeal.

After this Court issued its opinion, Richardson went to the ranch and discovered that property held by the trust had disappeared or been destroyed. He filed a suit against Dustin

individually and in his capacity as personal representative, alleging claims of waste and conversion. Walther appeared on behalf of the personal representative and filed a motion to dismiss. No answer or motion to dismiss was filed on behalf of Dustin individually, and a default judgment was entered against him in the amount of $90,320.

In January 2017, Walther filed a motion to withdraw as counsel for the personal representative in the probate case. The trial court appointed a new personal representative for the estate and granted Walther's motion to withdraw. In March 2017, the court held a hearing at which the new personal representative questioned Dustin regarding the location of estate property. The court found Dustin had lost property of the estate and entered judgment against him 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. Thereafter he filed an amended petition adding Carson & Coil as a defendant and asserting the law firm was vicariously liable for Riley's actions. Walther and Carson & Coil moved to dismiss, and the trial court granted those motions. As to Dustin's claim against Carson & Coil, the trial court found that Dustin failed to state facts that, if true, showed he had a cause of action in his individual capacity and that he lacked standing. As to Dustin's claim against Walther, the trial court found that Dustin failed to state facts that, if true, showed Walther owed a duty to Dustin individually. Dustin appealed.

AFFIRMED.

Division Three holds:

(1) The trial court did not err in dismissing Dustin's claim against Carson & Coil, as Dustin lacked standing to assert a claim of legal malpractice relating to the preparation of Norma's will. Dustin's only asserted interest in this claim was as a beneficiary of Norma's will, but upon her death, the portion of Norma's estate in which Dustin had a contingent interest vested in and passed to Jeffrey. Dustin did not allege facts establishing that, after the estate vested in Jeffrey, Dustin had any interest as a beneficiary of Norma's will.

(2) The trial court did not err in dismissing Dustin's claim against Walther, as Dustin failed to allege facts, taken as true, establishing all elements of a legal malpractice claim. Dustin did not allege that Walther owed him a legal duty in his individual capacity, nor did he allege facts showing that he suffered damage as a result of Walther's alleged negligence.

Opinion by: Edward R. Ardini, Jr., Judge Date: December 15, 2020

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