

No. 1-17-1178

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RITA TAGLIASACCHI,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 2016 L 5559
)	
MICHELLE M. MORRONE and JOHN M. MORRONE,)	Honorable
)	Catherine A. Schneider
Defendants-Appellees.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly dismissed estate beneficiary's complaint against counsel for her father's estate because estate's counsel owed no fiduciary duty to beneficiary.

¶ 2 Rita Tagliasacchi and Monica Wooden are daughters of Richard Winkler, who died on January 24, 2013, in Will County. Both are beneficiaries of their father's estate. Monica originally acted as the successor trustee of the Richard M. Winkler Trust and the executor of his estate. Since June of 2013, Rita and Monica have been adversaries both in probate proceedings pending in Will County and in this chancery action. Michelle and

John Morrone briefly represented Monica in both matters for seven months, from September 2015 until March 2016, when the firm withdrew. Following their withdrawal, Rita sued the Morronees for breach of fiduciary duty and unjust enrichment alleging that they aided and abetted Monica's conduct in misusing and failing to file an accounting for trust assets. The circuit court dismissed the complaint based on its finding that the Morronees owed no fiduciary duty to Rita as a matter of law. We affirm.

¶ 3 After Winkler died, Monica was appointed independent executor of the estate on July 12, 2013. From June 2013 until May 2015, Monica was represented by James Ashack. Ashack withdrew and from May 2015 until September 2015, Monica was represented by Megan Preston, who also withdrew in September 2015. The Morronees then represented Monica for the next seven months, until they withdrew in March 2016. As far as the record discloses, since March 2016, Monica has been represented by her fourth set of attorneys. Monica was eventually removed as successor trustee by the probate court on February 22, 2016, and Rita and her sister, Rose Winkler, were appointed as successor co-trustees on March 2, 2016.

¶ 4 Even before Monica's appointment as independent executor in 2013, Rita filed an action in chancery (Case No. 13 CH 2147) accusing Monica of converting the real estate held in the trust (the trust's chief asset) and seeking partition of that property. After his withdrawal from Monica's representation, Rita pursued a lawsuit against Ashack, accusing him of aiding and abetting Monica's breach of fiduciary duties owed to Rita. That lawsuit was settled.

¶ 5 On June 3, 2016, following the Morronees' withdrawal, Rita filed this case against them based on allegations described by Rita as "nearly identical" to those leveled against

Ashack. At the outset of their representation of Monica, the Morronees were paid \$3,000 from estate funds as a retainer. When in June 2016 they filed a petition with the Will County probate court for payment of the balance of the fees incurred in representing Monica—totaling \$4,612.50—Rita objected to payment from estate funds and argued that the Morronees should also be directed to return the \$3,000 retainer to the estate. After a hearing held on June 14, 2016, the probate court approved the fees, but directed that they be paid by Monica personally; the court refused to require the Morronees to return the retainer. During the hearing, Rita’s counsel failed to disclose the filing of this chancery action against the Morronees 11 days earlier.

¶ 6 In her chancery complaint against the Morronees, Rita alleged a variety of misconduct by Monica, which was done “at [Michelle] Morrone’s direction,” on her advice or with her assistance. Central to Rita’s allegations was the claim that Monica filed a “false accounting,” with the assistance and on the advice of her counsel. In fact, the original accounting challenged by Rita had been filed while Monica was represented by Ashack. During the period Monica was represented by the Morronees, an amended accounting was filed.

¶ 7 The Morronees moved to dismiss Rita’s complaint. While the motion was pending, the Will County probate court conducted a hearing on January 19, 2017, on Rita’s objections to Monica’s amended accounting. Among other things, the court found that while Monica’s recordkeeping was negligent, “sloppy” and inconsistent with her fiduciary duties to estate beneficiaries, (i) Monica did not engage in “self-dealing;” (ii) expenditures of estate funds challenged by Rita were *de minimis*; (iii) Monica’s stays at the real property owned by the trust were beneficial to the trust and so she should not, as

Rita claimed, be charged rent; and (iv) Monica had rendered a sufficient accounting. During the course of its ruling, the court observed that issues relating to the sufficiency of Monica's accounting had been "substantially over litigated" by both sides.

¶ 8 On January 25, 2017, the circuit court of Cook County granted the motion to dismiss Rita's breach of fiduciary duty claim with leave to replead and dismissed the unjust enrichment claim with prejudice. Despite the probate court's ruling regarding the sufficiency of Monica's accounting and its rejection of the majority of Rita's objections to the accounting, Rita filed an amended complaint on February 22, 2017, which included a count for breach of fiduciary duty and, even though the claim had been dismissed with prejudice, reasserted the unjust enrichment claim. The amended complaint was, like the original, premised on Rita's allegation that Monica filed a false accounting, with the Morrone's advice and assistance. But in her amended complaint, Rita alleged that the amended accounting filed by Monica while she was represented by the Morrone's actually disclosed the details of her use of estate assets and her expenditure of estate funds, which Rita claimed were improper (amended accounting "chronicled Monica's use of probate funds for herself, individually, and included payments for her personal credit cards, bills for her personal real property, personal medical bills, restaurant meals, [and] shopping at department stores;" amended accounting "details Monica's self-dealing, including expenditures for Monica's personal obligations, clothing, mortgage payments and even for nail care").

¶ 9 The Morrone's again moved to dismiss the amended complaint. Rita did not respond to the motion and on April 24, 2017, the trial court dismissed the amended complaint with prejudice.

¶ 10 A section 2-615 motion attacks the legal sufficiency of the complaint based on defects apparent on the face of the pleading. *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 13. The relevant inquiry is whether the allegations, viewed in the light most favorable to the pleader, are sufficient to state a claim. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 61. We review the trial court’s order dismissing the complaint *de novo*. *Schweihs v. Chase Home Finance, LLC*, 2016 IL 120041, ¶ 27

¶ 11 The seminal case regarding an attorney’s duty to a third party is *Pelham v. Greisheimer*, 92 Ill. 2d 13 (1982). In *Pelham*, the children of the wife in a divorce case sued the wife’s attorney, alleging that the attorney “negligently and carelessly” failed to notify the husband’s employer of his obligation to maintain his children as prime beneficiaries on his life insurance policies. *Id.* at 16-17. The husband later changed the beneficiary designation to name his second wife, who received the proceeds of the policies after his death. *Id.* at 16. Our supreme court rejected this extension of an attorney’s duty to a third party nonclient. The court first noted that it was plaintiffs’ obligation to allege that the attorney’s representation of their mother was entered into for their “direct benefit.” *Id.* at 17-18. Although the court found that privity of contract “was not an indispensable prerequisite to establishing a duty of care between a nonclient and an attorney” (*id.* at 19), the concern in the legal malpractice context was that an attorney’s liability for negligence not extend to an unlimited and unknown number of potential plaintiffs:

“In the area of legal malpractice the attorney’s obligations to his client must remain paramount. In such cases the best approach is that the plaintiffs must allege and prove facts demonstrating that they are in the nature of third-party

intended beneficiaries of the relationship between the client and the attorney in order to recover in tort. [Citations omitted]. By this we mean that to establish a duty owed by the defendant attorney to the nonclient the nonclient must allege and prove that the intent of the client to benefit the nonclient third party was the primary or direct purposes of the transaction or relationship.” *Id.* at 20-21.

¶ 12 The court also noted particular concerns in extending an attorney’s duty to nonclients in adversarial matters:

“Where a client’s interest is involved in a proceeding that is adversarial in nature, the existence of a duty of the attorney to another person would interfere with the undivided loyalty which the attorney owes his client and would detract from achieving the most advantageous position for his client. [Citations omitted]. *** In cases of an adversarial nature, in order to create a duty on the part of the attorney to one other than a client, there must be a clear indication that the representation by the attorney is intended to directly confer a benefit upon the third party.” *Id.* at 22-23.

Applied in the context of estate and probate matters, we have found that an attorney representing the estate owes her first and only allegiance to the estate in the event of a conflict among estate beneficiaries. *Gagliardo v. Caffrey*, 344 Ill. App. 3d 219, 228 (2003); *In re Estate of Vail*, 309 Ill. App. 3d 435, 441 (1999); *In re Estate of Kirk*, 292 Ill. App. 3d 914, 919 (1997). Thus, while the executor of the estate owes a fiduciary duty to estate beneficiaries, the attorney for the estate does not.

¶ 13 At the time the Morrones undertook Monica’s representation (as her third set of attorneys), the relationship between Monica and Rita was undeniably adversarial and had

been from the outset of the probate proceedings. The fact that Rita was not challenging her father's will does not change this fact. The longstanding conflict between Monica and Rita that existed years before the Morrone's undertook Monica's representation precludes a finding that the primary or direct purpose of Monica's retention of the Morrone's was to benefit Rita (*Pelham*, 92 Ill. 2d at 21) and Rita could not have believed otherwise. The Morrone's could not fulfill their duty to represent Monica, whether in her capacity as executor of the estate or individually, were they also charged with representing Rita's diametrically opposed interests. Further, Rita had her own counsel who was aggressively representing her interests. Thus, the trial court properly concluded that, as a matter of law, the Morrone's owed no fiduciary duty to Rita.

¶ 14 Affirmed.