

MORALS FROM THE COURTHOUSE

A study of recent Texas cases impacting the wills, probate and trust practice

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Tortious Interference w/ Inheritance

Kinsel v. Lindsey – Page 5
Texas Supreme Court

Background

- Jury found tortious interference with inheritance rights
- Appealed on grounds that no such cause of action
- The appellate court agreed and reversed

Decision

- Supreme Court affirmed
- Supreme Court has not previously recognized tort
- Some lower courts have recognized
- Plaintiffs had adequate remedy: constructive trust
- Court would not consider here

Moral: Need to wait for another case to reach Supreme Court

Adoption by Estoppel

Dampier v. Williams – Page 1

Houston [1st Dist.] Court of Appeals

Background

- Intestate died
- Claimed adopted by estoppel
- Alleged acts of estoppel occurred after adult
- Father-son relationship over thirty years
- Oral promise to adopt

Decision

- No adoption of adult by estoppel
- No legal impediment to formal adoption
- Could have executed will

Moral:

- An adult may not be adopted by estoppel

Wills – Testamentary Capacity

Estate of Koontz – Page 1

San Antonio Court of Appeals

Background

- Ben. of prior will challenged capacity when new will signed
- Evidence that
 - believed wife of 50 years having affair
 - attempted to lease property no longer owned
 - suffered bipolar disorder
 - attempted suicide

Decision

- TC granted executor of new will a no-evidence MSJ
- Appellate court reversed
- Enough evidence to raise fact question regarding capacity

Moral: SJ that testator had testamentary capacity improper when “more than a scintilla of evidence” otherwise

Wills – Jury Verdict Upheld

Texas Capital Bank v. Asche – Page 2
Dallas Court of Appeals

Background

- TC determined
 - testator lacked capacity to sign EP documents
 - undue influence
- Conflicting evidence about capacity

Decision

- May not substitute judgment for jury
- Evidence legally and factually sufficient to support finding that lacked capacity
- Did not address undue influence issue

Moral: Once jury determines testator's capacity to execute will, difficult to overturn unless against great weight of evidence

Trusts – Parties

Texas Capital Bank v. Asche – Page 8
Dallas Court of Appeals

Background

- TC determined settlor lacked capacity to create trust
- Contestant failed to join trustee as party

Decision

- Reversed
- Suits against trust must be brought against trustee
- Fact that same entity was party as executor insufficient
- Executor and trustee are separate and distinct capacities

Moral: Trust not legal entity that can sue or be sued. In any action involving trust, trustee in representative capacity must be made party

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