IN THE COURT OF APPEALS OF IOWA

No. 0-682 / 10-0211
Filed November 10, 2010

NEW HOPE METHODIST CHURCH and VENTURA UNITED METHODIST CHURCH,
Plaintiffs-Appellants,

vs.

LAWLER & SWANSON, P.L.C. and THOMAS LAWLER, Individually,
Defendants-Appellees.

Appeal from the Iowa District Court for Butler County, Christopher C. Foy (partial summary judgment), and Michael J. Moon (trial), Judges.

Churches, putative contingent beneficiaries of a testamentary trust, appeal from adverse judgment on their professional malpractice, fraud, and intentional interference with bequest claims against legal representatives of the executors of the Estate of Mabel Wilke. **AFFIRMED.**

John J. Rausch of Rausch Law Firm, Waterloo, for appellants.

Patrick M. Roby and Robert M. Hogg of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellees.

Heard by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

New Hope Methodist Church and Ventura United Methodist Church, putative contingent beneficiaries of a testamentary trust, appeal from adverse judgment on their professional malpractice, fraud, and intentional interference with bequest claims against Thomas Lawler and Lawler & Swanson, P.L.C., the legal representatives of the executors of the Estate of Mabel Wilke. Because the district court correctly ruled Lawler owed no duty to the churches, summary judgment on the professional malpractice claims was appropriate. And because the trial court's finding that Lawler did not interfere with a bequest is supported by substantial evidence, and "[n]o evidence was presented at trial to support the [fraud] elements of falsity, representation, scienter, intent to deceive, or reliance," we affirm judgment for defendants in all respects.

I. Background Facts and Proceedings.

Mabel Wilke and her husband Walter Wilke had an eighty-acre farm in Butler County that included their homestead. Sometime in 1978, the Wilkes retired from farming and moved to Cerro Gordo County, selling off the home site on the Butler County farm and renting out the tillable ground.

When they moved, the Wilkes met Timothy and Doris Meyer at the United Methodist Church in Ventura, Iowa. The couples became friends and socialized often. While Walter was alive, the Meyers helped the Wilkes out with their yard work and around the house.

In May 1994, Mabel made out a will and named the Meyers her successor co-executors if Walter was unable to serve in that capacity.[1] On September 7, 1994, Mabel executed a general power of attorney naming Walter as her attorney in fact and naming the Meyers as successor attorneys in fact. The will and the power of attorney documents were prepared by attorney Norman Graven.

Walter died in February 1998 at the age of ninety-one. His will, which left everything to Mabel if she survived him, was admitted to probate and closed in September 1998. The Meyers served as co-executors in Walter's probate estate because, due to ill health, Mabel declined to act in the capacity.

Mabel continued to live at home in Ventura after Walter's death. The Meyers continued to visit Mabel often after Walter's death. They also assisted Mabel with her finances and arranged for in-home care visits. They did not request or receive remuneration for their assistance.

In August 2001, Mabel moved to a nursing home and the Meyers continued to handle Mabel's finances by the authority of the power of attorney.

In December 2003, Doris Meyer, as attorney in fact, signed a mortgage encumbering Mabel's Ventura homestead for a loan to pay for Mabel's care at the nursing home. The house was for sale at the time. The household goods and furnishings were sold to defray Mabel's living expenses. When Doris told Mabel about the sale of the household contents and the sale of the house, Mabel was sad and upset. There is some evidence that Mabel was suffering from dementia at this time.

[1] Walter, too, executed his will at this time with reciprocal provisions.

The Ventura house sold on May 25, 2004, for $150,000. Thomas Lawler, who purchased Graven's law practice in 2000, represented the Meyers with respect to selling the house. He had no legal relationship with Mabel. Mabel's brother, Vernon, helped the Meyers get the household goods, furnishings, and house ready for sale. Timothy Meyer and Vernon discussed selling the Butler County farm because they were still getting behind in the payment of bills incurred for Mabel's care.

The Meyers contacted Lawler about the sale of the farm. They knew there were procedures required under Iowa law with respect to terminating farm tenancies. Lawler represented the Meyers with respect to the sale of the farm ground. Neither Lawler nor the Meyers were aware of the contents of Mabel's will at the time. The Meyers did not tell Mabel about the sale of the farm. The Butler County farm sold on September 21, 2004, for $235,000.

Mabel died on March 20, 2005, at the age of ninety-five. Her will was submitted for probate on March 23, 2005, by Timothy and Doris Meyer. The Meyers were named co-executors of the estate and were represented by Lawler. Under Mabel's will, her debts and expenses were to be paid first. Pursuant to paragraph four, because Walter did not survive her, Mabel's will provided:

> . . . I give, devise, and bequeath unto Clear Lake Bank & Trust Company, as Trustees, the farm property owned by me in Butler County, Iowa . . . for the following purposes:
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> a. To establish the Walter E. and Mabel A. Wilke Scholarship Loan Fund, the income of said property, or, in the event of its sale, the income from the proceeds of the sale of said property, to be used as a loan fund of anyone of the Christian faith in Coldwater or Bennezette Townships, Iowa, for the purpose of helping defray the expenses of any individual therefrom who attends a seminary . . . . The selection of individuals for this loan shall be made by a committee. . . . In the event there is no one to take the loan under

> the loan fund available, the net income from the property which constitutes the principal of this scholarship fund shall be divided equally among the United Methodist Church of Aredale, Iowa, the Bennezette Wesleyan Methodist Church of Rural, Bristow, Iowa, and the Ventura United Methodist Church of Ventura, Iowa, and may be used by said churches only for the purpose of making permanent improvements or major repairs to the Church property. In the event any of the congregations are no longer holding church services in the communities mentioned above, that church and community shall no longer be eligible to participate in the scholarship fund or the income therefrom and the income shall then be divided among the remaining churches. It is my intent that the loan fund shall be perpetual.

Paragraph five divided the residue of her estate: one-fourth to a trust for the benefit of her son, Eugene, during his lifetime; and, the remaining three-fourths in equal shares to Timothy Meyer, Doris Meyer, and Amanda Meyer. Any assets remaining in the trust for Eugene's benefit were to be distributed to the Meyers after Eugene's death.

Notice and a copy of the Mabel's will were sent to Timothy Meyer, Doris, Meyer, Amanda Meyer, Eugene Wilke, Clear Lake Bank & Trust Company, and Oakwood Care Center; notice of the probate proceedings was not sent to the churches noted in paragraph four. The probate inventory listed assets of $344,215, comprised of $223,299 in stocks and bonds and $111,594 in cash. The assets were distributed as provided in the residuary clause after payment of ordinary administrative costs and expenses. The probate estate was closed December 6, 2005.

In 2008 New Hope Methodist Church and Ventura United Methodist Church (Churches) filed a law action against Thomas Lawler and Lawler & Swanson, P.L.C. (collectively Lawler) for professional malpractice alleging, after amendments, that Lawler had a duty to the Churches; breached the professional

standard of care by "failing to send [probate] notices" to the Churches; and that they had been damaged "by not receiving the farm and the proceeds from the farm." The Churches also asserted Lawler "negligently failed to seek court approval of [the sale of the Butler County farm] as this is self-dealing by the Power of Attorney."

Lawler filed a motion for summary judgment, asserting (1) there was no duty owed to the Churches, Lawler never represented the Churches, and did not prepare Mabel Wilke's will; (2) notice was given to Clear Lake Bank & Trust—the designated trustee for the property to which the Churches claimed entitlement; and (3) Lawler was not negligent in failing to foresee the supreme court's decision in *In re Estate of Anton*, 731 N.W.2d 19, 24 (Iowa 2007) (holding that "under the facts and circumstances of this case, the sale of the duplex [by attorney in fact] did not cause ademption to the extent that there were specifically identifiable proceeds in the estate at the time of death"). The Churches resisted, contending an attorney handling the administration of an estate can be held liable to third party beneficiaries.

Prior to a ruling on the motion for summary judgment, the Churches moved to amend their petition to assert two additional claims: intentional interference with an inheritance or bequest and fraud.

On October 15, 2009, the district court concluded the "record before the Court is devoid of any facts that would support the existence of a duty from Lawler to either Plaintiff" and defendants were entitled to judgment as a matter of law. The district court wrote:

> There is nothing in the record before the Court to suggest that when Meyers retained him to assist in the sale of the Wilke Farm, Lawler knew or believed that his clients intended as one of the primary objectives of his representation some benefit to Plaintiffs. Lawler was employed by the Meyers to make sure a fair price was obtained for the Wilke Farm and to make sure the Meyers properly performed all of their obligations as sellers on behalf of Mabel. Similarly, Plaintiffs have presented no evidence to show that when the Meyers designated him as their attorney in handling the administration of the estate of Mabel, Lawler knew or was aware of any intent on the part of the Meyers that the main purpose of his work was to benefit Plaintiffs. While Plaintiffs were mentioned as possible beneficiaries in the Wilke Will,[2] the Meyers determined early on that Plaintiffs had no interest in the estate and instructed Lawler to treat them accordingly. Because Plaintiffs have failed to present any proof that the Meyers hired Lawler with the primary intent that his services benefit Plaintiffs, let alone that Lawler knew of this intent, there is no basis for the Court to impose a legal duty on Lawler in favor of Plaintiffs. *Estate of Leonard* [*v. Swift*, 656 N.W.2d 132, 145–56 (Iowa 2003)]. In light of the failure of proof offered by Plaintiffs, Defendants are entitled to summary judgment.

The district court also concluded that summary judgment was appropriate for a "more pragmatic reason"—conflicting interests between the Meyers and the Churches. Finally, the district court noted that the Churches were attempting to equate their legal rights with those of Mabel and, to that extent, even assuming Lawler breached some duty he may have owed to Mabel, such claims should be pursued in the probate proceedings.

On October 19, 2009, the district court granted the Churches' motion to amend, and the Churches' claims of interference with a bequest and fraud were tried to the court. The Churches relied heavily upon a June 22, 2005 letter from Lawler to the Meyers, which provides in part:

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[2] As we read it, the Churches are possible contingent beneficiaries named in the testamentary trust. We note that the Churches have successfully petitioned the probate court to re-open Mabel's estate where they are asserting their claims against the estate. That proceeding is ongoing. Here, we address only the Churches claims against Lawler.

As you are aware, Mabel's Will provided that the farm in Butler County was to go into trust establishing a Scholarship Loan Fund. . . .

The farmland was sold prior to Mabel's death. This sale was done by the two of you acting pursuant to your Power of Attorney. The Iowa law is that when a Will gives specific property and that property is not owned by the decedent at death, the provision in the Will is not followed. If the person did not own the property, then that property could not be left as the Will provided.

Iowa has adopted a "modified-intention theory." Modified means that the court has enforced the Will bequest even though the property was sold prior to death. The court has made this modification in two circumstances.

One circumstance was where the testator was incompetent and the property was sold by a guardian. . . .

The other circumstance is when the specific property is destroyed by accident and the accident resulted in the death of the testator. . . .

In applying this rule of law to Mabel Wilke's Will, I have not come to a definite conclusion. That is, I do not know for sure what the Court would conclude if Mabel's case was considered by the Court. Mabel was not adjudged incompetent at the time of her death or at the time the real estate was sold. That is, there had not been a court ruling that she was incompetent. However, as you state in your letter, she was suffering from dementia, so there is some question as to whether she understood that the farm was sold and had the capacity to change her Will when the farm was being sold. So even though the law today in Iowa would say that the bequest to the Scholarship Fund lapsed because Mabel did not own the real estate at her death, it is possible the Court may make another exception. It would be that if Mabel did not understand the farmland was sold and did not have the capacity or the opportunity to change her Will, then the proceeds from the sale of the farm should go into the Scholarship Fund.

The question for you is what to do next. One option is to continue with the probate of the estate based on all of the assets going to Eugene in trust, the two of you, and your daughter. No notice will be given to the churches because they are not receiving anything under the Will. The churches will have no Notice that Mabel's Will did leave the real estate into the Scholarship Fund and the churches may have no knowledge about the real estate being sold. So the churches will probably not raise any objection to all of the property going to the four of you. The risk to this is that the church may find out about this five or ten years in the future and come back to challenge the way the Will was handled. As I indicated earlier, even if the churches challenge it, they may not be

> successful. Also, the churches may never take any action to challenge.
>
> The other option is to file a petition with the Court asking the District Court to make a decision on whether the proceeds from the sale of the farmland go to the four of you or go into the Scholarship Fund. When this petition is filed with the Court, Notice will be served on the churches. . . . The benefit of this procedure is you will have a definite ruling one way or another. The down side is that the churches may challenge it and the Court may agree with the churches, resulting in the proceeds from the sale of the farmland going into the trust fund rather than the four of you.
>
> . . . So I ask that you give me direction on whether, as Executors, you want me to proceed with all of the property going to the four of you, or whether you want me to file a petition on your behalf asking the Court to interpret the Will.

Lawler testified that the Meyers informed him that "they would continue to administer the estate as they were and rely on the notices of probate that had already been sent out."

Lawler testified he was of the opinion the Churches were not beneficiaries as defined in the probate code and therefore they were not interested parties and were not entitled to notice. He further testified that had the trust been set up, the Churches would not have received anything "nor would any of the students." "[I]t was directed as a loan fund. So the money was loaned to a student they had to pay it back. And it does say that it's perpetual."

The district court found for Lawler on both claims. With respect to the interference with bequest claim, the court ruled, "it is manifest that defendant, Thomas Lawler, did not interfere with any bequest of Mabel Wilke.'' The court stated it was "clear from the evidence that Thomas Lawler did nothing to suppress Mabel's will after her death. Indeed, Mabel's estate was opened three days after her death and all notices required by the Iowa Probate Code were timely given." The court found the heirs under the will were Eugene Wilke,

Thomas Meyer, Doris Meyer, and Amanda Meyer; there were no devisees because there was no real estate owned by Mabel at the time of her death. The court stated that even if the farm ground had not been sold, the "devisee was Clear Lake Bank & Trust Company, not the plaintiffs."

The court then addressed the plaintiffs' allegations that Lawler facilitated fraud by intentionally not giving the Churches notice that they are a devisee under the will, which "fraudulent nondisclosure of notice . . . was the reason the Churches could not litigate their rights to attain proceeds from the farm," which the court characterized as the tort of fraudulent nondisclosure. The court stated, "No evidence was presented at trial to support the [fraud] elements of falsity, representation, scienter, intent to deceive, or reliance." Moreover, "[e]ven if the first six elements of fraud had been shown, plaintiffs failed to prove damages." The court noted that "none of the plaintiffs was entitled to the corpus of the trust, whether it was farmland or the cash proceeds from the sale of the farmland." Further, the Churches produced no evidence as to what income would have been used to loan money to seminarians and during what period that would occur, or establish the amount of income that would be available. The trial court dismissed the remaining counts of the petition and taxed costs to plaintiffs.

The Churches appeal the adverse rulings on summary judgment and after trial.

II. Summary Judgment.

A. Scope and standard of review. We review rulings on summary judgment motions for correction of errors of law. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000).

> If the record shows no genuine dispute of a material fact and that the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. In assessing whether summary judgment is warranted, we view the entire record in a light most favorable to the nonmoving party. We also indulge in every legitimate inference that the evidence will bear in an effort to ascertain the existence of a fact question.

Id. "A fact question does not arise, however, when the only dispute concerns the legal ramifications flowing from undisputed facts." *Estate of Leonard*, 656 N.W.2d at 138.

B. Did the district court err in granting summary judgment to Lawler on professional malpractice claims? In *Ruden v. Jenk*, 543 N.W.2d 605, 610 (Iowa 1996), our supreme court stated:

> To establish a prima facie claim of legal malpractice, the plaintiffs must produce substantial evidence that shows: (1) the existence of an attorney-client relationship giving rise to a duty, (2) the attorney, either by an act or failure to act, violated or breached that duty, (3) the attorney's breach of duty proximately caused injury to the client, and (4) the client sustained actual injury, loss, or damage. The failure to prove any one of these four elements defeats recovery for the plaintiffs.

"Because the issue of whether a duty arises out of a party's relationship is a legal question, it is susceptible to summary judgment." *Ruden*, 543 N.W.2d at 607.

"An attorney is generally liable for malpractice only to a client." *Id.* at 610; *see also Estate of Leonard*, 656 N.W.2d at 144 (noting several rationales for the rule). However, "under severely limited circumstances" a third-party claim may be allowed. *Ruden*, *543 N.W.2d at 610*; *Estate of Leonard*, 656 N.W.2d at 145. "Circumstances giving rise to such a claim exist where the third party is 'a direct and intended beneficiary of the lawyer's services.'" *Estate of Leonard*, 656 N.W.2d at 145 (quoting *Brody v. Ruby*, 267 N.W.2d 902, 906 (Iowa 1978) (noting

that in *Lucas v. Hamm*, 364 P.2d 685, 688-89 (1961), *cert. denied*, 368 U.S. 987, 82 S. Ct. 603, 7 L. Ed. 2d 525 (1972), the California Supreme Court held an attorney who negligently drafted a provision of his client's will so as to render it void would be liable to the intended beneficiaries)).

In *Schreiner v. Scoville*, 410 N.W.2d 679, 682 (Iowa 1987), the court held a lawyer who drafted testamentary instruments "owes a duty of care to the direct, intended, and specifically identifiable beneficiaries of [a] testator as expressed in the testator's testamentary instruments."

In the *Ruden* case, the court considered the extent of the duty owed to nonclients by the attorney for the administrator of an estate. 543 N.W.2d at 610–11. The *Ruden* court noted that the attorney for the administrators of an estate "had a duty to advise the administrators" with "'such skill, prudence and diligence as lawyers of ordinary skill and capacity commonly possess and exercise' in performing the task he undertakes." *Id*. (quoting *Milwright v. Romer*, 322 N.W.2d 30, 32 (Iowa 1982)). The court stated, "Although [an] estate attorney is hired by an executor or administrator, his obligations, like those of the fiduciary, extend to the estate and all other distributees." *Id.* at 610 (citing *Schmitz v. Crotty*, 528 N.W.2d 112, 115–17 (Iowa 1995)). But an estate attorney's duty to third parties is limited to certain circumstances. The *Ruden* court quoted with approval section 51(3) of the Restatement Governing Lawyers, which provides that a lawyer owes a duty to use care to "a nonclient when and to the extent that":

> (a) the lawyer knows that a client intends as one of the primary objectives of the representation that the lawyer's services benefit the nonclient;
>
> (b) such a duty would not significantly impair the lawyer's performance of obligations to the client; and

> (c) the absence of such a duty would make enforcement of those obligations to the client unlikely.

Estate of Leonard, 656 N.W.2d at 145–46 (quoting Restatement (Third) Law Governing Lawyers § 51(3), at 357 (2000)). "[A] mere incidental benefit to a nonclient is not sufficient to create a duty to the nonclient." *Id.* at 146 (internal quotation and citation omitted).

C. Did Lawler owe a duty to Churches? The Churches state, "Lawler as attorney for the estate at a minimum had the fiduciary duty to provide third party beneficiaries notice pursuant to 633.304 of the Iowa Code as the churches were devisees under the will." They also contend "Lawler as attorney for estate owed the Churches notice of the Final Report as the Churches were interested parties in the estate pursuant to 633.487." We conclude the district court correctly granted summary judgment to defendants.

The Churches first contend Lawler had a duty to send notices to the Churches as devisees under the will pursuant to Iowa Code section 633.304 (2005). This claim fails for two reasons. First, the duty to give notice under section 633.304 is imposed upon the executor. Iowa Code § 633.304 ("On admission of a will to probate, *the executor* . . . as soon as practicable give notice . . . by ordinary mail to . . . each heir of the decedent and each devisee under the will admitted to probate. . . ." (emphasis added)). Lawler was not the executor.

Second, the Churches are not devisees. Section 633.3 defines various terms used in the probate code (chapter 633). Subsection 11 provides: "Devise—when used as a noun, includes testamentary disposition of property, both real and personal," and in subsection 12, "when used as a verb, to dispose

of property, both real and personal, by a will." A "[d]evisee—includes legatee." *Id.* § 633.3(13). And a "legatee" is "a person entitled to personal property under a will." *Id.* § 633.3(26). Thus a devisee is the person entitled to property disposed of by a will.

Paragraph four of Mabel's will provides, "I give, devise, and bequeath unto Clear Lake Bank & Trust Company, as Trustees, the farm property owned by me in Butler County, Iowa . . . for the following purposes. . . ." Thus the devisee was Clear Lake Bank & Trust, the trustee. *Cf.* Iowa Code § 633.356(2) (defining "successor of decedent" in part as "the beneficiary or beneficiaries who succeeded to the particular item of property of the decedent under the decedent's will" and stating "the *trustee of a trust* created during the decedent's lifetime *is a beneficiary* under the decedent's will *if the trust succeeds to the particular item of property* under the decedent's will" (emphasis added)).

Similarly Iowa Code section 633.478 imposes a duty upon the "personal representative" to give notice of the final report to "all persons interested." Lawler was not the personal representative of the probate estate.

The Churches wish to have this court equate Lawler's duties to third parties co-extensive with those of the executor, but this result is not supported by our courts' prior holdings. Rather, only in those circumstances noted in *Estate of Leonard*, 656 N.W.2d at 145–46, will we recognize a duty extending to a third party and the Churches have failed to present evidence of any of them.

We note that the Churches have reopened the estate and are pursuing their claims there, negating any finding that "the absence of such a duty would

make enforcement of those obligations to the client unlikely." *Estate of Leonard*, 656 N.W.2d at 145.

Our conclusion is in line with the rulings of several other jurisdictions. *See Young v. Woodard*, 2007 WL 2061057, (Wash. Ct. App. 2007) (rejecting claim that attorney for personal representative committed malpractice in failing to give the spouse of the deceased notice of probate proceedings noting the statutory provision "requires the personal representative to give notice of the pendency of the probate proceedings to each heir," not the attorney); *see also Allen v. Stoker*, 61 P.3d 622, 624 (Idaho Ct. App. 2002) ("The attorney is not hired to benefit any particular heir, but to assist the personal representative in the performance of his or her duties. The imposition of a duty owed by the attorney to the heirs would create a conflict of interest whenever a dispute arose between the personal representative and an heir."); *Goldberger v. Kaplan, Strangis & Kaplan, P.A.*, 534 N.W.2d 734, 738–39 (Minn. Ct. App. 1995) (holding "the estate beneficiaries lack standing to sue the personal representative's attorneys because the attorneys were not hired for their direct benefit, other procedures are available to protect the beneficiaries' interests from malpractice, and the potential for conflict of interest would unduly burden the legal profession").

As the Washington Supreme Court explained in *Trask v. Butler*, 872 P.2d 1080, 1085 (Wash. 1994), there are at least three reasons why the recognition of such a duty is inappropriate:

> (1) the estate and its beneficiaries are *incidental,* not intended, beneficiaries of that attorney-personal representative relationship; (2) the estate heirs may bring a direct cause of action against the personal representative for breach of fiduciary duty; and (3) the unresolvable conflict of interest an estate attorney encounters in

> deciding whether to represent the personal representative, the estate, or the estate heirs unduly burdens the legal profession.

The district court did not err in concluding Lawler owed no duty to the Churches. We find no error in granting summary judgment for defendants on the malpractice claims.

III. Claims Tried to the Court.

A. Scope and standard of review. Our review is for correction of errors at law. Iowa R. App. P. 6.907. The trial court's findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 6.904(3)(*a*).

B. Fraud. The Churches summarize their fraud claims in their appellate brief as Lawler "choos[ing] not to give Churches notice of Probate Pursuant to 633.304 . . . knowing they were devisees under the will" and "intentionally choos[ing] not to send Final Report to Churches as interested parties."

We have no quarrel with the principle stated by the Churches that "[u]nder Iowa law, the failure to disclose material information can constitute fraud *if* the concealment is 'made by a party under a duty to communicate the concealed fact.'" *Wright v. Brook Group Ltd.*, 652 N.W.2d 159, 174 (Iowa 2002) (quoting *Cornell v. Wunschel*, 408 N.W.2d 369, 374 (Iowa 1987)). But we have already rejected the argument that Lawler had a duty to notify the Churches as asserted. Additionally, Lawler did not hide or conceal the will and the Churches were not devisees under the will.

The trial court correctly noted that all fraud cases require clear and convincing evidence of (1) materiality, (2) falsity, (3) representation, (4) scienter, (5) intent to deceive, (6) justifiable reliance, and (7) resulting injury and damages.

Clark v. McDaniel, 546 N.W.2d 590, 592 (Iowa 1996). We agree with the trial court that the Churches presented "no evidence" to support the elements of falsity, representation, scienter, intent to deceive, or reliance. Lawler provided the Meyers legal analysis and noted the law was unclear concerning whether the sale of property by an attorney in fact would work an ademption. He outlined the options available to the executors. We reject the Churches' claim that Lawler's June 22, 2005 letter to the Meyers provides proof of intent to deceive.

C. Interference with bequest. In *Frohwein v. Haesemeyer*, 264 N.W.2d 792, 795 (Iowa 1978), the supreme court recognized a claim of tortious interference with a bequest. In *Huffey v. Lea*, 491 N.W.2d 518, 520 (Iowa 1992), the court described the tort as follows:

> One who by fraud or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to others for the loss of the inheritance or gift.

(Quoting Restatement (Second) of Torts § 774B, at 58 (1979)).

The Churches have not proved such a claim. The action applies "when a will is forged, altered, or suppressed," none of which the Churches have asserted. Restatement (Second) of Torts § 774B, cmt. b, 58. Even assuming the lack of notice might be considered a form of suppressing a will, and further assuming Lawler had a duty to provide that notice,[3] the Churches have not shown with any reasonable degree of certainty that they would receive anything under the will. *See Frohwein*, 264 N.W.2d at 795 (noting no reason to refuse to protect non-commercial expectancies, where those expectancies are "something

[3] An argument we have specifically rejected.

like a certainty" (quoting W. Prosser, The Law of Torts § 130, at 951 (4th ed. 1971)); *see also* Restatement (Second) of Torts § 774B, cmt. d, at 59 ("An important limitation upon the rule stated in this Section is that there can be recovery only for an inheritance or gift that the other would have received but for the tortious interference of the actor."). The district court did not err in dismissing the Churches' interference with a bequest claim.

IV. Conclusion.

The district court correctly ruled Lawler owed no duty to the Churches and summary judgment on the professional malpractice claims is affirmed. Substantial evidence supports the trial court's findings that Lawler did not suppress the will, all notices required by the probate code were timely given, and the Churches were not devisees under the will. Additionally, we agree that "[n]o evidence was presented at trial to support the [fraud] elements of falsity, representation, scienter, intent to deceive, or reliance," and thus the fraud claim necessarily fails. We affirm judgment for Lawler in all respects.

AFFIRMED.