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Court of Appeals Reiterates No Duty to Will Beneficiaries

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Division I of the Court of Appeals in *Reznick v. Livengood, Alskog, PLLC*, 2016 WL 7470037 (Wn. App. Dec. 27, 2016) (unpublished), recently reiterated that will beneficiaries ordinarily do not have standing to bring a legal malpractice claim against the attorney who drew the will involved because they are not clients of the lawyer. In doing so, the Court of Appeals relied primarily on its own opinion in *Parks v. Fink*, 173 Wn. App. 366, 293 P.3d 1275 (2013), which, in turn, applied the Washington Supreme Court's decision in *Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994).

The lawyer in *Reznic*k had prepared a will for a long-time client in 2005. The will left most of the estate to non-family members but included specific dollar bequests to the client's two sisters. In 2012, the lawyer was called to the client's death bed. The client, who could not speak by that point, communicated her wish to revoke the 2005 will so that her two sisters could split her estate by intestate succession by squeezing the lawyer's hand in response to his question. The client, however, died later that day before the lawyer could actually destroy the 2005 will. Under Washington law, he could not effectively destroy the prior will outside the client's presence. The 2005 will, therefore, remained in force and the two sisters sued the lawyer for malpractice.

The sisters did not meet one of the standard requisites for a legal malpractice claim: they were not the lawyer's clients. The sisters instead attempted to rely on a narrow exception to the standing requirement articulated by the Supreme Court in *Trask*. In *Trask*, the Supreme Court outlined a "multi-factor balancing test" for assessing whether a non-client can bring a malpractice claim. Although a key element of the test is whether the work involved was intended to benefit the non-client, Washington courts—including *Trask*—have generally concluded that will beneficiaries do not qualify because the lawyers involved did not owe specific duties to the beneficiaries. The Court of Appeals noted that it had discussed the *Trask* lineage extensively in *Park*s—where it also found that a will beneficiary did not meet the *Trask* alternative. Accordingly, relying on *Trask* and *Parks*, the Court of Appeals in *Resnick* concluded that the sisters did not meet the *Trask* alternative test for standing.

Although not mentioned in *Resnick*, the Court of Appeals' more extensive analysis in *Parks* included a discussion of the scenarios (173 Wn. App. at 376 n. 9)—principally in the guardianship context where an instrument is prepared specifically for the ward's benefit—where the *Trask* test may be met.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory and attorney-client privilege issues for lawyers, law firms and corporate and governmental legal departments throughout the Northwest. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is also a former member of the Oregon State Bar Legal Ethics Committee and is a current member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the monthly Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the quarterly Ethics & the Law column for the WSBA *NWLawyer* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author/editor for the current editions of the OSB Ethical Oregon Lawyer, the WSBA *Legal Ethics Deskbook* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.