

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TERRI HARRIGFELD; SARA HARRIGFELD, <i>Plaintiffs-Appellants,</i> v. J. D. HANCOCK; HANCOCK & ZOLLINGER, a partnership, <i>Defendants-Appellees.</i>

No. 01-35525
D.C. No.
CV-99-00466-
BLW/LMB
OPINION

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, District Judge, Presiding

Submitted March 29, 2004*
Seattle, Washington

Filed April 5, 2004

Before: J. Clifford Wallace, Stephen S. Trott, and
A. Wallace Tashima, Circuit Judges.

Opinion by Judge Trott

*This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

COUNSEL

Allen B. Ellis, Ellis, Brown & Sheils, Boise, Idaho, for the plaintiffs-appellants.

Thomas B. High, Benoit, Alexander, Harwood, High & Butler, L.L.P., Twin Falls, Idaho, for the defendants-appellees.

OPINION

TROTT, Circuit Judge:

On January 30, 2003, we filed, pursuant to Rule 12.2 of the Idaho Appellate Rules, an order tendering certification of a question of law to the Idaho Supreme Court. *Harrigfeld v. Hancock*, 317 F.3d 1094 (9th Cir. 2003). In so doing, we requested the Idaho Supreme Court to exercise its discretion in favor of accepting certification, which that court did on March 21, 2003. The legal question certified and accepted was as follows:

Is a direct attorney-client relationship required to exist between the plaintiff and the attorney-defendant in a legal malpractice action when the plaintiff alleges to be an intended beneficiary of testamentary instruments drafted by the attorney-defendant for a third-party testator?

On February 27, 2004, we received from the Clerk of the Court a certified copy of the Remittitur finalizing the Supreme Court's opinion issued on January 29, 2004. The court unanimously held as follows:

A direct attorney-client relationship is required to exist between the plaintiff and the attorney-defendant in a legal malpractice action except in this very narrow circumstance. An attorney preparing testamentary instruments owes a duty to the beneficiaries named or identified therein to prepare such instruments, and if requested by the testator to have them properly executed, so as to effectuate the testator's intent as expressed in the testamentary instruments. If, as a proximate result of the attorney's professional negligence, the testator's intent as expressed in the testamentary instruments is frustrated in whole or in part and the beneficiary's interest in the estate is either lost, diminished, or unrealized, the attorney would be liable to the beneficiary harmed even though the attorney did not have a direct attorney-client relationship with that beneficiary.

Harrigfeld v. Hancock, S. Ct. No. 29445, 2004 slip op. No. 3 at 7 (Idaho Jan. 29, 2004), ___ P.3d ___ (Idaho 2004).

After receipt of the Idaho Supreme Court's answer to our certified question, we asked the parties to submit letter briefs containing their respective views of the effect of the Court's holding, and we received in return a gracious concession from

counsel for the Harrigfelds that under Idaho law, the plaintiffs lack standing to sue this defendant for malpractice.

Consequently, we affirm the judgment of the district court granting summary judgment against the plaintiffs and dismissing their complaint in its entirety.

AFFIRMED.