

STATE OF MAINE

BUSINESS AND CONSUMER COURT

Cumberland, ss.

CLAIRE DEAN PERRY,

Plaintiff,

v.

Docket No. BCD-CV-13-48

WILLIAM T. DEAN, JR., et al.,

Defendants

PAMELA W. VOSE, Personal Representative
of the Estate of William T. Dean, Jr.,

Plaintiff,

v.

Docket No. BCD-CV-14-14

JAMES P. TAYLOR, et al.,

Defendants

ORDER ON PLAINTIFF VOSE'S MOTION FOR RECONSIDERATION
AND MOTION TO ALTER OR AMEND

Plaintiff Pamela W. Vose has filed a Motion for Reconsideration of certain issues addressed in the court's orders on the summary judgment motions filed by Plaintiff Vose, the State Defendants and Defendant James Taylor. *See Perry v. Dean*, Order on State Defendants' Motion for Summary Judgment (Dec. 3, 2015); *Vose v. Taylor*, Order on Cross-Motions for Summary Judgment of Plaintiff and Defendant (Dec. 3, 2015).

Also still pending is Plaintiff Vose's Motion to Alter or Amend Order of Summary Judgment in *Perry v. Dean*, which is dated December 17, 2014, and which was not fully briefed due to the filing of the State's appeal from that summary judgment order. The Motion to Alter

or Amend Order of Summary Judgment raises the same issue regarding Plaintiff's claim against attorney Barbara Cardone that is now raised in Plaintiff Vose's Motion for Reconsideration.

Oral argument on the Motion for Reconsideration was held June 1, 2017.

Plaintiff Vose's Motion for Reconsideration and previously filed Motion to Alter or Amend ask the court to reinstate Counts IX and X of Plaintiff Vose's cross-claim, which allege that attorney Cardone is liable for violating 42 U.S.C. § 1983 and for breach of fiduciary duty to Mr. Dean. Attorney Cardone represented the Maine Department of Health and Human Services (DHHS) in its capacity of temporary conservator for William Dean at the time DHHS arranged for the sale of Mr. Dean's Owls Head property to Defendant Taylor.

The Motion for Reconsideration also asks the court to reconsider its denial of summary judgment to Plaintiff Vose on her claim for a declaratory judgment that the deed to Mr. Taylor for the Owls Head property was void *ab initio*.

Claims Against Attorney Cardone

The Court's Order on State Defendants' Motion for Summary Judgment in *Perry v. Dean* addressed Mr. Dean's claims against attorney Cardone at pages 52-63 (Count X) and 65-66 (Count IX), and the court sees no reason to revisit its analysis and conclusions set forth therein.

Further discussion of one issue not reached by the court in that Order merits further discussion because it was a primary focus of the oral argument. The breach of fiduciary duty claim in Cross-Claim Count X is premised on the view that attorney Cardone owed a fiduciary duty to Mr. Dean, the ward, as well as a duty to her client, DHHS. Plaintiff Vose points out that Maine recognizes that an attorney may owe a duty to a non-client "when an attorney's actions are intended to benefit a third party and where policy considerations support it . . ." *Estate of Cabatit v. Candors*, 2014 ME 133, ¶21, 105 A.3d 439, 446. An example of such a

situation is when an attorney is negligent in preparing an estate plan and the court allows the client's estate to bring a malpractice action against the attorney. In fact, the *Cabatit* opinion cites to a New York case involving such circumstances. *Id.*, citing *Schneider v. Finmann*, 15 N.Y.3d 306, 933 N.E.2d 718 (2010). In such a situation, the attorney's duty extends to the non-client estate because the estate is the foreseeable beneficiary of the attorney's services and because there is no potential conflict between the attorney's duty of reasonable care to the estate planning client and the duty of care with respect to the estate. *See id.*, 933 N.E.2d at 720-21 (noting that a decedent's estate "stands in the shoes of the decedent").

However, the court in *Cabatit* noted that "[a]n attorney will never owe a duty of care to a nonclient, however, if that duty would conflict with the attorney's obligations to his or her clients." 2014 ME 133 at ¶21, 105 A.3d at 446, citing *Ramsey v. Baxter Title Co.*, 2012 ME 113, ¶ 11, 54 A.3d 710. Here, attorney Cardone's client wanted to sell the Owls Head property to Mr. Taylor, and was willing to thwart the efforts of Mr. Dean's family members to stop it. Plaintiff Vose says that attorney Cardone had a fiduciary duty to Mr. Dean and should not have assisted her client in selling the property to Mr. Taylor. Plainly, attorney Cardone could not have fulfilled her duty to her client and also fulfilled the duty to Mr. Dean that the Motion for Reconsideration asks the court to impose as a matter of law.

Whether the attorney for a conservator can ever owe a fiduciary duty to a protected person need not be decided here. At least under the circumstances of this case, to impose upon the attorney for a conservator a separate fiduciary duty toward the protected person would subject the attorney to conflicting obligations. The third-party beneficiary theory does not apply in this instance because to apply it would create a conflict between attorney Cardone's duty to her client and any separate duty to Mr. Dean, the protected person.

Accordingly, because both the Motion for Reconsideration and the Motion to Alter or Amend Order of Summary Judgment focus on the same issue, they will be denied regarding that issue.

Claim Regarding Taylor Deed Being Void Ab Initio

The gist of Plaintiff Vose's summary judgment motion and now her motion for reconsideration on the issue of the validity of the deed from DHHS as temporary conservator to James Taylor is that the deed is void because, under the Maine Probate Code, DHHS was required to obtain authorization from the Probate Court to convey Mr. Dean's Owls Head real estate to Mr. Taylor for less than fair market value. *See* 18-A M.R.S. § 5-408(6). The court denied Plaintiff Vose's summary judgment motion, and now denies her motion for reconsideration on this issue, because whether the DHHS conveyance to Mr. Taylor required prior Probate Court authorization raises disputed material issues of fact and law. The primary issue of fact is whether the sale to Mr. Taylor was indeed for less than fair market value. The primary issue of law is whether, assuming prior Probate Court authorization was required, an issue that the court has not had to address¹, whether the absence of prior authorization for the sale invalidates the deed.

IT IS ORDERED AS FOLLOWS: Plaintiff Pamela W. Vose's Motion for Reconsideration is denied. Plaintiff Pamela W. Vose's Motion to Alter Or Amend Order of Summary Judgment also is denied.

Pursuant to M.R. Civ. P. 79(a), the Clerk is hereby directed to incorporate this Order by reference in the docket.

Dated June 5, 2017

/s
A. M. Horton, Justice

¹ As discussed at oral argument, the court views the effect of section 5-408 of the Maine Probate Code upon the transaction to involve issues of law that the court has not been called on to address because of the material factual dispute regarding the fair market value of the property at the time of the sale.