STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. FRA-25-550

DARBY SABIN
Appellant

v.

SHAWN NEWCOMB, *ET AL.*
Appellees

APPEAL FROM THE SUPERIOR COURT (FRANKLIN COUNTY)

BRIEF OF APPELLANT DARBY SABIN

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	3
I. FACTS & PROCEDURAL HISTORY	4
II. ISSUES PRESENTED	10
III. ARGUMENT	11
IV. CONCLUSION	19
CERTIFICATE OF SERVICE	20

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

Me. Const. art., § 19 11

Me. Const. art., § 20 11

STATUTES

18-C M.R.S. § 2-603 5

18-C M.R.S. § 5-914 .... 9, 15

COURT RULES

M.R. Civ. P. 8 12

CASES

Burns v. Architectural Doors & Windows, 2011 ME 61 12

Cote v. Cote, 2016 ME 94 17

Gaulin v. Jones, 481 A.2d 166, 168 (Me. 1984) 17

Howe v. MMG Insurance Company, 2014 ME 78 12

McCormick v. Crane, 2012 ME 20 11

Morrill v. Morrill, 679 A.2d 519 (Me. 1996) 13, 14

Morrill v. Morrill, 1998 ME 133 .... 13, 14

Oakes v. Town of Richmond, 2023 ME 65 11

Ramsey v. Baxter Title Co., 2012 ME 113 11

I. FACTS & PROCEDURAL HISTORY

Steven W. Sabin directed in his 2022 will that his granddaughter, Darby Sabin, would take a share of his estate in place of her deceased father. After Steven's mental decline, his stepson Shawn Newcomb used a power of attorney to sell Steven's home to Shawn's nephew Owen Soucy for far below market value. Then Shawn circumvented Steven's estate plan by depositing the sale proceeds into a joint bank account. The Superior Court dismissed Darby's claim of tortious interference and related claims, finding that Darby had no expectancy in Steven's estate and that Shawn's actions were immunized by the power of attorney, leading to this appeal.

Steven W. Sabin, born December 13, 1940, had three children who survived to adulthood, Paul Sabin, Kelly Sabin, and Janice Sabin. A. 14. Appellant Darby Sabin is the only child of Paul Sabin. A. 15. Paul passed away on June 11, 2021. A. 15.

In 1991, Steven married Christine C. Chabot, who had two children from a prior relationship, Appellees Shawn D. Newcomb and Cynthia M. Soucy. A. 14. Cynthia M. Soucy is the mother of Appellee Owen J. Soucy. A. 14.

Around 1973, Steven acquired land on Walker Hill Road, Wilton, Franklin County, Maine and built a home on the land. A. 14. In 1999, Steven conveyed the 116 Walker Hill Road property to himself and Christine, as joint tenants. A. 14. In 2011, Steven W. Sabin and Christine C. Sabin purchased additional land adjoining the original residence lot.[1] A. 15.

By June of 2021, both Steven and Christine were suffering from mental decline. A. 15. In January 2022, Steven and Christine went to an attorney for estate planning. A. 15. On January 26, 2022, Steven executed a Last Will and Testament. He nominated Janice and Shawn as co-personal representatives of his estate. A. 15. Steven's will noted Paul's death and named Darby to take in his place.[2] A. 15. Steven named Shawn as his financial power of attorney. A. 15.

In August 2022, Christine was moved to the "memory care" unit at Woodlands Senior Living. A. 16. At the end of June or early July 2023, Steven was moved from his home to Woodlands Senior Living. A. 17. Almost immediately after Steven was moved to the nursing home, Owen moved into 116 Walker Hill Road. A. 18.

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[1] Hereafter, "116 Walker Hill Road" shall refer collectively to both the original house lot and the additional land purchased in 2011.

[2] Darby would have taken in Paul's place even without this provision. 18-C M.R.S. § 2-603.

Christine passed away on or about February 26, 2024. A. 18.

In March 2024, Shawn used the power of attorney to sell 116 Walker Hill Road to his nephew, Owen, at substantially below market below. A. 19. Shawn listed the property for sale for $225,000.00, then immediately agreed to sell it to Owen for $105,000.00.[3] A. 19. Listing the property for sale with a real estate agent was subterfuge – Shawn had already agreed to sell the property to Owen for substantially below fair market value. A. 19.

Owen took out a mortgage for most or all of the purchase price and it is believed that he obtained title to the property paying little or no money at all out-of-pocket. A. 20. Shawn took the foregoing actions with the encouragement of Owen's mother, Cynthia. A. 8.

Shawn deposited the proceeds from the sale of 116 Walker Hill Road into a bank account that was jointly titled between Steven, Shawn, and Cynthia. A. 20.

Steven passed away on June 21, 2024. A. 20.

Upon Steven's death, the money from the sale of the home that Shawn deposited into the joint account passed to Shawn and Cynthia by operation of 18-C, Article 6, Part 2. A. 20. Shortly after Steven's death,

[3] Shawn also gave a $5,000.00 "seller credit" to Owen as part of the closing on 116 Walker Hill Road. A. 20.

Shawn and Cynthia closed the bank account and split the money between themselves. A. 20.

The complaint also alleges that Shawn bypassed Steven's estate plan by designating himself as a pay-on-death beneficiary on Steven's investment accounts.[4] A. 22.

The complaint also alleges that after Steven began declining mentally, Cynthia took possession of his valuable rookie baseball card collection. A. 16. After Steven died, Cynthia denied having the baseball card collection. A. 21. The complaint also alleges that Steven had a valuable antique coin collection that is allegedly missing. A. 23.

The complaint describes various actions and statements by Shawn and Cynthia from which their malicious intent can be inferred. A. 12-25. The complaint also alleges that Darby "suffered significant mental and emotional stress and pain as the direct and proximate result of Defendants' wrongful conduct." A. 24.

Darby's complaint asked that the court award her all appropriate relief including but not limited to money damages and that certain property be held in a resulting or constructive trust. A. 24.

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[4] On some accounts Shawn included Darby as a beneficiary but she was excluded on other accounts.

Shawn filed a Motion to Dismiss, attaching a copy of the POA. A. 26. Shawn argued that Darby's central claim, tortious interference with an expectancy, must be dismissed because, in effect, the existence of the POA absolutely immunized Shawn from suit for the actions set forth in the Complaint.[5] A. 29-32. Shawn *did not* argue that Darby failed to allege an expectancy in her grandfather's estate (*i.e.*, that she was entitled to a share of his estate as his heir).

Cynthia's Motion to Dismiss largely repeated Shawn's arguments. A. 60. However, Cynthia also argued that Ms. Sabin did not properly plead the second element of tortious interference (*i.e.*, tortious conduct) because "[f]raud is not mentioned in the Complaint, and the circumstances constituting fraud must be stated with particularity." A. 61.

Owen's Motion to Dismiss focused on whether Darby properly pled sufficient facts to pursue Owen for Shawn's wrongful acts. A. 43.

Like Shawn, neither Owen nor Cynthia argued that Darby altogether lacked an expectancy in Steven's estate.

Darby timely opposed the motions to dismiss. A. 65. On the central issue, whether the POA effectively exonerated Shawn (and indirectly, the

[5] Shawn argued that Darby's other claims (constructive trust, conspiracy, and punitive damages) were derivative of her central claim, tortious interference. Darby agrees that these theories could not survive independent of a substantive theory of liability.

other defendants), Darby argued that the POA did not exonerate Shawn because her Complaint sufficiently alleged breach of fiduciary duties under the POA that (1) cannot, by statute, be waived, and (2) were expressly preserved in the POA. A. 67-68.

The court (Mills, A.R.J.) granted the motions to dismiss and dismissed Darby's complaint without prejudice.[6] A. 7. The court articulated two reasons for dismissing Darby Sabin's complaint.

First, the court concluded that Darby failed to allege that she had an expectancy in Steven's estate. A. 10.

Second, the court determined that Darby "failed to allege she would have inherited the property absent defendant's interference" because "the plain language of the [power of attorney executed by Steven] authorizes Shawn to transfer any interest in the property." A. 10.

The court did not address Darby's argument that the complaint alleged that in transferring the property using the power of attorney Shawn breached non-waivable fiduciary duties under 18-C M.R.S. § 5-914(1) and breached fiduciary duties that were expressly preserved by the power of attorney. The court also did not address: (1) Cynthia misappropriating Steven's valuable rookie baseball card collection; (2) the missing coin

[6] It is not clear what additional allegations Darby could include in a new complaint that would change the result reached below.

collection; (3) Shawn interfering with Steven's estate plan by depositing the proceeds from the sale of the home into a joint bank account; or, (4) Shawn omitting Darby as a pay-on-death beneficiary on some of Steven's investment accounts.

The court dismissed the claims against Owen and Cynthia along with the claims for constructive trust, civil conspiracy, and punitive damages on the grounds that all of the foregoing were dependent on the primary tort (*i.e.*, tortious interference with expectancy.)

II. ISSUES PRESENTED

(1) Whether the Complaint sufficiently alleges that Darby had an expectancy in Steven's estate when she is the child of Steven's deceased son *and* she was explicitly made an heir in Steven's will.

(2) Whether the power of attorney effectively immunizes Shawn from suit (and indirectly immunizes the other defendants) when the Complaint alleges that Shawn violated fiduciary duties that cannot, by statute, be waived *and* violated fiduciary duties that were expressly preserved in the power of attorney.

(3) Whether the Complaint raises other claims of tortious interference that were not addressed by the court below when it dismissed the Complaint.

III. ARGUMENT

This Court reviews *de novo* the legal sufficiency of a complaint when it has been challenged by a motion to dismiss, *McCormick v. Crane*, 2012 ME 20, ¶ 5, and "view[s] the facts alleged in the complaint as if they were admitted." *Ramsey v. Baxter Title Co*., 2012 ME 113, ¶ 2. Complaints are construed liberally and a "dismissal should only occur when it appears beyond doubt that a plaintiff is entitled to no relief under any set of facts that she might prove in support of her claim." *Oakes v. Town of Richmond*, 2023 ME 65, ¶ 15 (quotation marks and citation omitted).

A court's dismissal of a civil case upon a motion to dismiss has constitutional implications. The Constitution of the State of Maine, Article I, Section 19, provides, "Every person, for an injury inflicted on the person or the person's reputation, property or immunities, shall have remedy by due course of law . . . ." Furthermore, our state Constitution provides, "In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced." Me. Const. art., § 20. When a court dismisses a civil suit on a motion to dismiss it risks prematurely terminating the plaintiff's right to redress and to have important factual issues decided by a civil jury in the course of seeking that redress. Of course, this is a non-issue if the court properly construes the complaint in the light most favorable to the plaintiff.

"Maine is a notice pleading state." *Howe v. MMG Insurance Company*, 2014 ME 78, ¶ 9 (citation omitted). This Court has noted "that the 'notice pleading standard . . . [is] forgiving,' meaning that a complaint need only 'give fair notice of the cause of action by providing a short and plain statement of the claim showing that the pleader is entitled to relief,' and then make a demand for that relief." *Id.*, citing *Burns v. Architectural Doors & Windows*, 2011 ME 61, ¶¶ 16, 21; M.R. Civ. P. 8(a). "The 'complaint need not identify the particular legal theories that will be relied upon, but it must describe the essence of the claim and allege facts sufficient to demonstrate that the complaining party has been injured in a way that entitles him or her to relief." *Id.*, citing *Burns*, 2011 ME 61, ¶ 17.

For instance, "a general allegation of negligence at a stated time and place will suffice in a motor vehicle tort case." M.R. Civ. P. 8, reporter's note. Rule 8 is to "be read with awareness that if the defendant needs more information than the complaint discloses, the discovery devices are designed for this purpose." *Id.*

The court erred in determining that the Complaint "sets forth no allegations [that Darby] expected to inherit an interest in the property." A. 10. Paragraph 76 of the Complaint explicitly avers, "Defendants conspired in the above-described actions with the intention of tortiously interfering with Darby Sabin's expectancy of inheritance from Steven W. Sabin." A. 24. What is more, the Complaint also specifically alleges that Steven included Darby in his final will before he passed away. A. 15. Finally, the Complaint explained that Darby's father predeceased Steven (his father) and, thus, Darby would take in his place pursuant to the anti-lapse statute, 18-C M.R.S. § 2-603, even if Steven hadn't amended his will. A. 15.

The court below cited *Morrill v. Morrill*, 1998 ME 133, as supporting its decision that Darby's complaint "states [she] is Steven's grandchild but otherwise sets forth no allegations that she expected to inherit an interest in the property.[7] Specifically, the court stated that *Morrill II* held that the "existence of a parent-child relationship can support a claim for expectancy, but does not establish the party's burden of proof on the nature and extent of that legacy". A. 10. (quotation marks omitted).

[7] *Morrill* made its way to this Court twice: *Morrill v. Morrill*, 679 A.2d 519, 521 (Me. 1996) (*Morrill I*) and *Morrill v. Morrill*, 1998 ME 133 (*Morrill II*).

The court's reliance on *Morrill II* was in error. In *Morrill II* this Court was reviewing the trial court's instruction to the jury that "[a] child has an expectancy of inheriting a portion of his parents' estate." *Id.* at ¶ 6. In giving that instruction, the trial court cited this Court's holding in *Morrill I*. However, this Court pointed out that *Morrill I* held "that the existence of a parent-child relationship enabled a claim of tortious interference with an expected legacy to survive a motion for a judgment as a matter of law." *Id.* However, *Morrill I* should not be read to establish the party's burden of proof on the nature and extent of that legacy. *Id.*

This case is not at the *Morrill II* stage (jury instructions). It isn't even at the *Morrill I* stage (judgment as a matter of law). Moreover, *even if* the *Morrill* cases somehow applied here, Darby would prevail. She would prevail under *Morrill I* because she has alleged a right to intestate succession *and* a right to inheritance under Steven's will. She would prevail under *Morrill II* because her complaint went much further than necessary in establishing the nature and extent of her interrupted inheritance.

The court below also erred in dismissing Darby's tort claims on the basis that the power of attorney (hereinafter "POA") signed by Steven gave

Shawn the authority to take the actions described in the complaint and thus he could not possibly have acted tortiously in taking those actions.

When a person executes a durable financial power of attorney, it is often advisable for that power of attorney to be written as broadly as possible. Given the uncertainties of life, it is impossible to anticipate exactly what authority an agent may need to handle the principal’s affairs. Under Maine law, a principal does not, by executing a broad power of attorney, give up the fiduciary duties owed to him. The court below erroneously held to the contrary.

18-C M.R.S. § 5-914(1) provides: “*Notwithstanding provisions in the power of attorney*, an agent that has accepted appointment shall: A. Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and otherwise act as a fiduciary under the standards of care applicable to trustees as described under Title 18-B, sections 802 to 807 and Title 18-B, chapter 9; B. Act in good faith; and C. Act only within the scope of authority granted in the power of attorney.” (emphasis added).

Furthermore, 18-C § 5-914(2) provides, in pertinent part: “Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall: A. Act loyally for the principal's benefit; B. Act so as not to create a conflict of interest that impairs the agent's ability to act impartially; C. Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances; D. Keep a record of all receipts, disbursements and transactions made on behalf of the principal; . . . ; and, F. Attempt to preserve the principal's estate plan, to the extent actually known by the agent, based on all relevant factors . . . ."

The POA at issue here arguably waives or limits, to some extent, some of the fiduciary duties listed in 18-C § 5-914(2): "I hereby exonerate my agent from liability for breach of fiduciary duty except for any breach committed dishonestly, with improper motive, or with reckless indifference to the purposes of the power of attorney." A. 40.

The Court does not need, at this time, to resolve the exact metes and bounds of the fiduciary duties owed by Shawn to Steven. The Complaint sufficiently alleges that Shawn breached non-waivable duties under 18-C M.R.S. § 5-914(1). Moreover, the Complaint sufficiently alleges that Shawn breached fiduciary duties that were expressly preserved by the POA – *i.e.*, breaches "committed dishonestly [or] with improper motive . . . ."

The court below did not appear to rely in Cynthia and Owen's additional arguments. Nevertheless, Darby will address those arguments here, briefly, and demonstrate that they do not offer alternative grounds for affirming the dismissal of the Complaint.

The only additional argument raised by Cynthia which appears to be worthy of discussion is her assertion that Darby has not properly pled the second element of tortious interference with an expectancy in an inheritance because “[f]raud is not mentioned in the Complaint, and the circumstances constituting fraud must be stated with particularity.”

Fraud is not the only possible basis to establish the second element of tortious interference. Rather, that element may be established by any “tortious conduct” that interferes with an expectancy – with fraud being but one species of such conduct. *Cote v. Cote*, 2016 ME 94, ¶ 12. In this case, that tortious conduct is Shawn’s breach of fiduciary duty. Darby has adequately pled that Cynthia (and Owen) conspired in that breach of fiduciary duty.

Moreover, breach of fiduciary duty can result in a finding of constructive fraud: “[F]raud in equity or constructive fraud may be found where it can be demonstrated that one party has obtained some benefit from the other through undue influence or breach of a fiduciary or confidential relation.” *Gaulin v. Jones*, 481 A.2d 166, 168 (Me. 1984) (citation omitted). Darby's Complaint sufficiently describes the circumstances constituting fraud in equity or constructive fraud in this case.

Owen's Motion to Dismiss focuses on whether Darby has properly pled sufficient facts to pursue Owen for Shawn's wrongful acts. She has. She expressly alleges that all three defendants "conspired in the above-described actions with the intention of tortiously interfering with Darby Sabin's expectancy of inheritance from Steven W. Sabin."

Moreover, even without that allegation, the facts alleged in the Complaint give rise to an overwhelming inference that Owen was not an innocent bystander. He is closely related to Shawn (his uncle) and Cynthia (his mother). He was the primary beneficiary of a part of the defendants' scheme. Steven's home was not listed for months and months before selling for half of its fair market value. The closing occurred less than a month after the property was ostensibly listed for sale. The Complaint alleges, that Shawn "had already agreed to sell 116 Walker Hill Road to Owen J. Soucy for substantially under fair market value when he listed it for sale for $225,000.00."

Furthermore, even if Mr. Soucy were entirely innocent, he is in possession of and holds record title to property that was wrongfully conveyed to him. He was not, according to the Complaint, a *bona fide* purchaser for value. Rather, the Complaint alleges that Mr. Soucy, "paid little to nothing out-of-pocket for 116 Walker Hill Road."

Perhaps there is an outside chance that at a later stage of this case – at the summary judgment stage, for instance – Mr. Soucy will be able to demonstrate that he was a totally innocent bystander in this situation. At this stage, Darby has sufficiently alleged to the contrary.

IV. CONCLUSION

For the foregoing reasons, the Superior Court's judgment dismissing the complaint must be vacated and this matter remanded for further proceedings.

Dated on this NINETEENTH day of FEBRUARY, 2026.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Christopher S. Berryment, Esq., Attorney for Appellant, certify that I served two copies of this Brief of Appellant upon the other parties in this matter by regular U.S. mail (or Fedex overnight), postage paid, with a copy by email, at the addresses below:

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