

Circuit Court for Anne Arundel County
Case No. C-02-CV-17-000620

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2488

September Term, 2017

DARLENE BARCLAY

v.

SADIE M. CASTRUCCIO

Wright,
Graeff,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: March 21, 2019

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In German, the word *geduldig* means “patient.” This appeal turns on whether our decision in *Geduldig v. Posner*, 129 Md. App. 490 (1999), or the Court of Appeals’s decision in *Anderson v. Meadowcroft*, 339 Md. 218 (1995) before it, recognized the tort of intentional interference with an expectancy. Darlene Barclay, the residuary beneficiary of the Estate of Dr. Peter A. Castruccio (the “Estate”), has run out of patience: she alleges that Sadie M. Castruccio, Dr. Castruccio’s widow, has interfered with her inheritance by filing lawsuits that challenged the estate plan and by attempting to initiate criminal charges against her, all of which have diverted Estate assets to pay attorneys. The Circuit Court for Anne Arundel County concluded that “Intentional Interference with an Expectancy is not a Cause of Action under Maryland law” and granted Ms. Castruccio’s motion to dismiss. Ms. Barclay urges us to hold otherwise, but the question must await another day: even if we assume, without deciding, that the tort has been recognized, we agree with the circuit court that her complaint didn’t state a claim.

I. BACKGROUND

Ms. Barclay filed a complaint on February 28, 2017, that alleged three counts: intentional interference with an expectancy, malicious use of process, and abuse of process. Ms. Castruccio moved to dismiss, and, after argument, the circuit court dismissed the complaint in a written order on February 7, 2018. Although the court granted leave to amend the two latter claims, Ms. Barclay did not amend them, and apparently does not intend to—her brief states that upon further review, she “has concluded that the facts do not support the strict elements of those causes of action.” She reiterated that position at oral

argument, and proceeds on appeal to only challenge the dismissal of her claim for intentional interference with an expectancy.

The complaint tells a 30,000-foot version of a story well familiar to readers of this Court's opinions. Dr. Castruccio, a medical doctor with various other business interests, hired Ms. Barclay in 1984 to work for him. In 2010, he signed a last will and testament. According to the complaint, Dr. Castruccio "disliked [Ms. Castruccio's] extended family" and "did not want his share of his and [Ms. Castruccio]'s joint estate to pass to [Ms. Castruccio's] extended family." He preferred that Ms. Castruccio participate in a joint estate plan designed to carry out his intentions, but when she refused, he moved forward with his own estate plan, which included signing the 2010 will.

The will names Ms. Barclay the beneficiary of the majority of Dr. Castruccio's Estate, but states that Ms. Castruccio is the residuary beneficiary of the Estate "only if she (a) survives [Dr. Castruccio]; and (b) wrote and executed a will prior to [Dr. Castruccio's] death; and (c) deposited the will for safekeeping with the Register of Wills." Ms. Castruccio did not fulfill the latter two requirements before Dr. Castruccio died on February 19, 2013. He left a probate estate worth approximately \$6.7 million. As a surviving spouse, Ms. Castruccio has the right to a spousal elective share of 50% of the value of the net probate estate. She has not yet claimed her elective share, but instead has "filed extensions to take her elective share every three months since November 2013." (This, we understand, is the subject of yet another pending appeal.)

According to the complaint, Ms. Castruccio went on "to file seven lawsuits in order

to overturn [Dr. Castruccio’s] estate plan,” and also filed with the Anne Arundel County State’s Attorney’s office “multiple versions of a 21-page memorandum” asserting that Ms. Barclay and the Estate’s personal representative “st[ole] the Castruccios’ money.” The State’s Attorney investigated the claims, but declined to file charges. The complaint briefly describes the lawsuits, which included a caveat action against the 2010 will (“Caveat Case”); an action challenging the transfer of certain deeds (“Deed Case”); a declaratory judgment action to construe the will (“Will Construction Case”); a lawsuit against Ms. Barclay alleging she violated her notarial duty (“Notary Case”); and a lawsuit against the personal representative of the Estate. The complaint also alleges two attempts by Ms. Castruccio to have the Estate’s personal representative removed, and a case brought by the Estate against Ms. Castruccio “for her failure to comply with an order from the Orphans’ Court . . . requiring [her] to provide access to [the Castruccios’] office and produce documents” (“Contempt Case”).

These actions culminated in the following allegations that, Ms. Barclay contends, stated a claim for intentional interference with an expectancy:

104. [Ms. Barclay] was aware of [Dr. Castruccio]’s estate plan.

105. [Ms. Barclay] understood that she would be the beneficiary of the residuary estate if [Ms. Castruccio] did not have a will filed for safekeeping at the Register of Wills for Anne Arundel County.

106. [Ms. Barclay] knew that [Ms. Castruccio] did not comply with the conditions of the 2010 Will.

107. [Dr. Castruccio] told [Ms. Barclay] that she would be taken care of.

108. Under [Dr. Castruccio]’s estate plan, [Ms. Barclay]

should receive the entire residuary Estate less the value of [Ms. Castruccio]’s elective share if [Ms. Castruccio] ever makes the election.

109. [Ms. Castruccio] has interrupted the administration of the Estate with litigation.

110. [Ms. Castruccio] wasted approximately half of the Estate on attorneys’ fees and costs by filing a tsunami of litigation.

111. None of [Ms. Castruccio]’s cases have merit.

112. [Ms. Castruccio] knows her allegations are false and only done for the purpose of preventing [Ms. Barclay] from receiving the inheritance [Dr. Castruccio] intended for her.

113. [Ms. Castruccio] continues to waste the Estate on attorneys’ fees by engaging in expensive and time-consuming litigation.

114. [Ms. Castruccio] continues litigating in order to prevent [Ms. Barclay] from inheriting her share of [Dr. Castruccio]’s Estate.

Ms. Castruccio moved to dismiss all three counts in the complaint, and the circuit court granted the motion. In a footnote addressing the intentional interference with an expectancy claim, the court stated that “Intentional Interference with an Expectancy is not a Cause of Action under Maryland law.” The court found that the Court of Appeals had yet to recognize such a tort, but if it had, the complaint failed to allege fraud, duress, or tortious conduct that could support it. Moreover, the court concluded, any such claim would not yet be ripe because Ms. Barclay had not yet exhausted her probate options.

II. DISCUSSION

When reviewing a decision to grant a motion to dismiss for failure to state a claim,¹

¹ Ms. Barclay phrases the Questions Presented as follows:

1. Did the Circuit Court err when it ruled that the tort,

“we must determine whether the complaint, on its face, discloses a legally sufficient cause of action.” *Schisler v. State*, 177 Md. App. 731, 743 (2007) (citations omitted). In so doing, “we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party.” *Converge Servs. Grp. v. Curran*, 383 Md. 462, 475 (2004).

The circuit court began by concluding that the tort of intentional interference with an expectancy has not been recognized in Maryland. Ms. Barclay disputes this conclusion, and, relying on *Anderson*, 339 Md. at 227, asserts that “[t]he Court of Appeals stated that the tort of intentional interference with an expectancy is available to Maryland litigants.” That’s not right. In *Anderson*, the Court considered the possibility and the possible contours of such a tort, but ultimately *declined* to decide whether the tort was available under Maryland law. *Id.* at 227 (“In this case, however, we need not decide whether or how far to extend our law to embrace these causes of action [*i.e.*, intentional interference with an expected inheritance and fraud in the procurement of a will] . . .”). The court didn’t need to take that step because, it found, the beneficiary hadn’t alleged facts sufficient to establish the tortious conduct that would, if recognized, give rise to the claim.

We reach the same conclusion here. We summarize the two reported cases that address whether the tort exists under Maryland law, then explain that, even if the cause of

intentional interference with an expectancy, is not a cause of action under Maryland law?

2. Did Darlene adequately plead facts to succeed on a claim of intentional interference with an expectancy?

action were recognized in Maryland, Ms. Barclay's complaint was dismissed properly because, as the circuit court found, she "does not allege any fraud, duress or other tortious act which prevented the decedent from making a gift to Plaintiff."

The first case is *Anderson*, in which the decedent changed his will based on the influence of a cousin. *Id.* at 220. The cousin, a lawyer, had convinced the decedent to leave most of the estate to him, and drafted a new will that the decedent executed. *Id.* The plaintiff was the decedent's daughter, and she failed to file a caveat proceeding within the limitations period. *Id.* Her circuit court complaint alleged that the cousin had unduly influenced her father to change his will, and specifically alleged two causes of action: conversion and fraud. *Id.* at 221. The circuit court dismissed, holding that the conversion claim failed because it was based on a mere expectancy interest and that the fraud claim failed because there were no allegations that the cousin had made misrepresentation to the daughter. *Id.* at 221.

While the case was pending before this Court, the Court of Appeals granted the daughter's petition for a writ of *certiorari*. *Id.* at 222. Among other things, the daughter asked the Court to recognize a cause of action for tortious interference with an expected inheritance, even though it had not been pled:

Anderson's new attorney, apparently realizing the difficulties associated with the causes of action stated in the complaint, attempts to reframe the issues for appeal to be 1) whether the complaint states a cause of action for tortious interference with an expected inheritance, 2) whether the complaint states a cause of action for fraud in the procurement of a will, and 3) whether the complaint is sufficient to withstand dismissal despite the fact that it did not contain the legal theories that

would support a right to recovery.

Id. But the Court declined to recognize either cause of action: “In this case, [] we need not decide whether or how far to extend our law to embrace the[] causes of action [tortious interference with an expected inheritance or fraud in the procurement of a will] because we hold that the complaint does not adequately allege undue influence, which forms the basis for both claims.” *Id.* at 227.

Four years later, in *Geduldig*, this Court addressed directly “whether Maryland recognizes the tort of intentional interference with expected inheritance.” 129 Md. App. at 492. And we came closer to recognizing the tort than the Court of Appeals had in *Anderson*: we predicted that the Court of Appeals would recognize the tort under certain circumstances. Even so, the requisite circumstances didn’t exist in that case. The plaintiffs were two of the decedent’s children who alleged that their sibling had unduly influenced their mother to execute a will and create a revocable trust that left a significant portion of the estate to the sibling and almost nothing to them. *Id.* at 492–93. The children filed a caveat action and a civil action that were consolidated. *Id.* at 493. Both actions alleged undue influence and fraud, and the civil action alleged tortious interference with expected inheritance as well. *Id.* at 493–94. The plaintiffs sought compensatory damages, punitive damages, and the imposition of a constructive trust on assets distributable under the trust. *Id.* at 494.

The trial court did not reach the question of whether the tort of intentional interference with expected inheritance was recognized under Maryland law, and instead

granted the siblings’ motion for summary judgment on the ground there was insufficient evidence of undue influence or fraud. *Id.* at 494. We reversed, holding that the circuit court had erred because the evidence was sufficient to create a jury issue as to undue influence. *Id.* at 511. But because the question would likely arise on remand, we also considered whether the tort of intentional interference with expected inheritance was recognized in Maryland law.

Our analysis of that question focused on the available remedies. We observed first that under § 774A of the *Restatement (Second) of Torts*—which the Court of Appeals has adopted, *Rite Aid Corp. v. Lake Shore Investors*, 298 Md. 611 (1984)—punitive damages (among other types of damages) are allowed when seeking redress for the tort of interference with contract or a prospective contractual relation. 129 Md. App. at 507. We went on to reason that such damages would also likely be available for a tortious interference with expected inheritance because the corresponding section of the *Restatement* (namely § 774B²) references § 774A, and at least one other court has stated that the damages available under both sections are the same. *Id.* at 507 (citing *King v. Acker*, 725 S.W.2d 750, 754 (1987)). The plaintiffs in *Geduldig* argued that the tort should be recognized because punitive damages, as well as damages for emotional distress and harm to reputation, would not be available for their undue influence and fraud claims. *See*

² Section 774B of the *Restatement (Second) of Torts*, tortious interference with expected inheritance occurs when “[o]ne who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received.”

id. at 508–09.

But we disagreed and “decline[d] to recognize the tort where the sole reason is an expansion of traditional remedies, as opposed to a situation, not before us, where the traditional remedy might be insufficient to correct the pecuniary loss.” *Id.* at 509. Although we did not foreclose the possibility of the tort under Maryland law as a gap-filler in cases where traditional remedies left a party without a remedy, we concluded that the traditional remedies available for undue influence and fraud were sufficient to correct any pecuniary loss. *Id.* at 509 (“[T]he Court of Appeals would recognize the tort if it were necessary to afford complete, but traditional, relief.”). We analogized to the Court of Appeals’s decision *Kann v. Kann*, in which the Court declined to recognize a “universal or omnibus tort for the redress of breach of fiduciary duty by any and all fiduciaries.” 344 Md. 689, 713 (1997). Much as the Court had decided “not [to] preside over the death of contract by recognizing as a tort a breach of contract that was found to be in bad faith,” *id.* (citing *K&K Mgmt. Inc. v. Lee*, 316 Md. 137,169 (1989) and *Alexander & Alexander, Inc. v. B. Dixon Evander & Assocs.*, 336 Md. 635, 650 (1994)), the court viewed a “unisex” tort of breach of fiduciary duty as the death of equity. From this, we reasoned in *Geduldig* that there was no gap to fill, that the remedies available for undue influence and fraud were sufficient to compensate the plaintiffs for any pecuniary loss they might be able to prove, and thus that there was no need for a new remedy in tort.

This case presents an even less compelling opportunity to recognize a new tort. As an initial matter, Ms. Barclay does not allege undue influence or fraud in the procurement

of the will—to the contrary, she is a significant beneficiary of the will and does not object to it. The wrongful or tortious conduct she alleges here is the *seriatim* filing of meritless lawsuits. She acknowledges that she has a remedy for such wrongful conduct under Maryland Rule 1-341, which would allow her to recover costs and attorneys’ fees if she could prove that Ms. Castruccio maintained an action “in bad faith or without substantial justification,”³ or through the existing torts of abuse of process or malicious use of process, counts she pled and lost and doesn’t appeal. Ms. Barclay concedes that filing Rule 1-341 motions in Ms. Castruccio’s individual cases would be “ineffectual” because they likely would be unsuccessful. (Indeed, at oral argument, counsel for Ms. Barclay did not dispute that such attempts had already been unsuccessful.) She counters that Rule 1-341 is not an adequate remedy because it is not any one case but rather the “aggregate” of all the cases that has prevented Ms. Barclay from receiving her inheritance:

One of [Ms. Castruccio]’s cases taken in isolation could be viewed as seriously misguided but not necessarily maintained in bad faith. In the aggregate, especially against [Ms. Castruccio]’s professed desire to punish [Ms. Barclay] and prevent her from receiving her inheritance, it is a different story. The magnitude of [Ms. Castruccio]’s litigation is breathtaking. She tried to bring criminal charges against [Ms.

³ Rule 1-341 provides in relevant part:

(a) In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys’ fees, incurred by the adverse party in opposing it.

Barclay]. [] She brought three cases, the Caveat Case, Deed Case and Will Construction Case, to overturn the effect of the Will only to lose all three cases. [] After losing the Deed Case, [Ms. Castruccio] filed the Notary Case in order to recover from [Ms. Barclay] on yet another basis. [] In addition, [Ms. Castruccio] continually shifts her recollections and explanations under oath. [] Such behavior shows that she makes allegations based on convenience to further her litigation posture. In the aggregate, [Ms. Castruccio]’s litigation is designed to wipe out [Ms. Barclay] and the Estate. Md. Rule 1-341 was not designed to address [] a scorched-earth litigation strategy.

We understand Ms. Barclay’s frustration, but that doesn’t mean that Ms. Castruccio’s alleged actions were tortious. That is, even if we were to decide that Rule 1-341 were an inadequate remedy in this situation—which we don’t, and its inadequacy is, in any event, a doubtful proposition—the determinative question is whether the complaint contains factual allegations sufficient to support the existence of an independently wrongful act. And it doesn’t. As the Court of Appeals stated in *Anderson*, the tort of interference with an inheritance (if recognized) would require the commission of an independently wrongful or unlawful act. 339 Md. at 223–24. “Wrongful or unlawful acts include common law torts and violence or intimidation, defamation, injurious falsehood or other fraud, violation of criminal law, and the institution or threat of groundless civil suits or criminal prosecutions in bad faith.” *Id.* at 224 (cleaned up). Ms. Barclay concedes that the facts do not support claims for malicious use of process or abuse of process, and admits that she can’t prove that the individual cases were brought in bad faith. So even when viewed in a light most favorable to Ms. Barclay, the complaint cannot support a claim for interference with expected inheritance, even if we were to

recognize one.⁴

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**

⁴ The circuit court also held that Ms. Barclay’s complaint was not yet ripe:

Additionally, in jurisdictions that recognize this action, ‘a substantial number of courts permit plaintiffs to maintain such actions only when they have exhausted probate proceedings or can show that such proceedings would not have provided adequate relief.’ [*Anderson*, 339 Md. at 223.] Thus, even if Intentional Interference with an Expectancy was a cause of action in Maryland, Plaintiff’s complaint is not yet ripe, as she has not exhausted probate proceedings.

Because the parties did not fully brief this issue, we observe, without deciding, that the ongoing probate proceedings and the fact that Ms. Barclay still hasn’t collected her inheritance leave questions about the ripeness of her claim, if we were recognizing one.