

G044479

IN THE COURT OF APPEAL OF
OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BRENT BECKWITH,

Plaintiff and Appellant,

vs.

SUSAN DAHL,

Defendant and Respondent.

AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFF AND APPELLANT BRENT
BECKWITH

**Appeal from the Superior Court of California
County of Orange
Honorable Luis A. Rodriguez
Case No. 30-2010-00394872**

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COURT OF APPEALS RULE 8.200(C)(3) STATEMENT

Pursuant to Court of Appeal Rule 8.200(c)(3), counsel for *Amicus Curiae* Consumer Attorneys of California certifies that this brief was not written in whole or part by counsel for any party, and that no person or entity other than *Amicus Curiae* or its counsel has made a monetary contribution to the preparation or submission of this brief.

TABLE OF CONTENTS

COURT OF APPEAL RULE 8.200(c)(3) STATEMENT.....i

TABLE OF AUTHORITIES.....iii

INTEREST OF THE AMICUS.....iv

INTRODUCTION.....v

ARGUMENT.....1

 I. EXTENDING THE TORT OF INTENTIONAL INTERFERENCE WITH
 AN EXPECTANCY IS SOUND POLICY AND MERELY BRINGS
 CALIFORNIA IN LINE WITH THE CLEAR MAJORITY TREND.....1

 II. THIS COURT SHOULD RECOGNIZE THE TORT AS TO
 UNREGISTERED SAME SEX COUPLES BECAUSE THE PROBATE
 LAWS OF INTESTACY DO NOT APPLY TO SUCH COUPLES, AND
 THUS, THEY FACE A POTENTIAL HARM WITHOUT A
 REMEDY.....5

CONCLUSION.....6

TABLE OF AUTHORITIES

Cases	Page
<i>Allen v. Hall</i> (Ore. 1999) 328 Ore. 276.....	3
<i>Burns v. The Neiman Marcus Group</i> (2009) 173 Cal.App.4th 479.....	1
<i>Cedars-Sinai Medical Center v. Superior Court</i> (1998) 18 Cal.4th 1.....	1
<i>Hagen v. Hickenbottom</i> (1995) 41 Cal.App.4th 168.....	4
<i>Heyer v. Flaig</i> (1969) 70 Cal.2d 223.....	2
<i>Korea Supply Co. v. Lockheed Martin Corp.</i> (2003) 29 CA.4th 1134.....	4
<i>Laird v. Blacker</i> (1992) 2 Cal.4th 606.....	2
<i>Lucas v. Hamm</i> (1961) 56 Cal.2d 583.....	2
<i>Munn v. Briggs</i> (2010) 185 Cal.App.4th 578.....	v, 2, 3
 Statutes	
California Civil Code § 1708.....	1
California Civil Code § 3523.....	1
 Other Authority	
Renfroe, Jared S., <i>Does Tennessee Need Another Tort? The Disappointed Heir in Tennessee and Tortious Interference With Expectancy or Gift</i> (2010) 77 Tenn.L.Rev. 385.....	4
Prosser on Torts (4 th ed. 1971) pp. 3-4.....	4-5

INTEREST OF THE AMICUS

The Consumer Attorneys of California (“Consumer Attorneys”) is a voluntary membership organization representing approximately 6,000 associated attorneys practicing throughout California. The organization was founded in 1962. Its membership consists primarily of attorneys who represent individuals subjected in a variety of ways to personal injury, employment discrimination, and other harmful business and governmental practices. Consumer Attorneys has taken a leading role in advancing and protecting the rights of injured Californians in both the courts and the Legislature.

As an organization representative of the plaintiff’s trial bar throughout California, including many attorneys who represent consumers in tort cases, Consumer Attorneys is interested in the significant issues presented by the issue presented in this case. In fact, protecting California citizens from the damages caused by the efforts of an individual or a business to deprive another of their rights and entitlements is a part of the organization’s core mission.

INTRODUCTION

The decision in this case has the potential to dramatically affect the rights of California citizens who are left without a remedy in probate court for harm resulting from a defendant's intentional interference with the plaintiff's expected inheritance. In *Beckwith v. Dahl*, the Superior Court refused to recognize the tort of intentional interference with an expectancy and deferred the decision to this Court. The recognition of the right of non-married and unregistered domestic partners to bring an action for intentional interference with an expected inheritance is essential for those who, like Beckwith, otherwise have no probate remedy.

Half of the states have already recognized this right of action and California is poised to follow their lead. In *Munn v. Briggs* (2010) 185 Cal.App.4th 578, this Court declined to recognize a separate right of action because under the facts in that case that an adequate remedy in probate law already existed. Here, although Beckwith and his partner had devoted their lives to each other, they never registered as domestic partners, a status many marriage-rights activists find demeaning. Thus, he is denied standing in probate court, and this Court should take this opportunity to follow up on the *Munn* decision by recognizing the right of action in this factual context.

Amicus Consumer Attorneys of California provide this brief upon invitation from this Court in order to explain and clarify the issues presented in this appeal.

ARGUMENT

I. EXTENDING THE TORT OF INTENTIONAL INTERFERENCE WITH AN EXPECTANCY IS SOUND POLICY AND MERELY BRINGS CALIFORNIA IN LINE WITH THE CLEAR MAJORITY TREND.

California has long recognized that for every wrong there is a remedy and that every person is bound to refrain from injuring the person or property of another. Civ. Code § 1708; Civ. Code § 3523. The recognition of this tort is consistent with the purpose behind these statutes. In this case, Dahl intentionally interfered with the signing of her brother's will to ensure that she would inherit the entirety of his estate despite her brother's own wishes. This action harmed Beckwith because he had a justifiable expectation that he would inherit a 1/2 share of his partner's estate as he and his partner had planned. In cases like this, where the doors of the probate court are shut to Beckwith, a tort should be available to remedy the harm.

The recognition of a new tort is governed by general considerations of policy. *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1; *Burns v. The Neiman Marcus Group, Inc.* (2009) 173 Cal.App.4th 479. In *Cedars-Sinai*, the Supreme of California established a balancing test to be used when determining whether or not to recognize a new tort. A court must weigh the social benefits which exceed those created by existing remedies against the costs and burden that the recognition would bring. *Id.* at 8.

The cost-benefit analysis here clearly favors Beckwith and the extension of the tort to this factual situation. A half century ago, the California Supreme Court recognized

that a prospective inheritance is deserving of protection under the common law and held that such inheritances were protected from *negligent* interference. *See, Lucas v. Hamm* (1961) 56 Cal.2d 583, 591 [Intended beneficiaries could sue to recover legacies lost through a negligent preparation of a will]. The California Supreme Court found that protecting the prospects of inheritance prevents future harm. *Heyer v. Flaig* (1969) 70 Cal.2d 223, 228 (overruled on other grounds in *Laird v. Blacker* (1992) 2 Cal.4th 606, 620). The Supreme Court has precluded the *negligent* interference with an expectancy and the same policy reasons support the extension to protection of such expectancies from *intentional* interference.

The potential burden that would be created by the tort's extension is negligible, if any. The respondent claims that recognition would 1) allow plaintiffs to bypass the requirements for a valid will and 2) is not necessary because the Legislature has already extensively regulated inheritance law in the California Probate Code. Both of these claims are unfounded.

In *Munn*, this Court declined to apply the tort to the facts in that case for the very reason that an adequate remedy already existed in the Probate Code. *supra*. A decision by this Court permitting the cause of action is consistent with *Munn* because here there is no other adequate remedy. This requirement would ensure that the administration of estates as set out in the Probate Code would not risk disruption with tort claims.

It is accurate to say, as the respondent does, that the Legislature has already extensively regulated this area of law. The Probate Code statutorily sets forth the rules for the administration of estates. But this factual scenario is not addressed by the Probate

Code. Since the common law exists independent of, and side-by-side with, California's statutory law, there is no impediment to resolving the legal dispute in this case on the basis of standard common law principles. This is especially appropriate given that the Legislature has not manifested any intent to occupy the field with respect to relationships not controlled by or defined in the Probate Code. This conclusion is illustrated by the fact that it is the common law which recognizes the *negligent* interference with an expectancy and the Legislature has not stepped in to overrule these cases.

Furthermore, any concern that this new tort will create an explosion of litigation is also without merit. The tort has already been extensively developed by the other states which have recognized it and which set forth stringent elements that must be met for a claim to proceed. *Allen v. Hall* (Ore. 1999) 328 Ore. 276, 284, and *Munn* 185 Cal.App.4th at 588 (the *Munn* court examined the development of the tort in various jurisdictions). There is no evidence that those states have experienced any increase in litigation due to this tort's recognition.

This Court could adopt, for example, the requirements established in Oregon for this tort. *Allen, supra*, 328 Ore. at 285. Alternatively, this Court could choose to analogize the requirement for establishing a cause of action in this context to those necessary to establish a claim for intentional interference with a prospective economic advantage, which include: 1) a relationship between the plaintiff and a third party, with a probability of future economic benefit to the plaintiff; 2) the defendant's knowledge of this relationship; 3) intentional and wrongful conduct on the part of the defendant, designed to interfere with or disrupt the relationship; 4) actual disruption or interference;

and 5) economic harm to the plaintiff as a proximate result of the defendant's wrongful conduct. *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153. All five of these elements would have to be proven to be more likely than not to have occurred for a plaintiff to recover in such an action. These compulsory elements would ensure that only meritorious claims would see any recovery.

The extension of the tort merely brings California into line with the majority trend. Twenty-five states currently recognize the tort of intentional interference with an expected inheritance. Renfroe, Jared S., *Does Tennessee Need Another Tort? The Disappointed Heir in Tennessee and Tortious Inference with Expectancy of Inheritance or Gift* (2010) 77 Tenn.L.Rev. 385, 393-396. Only a minority of states (13) have definitively chosen not to recognize this tort. *Id.*

In California, two published decisions address the issue. One, *Hagen v. Hickenbottom* (1995) 41 Cal.App.4th 168, found that the plaintiff failed to establish the elements of the tort, but declined to take a position on whether to recognize the tort. The other, *Munn v. Briggs, supra.*, decided by this Court, declined to recognize the tort where an adequate remedy exists at law.

It is time, now, to extend relief in the factual context presented in this case. As Prosser stated, the test for when a tort claim should be recognized is "When it becomes clear that the plaintiff's interests are entitled to legal protection against the defendant." Prosser on Torts (4th ed. 1971) pp. 3-4. The facts of this case make it clear that the plaintiff should be entitled to protection, especially since he has no remedy in the Probate Court and thus, the time is now.

II. THIS COURT SHOULD RECOGNIZE THE TORT AS TO UNREGISTERED SAME SEX COUPLES BECAUSE THE PROBATE LAWS OF INTESTACY DO NOT APPLY TO SUCH COUPLES AND THUS, THEY FACE A POTENTIAL HARM WITHOUT A REMEDY.

Additionally, this Court should, as a matter of public policy, recognize the application of this tort to unregistered same sex couples because under the current state of California law, couples who reject civil unions or domestic partnership registration on principle are more vulnerable to unintended disinheritance than their legally-married counterparts in California.

When a married person dies without a will in California, the Probate Code's intestacy statute sets forth an intricate scheme dictating the surviving spouses' inheritance rights. In the case of an equally-committed, but non-registered same-sex partnership, no such statute exists. Domestic partner registration is a far cry from marriage and is chosen or not chosen for a myriad of different reasons. Registration should not be the determining factor as to whether a person has a right to challenge an inheritance that has been wrongly interfered with. Non-registered couples should have the right to a remedy that will make them whole in the case of an intentional interference with the expected inheritance.

Furthermore, because of the still-prevalent stigma against homosexuality, same-sex partners are at a greater threat of having disapproving family members intentionally tamper with their expected inheritances. The current state of the law provides no protection against such abuse.

CAOC urges this court, at the very least, to recognize the tort of intentional interference with an expected inheritance as to unregistered same-sex partners. This will help to bring equity to the laws of inheritance and ensure that true wrongs are righted regardless of a plaintiff's sexual orientation.

CONCLUSION

Respondent's actions rise to the level of tortious conduct and this court should follow the lead of the twenty five other states which recognize this tort and allow Beckwith his day in court.