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Court of appeal restricts suits involving tortious interference with inheritance



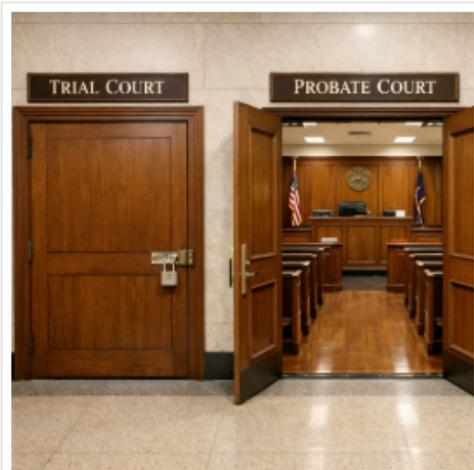
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In the last decades, courts have recognized as tortious conduct the intentional interference by one person in the expected inheritance of another. The tort was first articulated in the Restatement (Second) of Torts in 1979 at section 774B as follows: *One 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 is subject to liability to the other for loss of the inheritance or gift.*

Courts, in general and in California, have been reluctant to embrace the tort of intentional interference with expected inheritance, or "IIEI," and frequently view it as a cause of action intended to avoid

the stricter requirements and shorter limitations periods for contests, as well as the penalties imposed by a no-contest clause. Only where no probate remedy exists have courts permitted such suits. In the recent case of *Halperin v. Halperin*, 118 Cal.App.5th 193 (2026) (*Halperin*), that option has narrowed further.

California first recognized IIEI as a valid cause of action in *Beckwith v. Dahl*, 205 Cal.App.4th 1039 (2012) (*Beckwith*). In that case, plaintiff Beckwith and his partner, MacGinnis, were in a committed relationship for nearly 10 years. MacGinnis's only living relative was an estranged sister, defendant Dahl. At some point during their relationship, MacGinnis showed Beckwith a will saved on his computer that would split his assets between Beckwith and Dahl. It was never printed or signed. In May 2009, with his health declining, MacGinnis was confined to a hospital awaiting surgery and asked Beckwith to locate the will. When Beckwith could not, MacGinnis asked him to prepare a new one. Using a sample from the internet, Beckwith drafted a will in which MacGinnis left his estate to Beckwith and Dahl in equal shares. Before presenting this will to MacGinnis, however, Beckwith shared it with Dahl, who stalled the process. MacGinnis had his surgery and died days later, intestate, his estate passing entirely to Dahl. (*Beckwith* 1046-47.) Beckwith sued on what were then the novel grounds of IIEI, and Dahl's demurrer was sustained by the trial court without leave to amend.

The Court of Appeal reversed, holding that California would "recognize the tort of IIEI if it is necessary to afford an injured plaintiff a remedy." (*Beckwith* 1056.) *Beckwith* essentially carved out a space for IIEI to bridge the gap between a tort claim and a will or trust contest. In the former, no remedy was available if the tortious act was directed at the decedent rather than the plaintiff. In the latter, no remedy was available if the testamentary document was never executed. The appellate decision in *Beckwith* lays out a cause of action for IIEI with six elements: (1) an expectation of receiving an inheritance; (2) causation (i.e. the interference with that expectancy by a third party); (3) deliberate and intentional interference; (4) interference that was independently tortious; (5) a plaintiff who suffers damages; and (6) tortious conduct was directed at someone other than the plaintiff, such that the plaintiff has no other remedy at law. (*Beckwith*, at 1057.)

Those critical of the tort of IIEI argue that the cause of action runs counter to core policies of inheritance laws that protect the freedom of disposition by a testator, before whose death no one has any interest in an expectancy, and similarly violates settled tort policies that prohibit a plaintiff from pursuing an action for injuries to another. The only way to compensate a plaintiff for such interference is to recognize a right to an expectancy during the lifetime of another, a right that estate and trust law has steadfastly rejected. (See, e.g. Goldberg and Sitkoff, *Torts and Estates: Remediating Wrongful Interference with Inheritance*, Stanford Law Review, Vol. 65:335 (2013).)

California courts considered IIEI several times after *Beckwith*. In the unpublished opinion *Webster v. Webster*, 2019 Cal. App. Unpub. LEXIS 740, the Court of Appeals affirmed the trial court's dismissal due to, *inter alia*, a failure to prove the second of the *Beckwith* elements: that defendant's action interfered with an expected inheritance. In its holding, the court spoke in the cause-in-fact language familiar in traditional tort causes of action. Quoting *Beckwith*, the court stated that a plaintiff must allege facts to show that "but for the interference of a third party, [the plaintiff] would have inherited from the decedent." (*Webster* at 15.)

In *Gomez v. Smith* 54 Cal.App.5th 1016 (2020) ("*Gomez*"), the Court of Appeals again revisited IIEI. There, decedent Frank married plaintiff Louise in November 2014, 60 years after breaking off their first engagement. In the intervening years, Frank was married, fathered four children with his first wife, and widowed. Within 18 months of his marriage to Louise, he suffered a stroke and other health problems, was admitted to the hospital in June 2016, and thereafter transferred to a nursing home.

The relevant events took place over a period of only six days: On Aug. 15, Frank met with a lawyer, Erik Aanestad, to revise his existing trust to benefit Louise. On Aug. 19, he went home on hospice care, his condition terminal. On Aug. 20, Frank was on morphine and in bed. Aanestad and his paralegal came to meet with Frank in his home to have him sign the trust amendment, but two of Frank's children barred their entrance, calling the sheriff to escort them from the property. The trust amendment was never signed, and Frank died early the next day.

In her suit against Frank's children, Louise alleged several causes of action, including IIEI. The trial court found in her favor, and the Court of Appeal affirmed, finding the elements of *Beckwith* present. *Gomez* left unclear whether a plaintiff like Louise needed to also prove that, if unhindered, the decedent had the capacity to sign the testamentary instrument, though this presumably would be necessary to prove the element of causation. This was highly questionable on the *Gomez* facts, as Frank was heavily medicated, vomiting, incontinent, confined to bed and capable of expressing only a few words. He would have needed the ability to review and understand 93 pages of complex estate-planning documents.

In the recent case of *Halperin v. Halperin*, 118 Cal.App.5th 193 (2026), the court has taken steps to narrow even further the universe of successful IIEI suits. In this new case, decedent Warren Halperin established a trust in 2014 benefiting his three children. While Warren was still alive, his daughter Susan reviewed the trust and objected to her father, believing it to be more favorable to her brothers, David and Michael, who received their shares outright on their father's death, while Susan's share was funded with IRA accounts, subject to income tax when withdrawn, and retained in trust. Warren told Susan that he had consulted an attorney to amend the trust and make the shares equal.

When his efforts to do so were, in her view, interfered with by her brothers, Susan brought a petition while Warren was still alive for elder abuse, alleging, *inter alia*, the brothers' interference with Warren's estate planning. Warren died three months later, and Susan dismissed her petition shortly thereafter. Presumably because matters could not be satisfactorily resolved following Warren's death, Susan brought a new action the following year, this time alleging IIEI. Her brother David filed a demurrer which was sustained; the Court of Appeals affirmed.

In its decision, the *Halperin* court quotes *Beckwith* with approval, reiterating that "[A] court should recognize the tort of IIEI if it is necessary to afford an injured plaintiff a remedy," but warning that the integrity of the probate system must be respected by "guarding against tort liability for inherently speculative claims." (*Beckwith* at 1056, *Halperin* at 199). The *Halperin* court focused on whether Susan had any other remedy for relief other than IIEI, noting that all parties agreed that that a plaintiff cannot recover for IIEI if an adequate probate remedy exists. (*Halperin* at 200.) *Halperin* also cited *Munn v. Briggs* 155 Cal.App.4th 578 (2010) ("*Munn*"), in which a brother sued his sister for IIEI, alleging that she exerted undue influence on their mother to execute a codicil that reduced his inheritance, and hoping that by bringing a tort action against his sister he would avoid triggering the no-contest clause in the codicil. The court dismissed his IIEI action because he had an adequate remedy in probate for the relief he sought.

Drawing on *Munn*, the *Halperin* court reasoned that Susan had standing in probate to seek relief against the actions of her brothers during their father's lifetime, and in fact had done so, alleging the same facts of interference that were repeated in her suit for IIEI. The court offered Probate Code 17200, for example, which permits a beneficiary to petition a court concerning the internal affairs of a trust. (*Halperin* at 201, 203.) The court "decline(d) to recognize the availability of tort relief whenever probate fails to afford a remedy that is identical to the IIEI tort in all respects." (*Id.* at 201) Notably, the *Halperin* court was unmoved by the fact that the probate remedy did not allow Susan to recover "tort damages against individual actors." (*Id.* at 202.) In other words, "a desire to punish alleged tortfeasors by imposing damages [does not] justify an IIEI claim where probate provides an adequate remedy." (*Id.* at 203.)

Halperin leaves practitioners in an uncertain position. Where a defendant's interference results in a document that injures a party, a post-death challenge in probate based on undue influence or fraud is a well-understood remedy that is time tested in California law since the enactment of Civil Code section 1575 in 1872. But such a challenge is not available when the tortious conduct results in the *non-execution* of a testamentary instrument; that was the circumstance that led the court in *Beckwith* to first recognize the tort of IIEI. *Halperin* now suggests that, even where the issue is non-execution of a document, if a plaintiff previously had standing to do so, the plaintiff must seek relief for the wrongful conduct in a probate proceeding.

The *Halperin* court repeatedly maintains that Susan had adequate access to a probate remedy during her father's life, in large part because Susan had previously alleged she had standing during her father's life. (*Halperin* at 201-02.) But, in general, pre-death actions of this kind are tenuous remedies at best. Probate Code sections 15800 and 16069, for example, limit or deny remedies to beneficiaries of a revocable trust, and the argument that such a trust is irrevocable because the settlor lacks capacity, triggering application of post-death remedies (*see Giralдин v. Giralдин* (2012) 55 Cal.App 4th 1058, and Probate Code 16069(b)), would require proving that incapacity in a lifetime hearing that would be both difficult and undesirable in a family situation. It also shifts the focus in that case from undue influence to incapacity when those causes are not analogous. Practitioners may rightfully question whether *Halperin* would have been decided differently had Susan not previously filed a probate action, and therefore necessarily alleged having standing in probate.

In reaching this conclusion, the court finds Susan's appeal to *Gomez* unconvincing. "...[E]ven if we view the facts in *Gomez* as being somewhat similar to the alleged interference by David and Michael here (i.e., they allegedly interfered with Warren's ability to implement his intent to modify the trust), we do not view *Gomez* as precedential on the question presented here - whether Susan had an adequate remedy in probate." (*Halperin* at 204.)

First adopted in California in *Beckwith v. Dahl* in 2012, the tort of IIEI occupies the novel space between established doctrines of tort liability and testamentary contests and, on its face, affords additional grounds for relief where a party's facts do not fit cleanly into established probate actions. With that said, *Halperin* cements the judiciary's disfavor for the remedy, and suggests that the court is prepared to restrict its application to all but the most limited of fact patterns.

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