Intentional Interference with Inheritance: Is It a Cause of Action in South Carolina?

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Intentional interference with inheritance is a tort cause of action that is gaining traction throughout the United States, but is it a valid claim in South Carolina? The answer is not yet.

In *Wellin v. Wellin*, Judge David C. Norton predicted that South Carolina would adopt the intentional interference with inheritance cause of action if faced with the question. 135 F.Supp.3d 502 (D.S.C. 2015). The court in *Wellin* articulated that based on *dicta* from the Supreme Court of South Carolina, the adoption of the tort by 25 other states, the recognition of the tort by treatises such as the Restatement (Second) of Torts, and relevant South Carolina case law, intentional interference with inheritance will be accepted as a valid cause of action in South Carolina.

Thus, while South Carolina has not yet officially recognized this cause of action, all the building blocks are in place for it to do so. If the right case comes before the Supreme Court of South Carolina, it is likely to adopt intentional interference with inheritance as a valid cause of action.

So, what exactly is the tort of intentional interference with inheritance? Similar to wrongful interference with contract, the elements required to prove intentional interference with inheritance are:

- Existence of an expectancy – someone actually expected to inherit or receive something.
- Intentional interference through tortious conduct – the interference was accomplished through fraud, undue influence, duress, abuse of fiduciary duty, forgery, suppression of a will, etc.
- Reasonable certainty that the expectancy would have been realized but for the interference – if someone hadn't interfered, the person would have received their expectancy.
- Damages – someone suffered an injury; most likely, they lost money or property.

In essence, the tort of intentional interference with inheritance creates liability for a person who intentionally and wrongfully prevents someone else from receiving an inheritance, an at-death benefit, or a lifetime gift.

If adopted, the effects will primarily be seen in probate, estate, and trust litigation. So, what makes a claim of intentional interference with inheritance different than other will contest claims? First, intentional interference with inheritance may allow a claimant a more favorable result.

Second, intentional interference with inheritance could potentially mean a larger recovery for

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an unlawfully disinherited individual because the claim allows for compensatory damages, emotional distress damages, and, in some cases, even punitive damages.

However, some legal scholars fear that adopting the tort will increase probate, trust, and estate litigation because the regulations regarding tort litigation are less stringent than those for will contests. On the other hand, some states argue that by requiring a litigant to first exhaust all probate court remedies, such as will contests (e.g., seeking to invalidate a will based on lack of capacity or undue influence), there will not be a drastic increase in probate, trust, and estate litigation.

Overall, it will be important to keep an eye out for the right case to come before the Supreme Court of South Carolina to see whether our state will adopt the tort of intentional interference with inheritance as a valid cause of action as predicted in *Wellin*.

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