

Attorney Malpractice—Failed Amendment Provisions

In *Iacono v Hicken*, the parents of Julie Iacono (“Iacono”) created a trust that named them as the trustees and beneficiaries, leaving the residue at their deaths in equal shares to their four children. The trust contained a provision that made it irrevocable upon either parent’s death.

In 1998, Iacono’s mother died and the father appointed Iacono as the new co-trustee. Two years later, in recognition of Iacono’s diligence in caring for him, the father hired an attorney, Keith Weaver, to amend the trust giving his home solely to Iacono, rather than the four children equally.

In 2001, Iacono’s father passed away. Shortly thereafter, Iacono’s siblings challenged the validity of the trust amendment, arguing that the trust was irrevocable at the time of the amendment and therefore the amendment was invalid. The siblings brought serious additional claims against Iacono relating to her actions as the trustee. At that point, Iacono hired an attorney, Bret Hicken, to represent her.

Ruling on summary judgment, the District Court agreed with the siblings that the amendment giving the home to Iacono was invalid. In the end, Iacono settled all her sibling’s claims against her and as a result received nothing from her parents’ estate.

Iacono subsequently brought a legal malpractice action against both attorneys Hicken and Weaver. Iacono claimed that Weaver committed malpractice when amending the trust. Iacono and Weaver settled their dispute before trial. Iacono claimed her probate litigator committed malpractice in the way he represented Iacono against her siblings. Hicken did not settle.

At trial, Iacono alleged that Hicken “failed to assert any defenses against summary judgment, failed to conduct discovery of his own, and failed to timely respond and object to Siblings’ discovery request” (¶ 4). Two of Iacono’s witnesses, including the siblings’ former attorney, testified that Hicken’s representation was far below the necessary standard of care and that if Hicken had properly argued the case, Iacono would have had “a good shot at prevailing” (¶ 5).

The District Court agreed that Hicken had breached a duty owed to Iacono. Nevertheless, the District Court was not persuaded that Iacono, even with adequate representation, had a good shot at prevailing against her siblings. The court held that because the substandard representation was not the actual or proximate cause of the damages suffered, Hicken did not commit attorney malpractice. The Appellate Court upheld the District Court’s decision and Iacono was again left with nothing. *Iacono v Hicken*, 265 P.3d 116 (Utah App. 2011).

By R. Zenock Bishop