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DESPINA ALICE CHRISTAKOS and HELEN ALEXANDRA CHRISTAKOS, Plaintiffs, vs. ANTHONY A. BOYADJIS, ESQ., Defendant.	SUPREME COURT OF NEW JERSEY DOCKET NO. 090214 APPELLATE DIVISION DOCKET NO. A-1107-23/AM-142-23 SAT BELOW: Hon. Francis J. Vernoia, P.J.A.D. Hon. Kay Walcott-Henderson, J.A.D. (Temporarily Assigned)
ANTHONY A. BOYADJIS, ESQ., Plaintiff, vs. AMERICAN ALTERNATIVE INSURANCE CORPORATION, Defendant.	CIVIL ACTION ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY DOCKET NO. MRS-L-59-20/731-21 SAT BELOW: Hon. Louis S. Sceusi, J.S.C. (Retired T/A on Recall)

BRIEF ON BEHALF OF PLAINTIFFS-RESPONDENTS, DESPINA ALICE CHRISTAKOS AND HELEN ALEXANDRA CHRISTAKOS, PURSUANT TO THE SUPREME COURT'S ORDER OF JUNE 10, 2025

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PRELIMINARY STATEMENT

The following brief is submitted pursuant to the New Jersey Supreme Court's ("Court") June 10, 2025 order permitting the parties to serve and file briefs in response to the Court's order granting the New Jersey State Bar Association's motion for leave to file a brief and argue as *amicus curiae*.

First, it is essential for the Court to consider that the underlying case has yet to be tried. The Court granted Plaintiffs' motion for leave to appeal from the decision of the Appellate Division affirming in part the Trial Court's denial of summary judgment as to Despina Alice Christakos ("Alice"), but reversing and granting summary judgment as to Plaintiffs, Helen Christakos ("Helen") ("Helen" and "Alice," collectively "Plaintiffs"). Plaintiffs' motion for leave to appeal to the Supreme Court was specifically to deal with the Appellate Division's blatantly wrong ruling dismissing Helen's claim. It is therefore respectfully submitted that any decision to be made by the Supreme Court that would modify existing case law should not be made until the underlying case is tried and a full evidential record is before the Court.

Second, there are certain underlying facts crucial to this Court's ruling:

1. Plaintiff, Helen Christakos, asked Defendant Anthony Boyadjis ("Boyadjis" or "Defendant") to review the 2003 wills of her uncles, Peter and Nick Christakos to determine if the wills met with her uncles' preferences.

Helen told Boyadjis via email (prior to introducing Boyadjis to her uncles), that she was almost certain that she was a per stirpes beneficiary of their estates. Helen was in fact correct about this. Peter and Nick were elderly bachelors who lived together, and they had no issue. Their primary goal was to leave their estates in the first instance to each other and, upon the passing of both, to specific relatives, including both Helen and Alice (who is Helen's mother, and the sister-in-law of Nick and Peter).

2. Had Defendant reviewed the 2003 wills, he would have seen that those wills adequately and clearly covered Peter and Nick's wishes, because under the 2003 wills, each brother left his estate to the other brother in the first instance. Defendant either did not review the 2003 wills or, if he did, he misread them.

3. Without having an engagement letter in place with either Nick or Peter, Defendant drafted new wills for both Peter and Nick. Neither Peter nor Nicks' new wills left the estates to the other as they intended. Rather, the wills left one-third of the estate to Alice, one-third to a church and one-third to a neighbor. In both cases, Defendant named himself as Executor.

4. Peter died on April 11, 2018. After Peter's death, Defendant called Plaintiffs to advise that Peter's will left one-third to Alice, one-third to a church and one-third to a neighbor. Both Alice and Helen were shocked at the news, as

the intent was for Nick to receive 100 percent of Peter's estate. Defendant refused initially to move to have Peter's will reformed due to survivor's error. Helen had to pay counsel to file a caveat to challenge Peter's 2018 will so that Nick would inherit Peter's money. It was not until months later that Defendant filed a motion to reform Peter's will. The question is, will Helen be made whole for the costs incurred to correct Defendant's admitted error.

5. In the spring of 2018, after Peter's death, the State of New Jersey initiated a proceeding to assign Nick, who had advanced dementia, a legal guardian. Boyadjis filed a motion to be appointed as Nick's guardian. Nick's state-appointed case worker, Bruce Glatter, advised Helen and Alice that, based on his interactions and observations of Boyadjis, he feared, among other things, that Boyadjis did not have Nick's best interests at heart and might try to swindle Nick, (including because he had appointed himself as Executor of Nick's estate). To protect Nick, Helen incurred legal costs to challenge Boyadjis' guardianship petition and request that she be appointed Nick's guardian. The State of New Jersey recommended that Helen be appointed as Nick's guardian, and that Boyadjis not be granted guardianship, including because of Bruce Glatter's concerns. However, this petition was never affirmatively decided, as Nick passed away prior to the hearing. The question is, will Helen be made whole for the costs she incurred to protect Nick.

6. Defendant had Nick sign a new will on April 7, 2018. There is overwhelming evidence that Nick, who suffered from advanced Alzheimer's, was not mentally competent to sign a will on that date. This is evidenced by multiple doctor examinations and reports as well as the testimony of the witness to Nick's will who stated that Nick was completely unresponsive and had no idea of what he was signing.

6. When Nick passed away on October 2, 2018, Nick's new 2018 will was subject to challenge as Nick was not competent to execute the will. Defendant refused to reform Nick's will or file a motion to revert to Nick's 2003 will, because he claimed that Nick was competent and, moreover, that he was Executor of Nick's Estate. Helen was forced on her own to challenge the will for her benefit and Alice's benefit, and to argue that Nick's 2003 will should be the only will subject to probate. The question is, will Helen be made whole for the costs she incurred.

7. The probate action resulted in a settlement whereby the church and neighbors who were beneficiaries of the 2018 will accepted significantly less than that provided by Nick's 2018 will. Helen did not inherit anything from Nick's will. Helen was appointed Administrator of Nick's Estate, claims against Defendant were preserved; and the Probate Court assigned the Estate's rights to sue Defendant to Helen.

8. In a motion before the Trial Court, Plaintiffs moved to allow Helen to assert claims on behalf of the Estate as per the order of the Probate Court. The Trial Court denied Plaintiffs' motion; a ruling that is interlocutory and subject to appeal.

9. The Appellate Division's ruling on the Trial Court's denial of summary judgment, which took almost one year; granted summary judgment against Helen, based on the blatantly incorrect conclusion that Nick had no intent of leaving any of his Estate to Helen. Such a conclusion was in direct contradiction to Defendant's notes from his meeting with both Peter and Nick in the fall of 2017 that Helen was an intended beneficiary. Defendant's deposition testimony confirmed this fact. Moreover, Nick's "intent" in April 2018 is irrelevant if Nick was in fact not competent to execute a will at that time. Plaintiffs therefore moved to the Appellate Division for reconsideration, which motion was denied; but the Supreme Court granted the motion for leave to appeal on the narrow issues relating to Helen.

ARGUMENT

POINT I.

THE SUPREME COURT'S REVIEW IS LIMITED TO THE ISSUES RAISED IN PLAINTIFFS' MOTION FOR LEAVE TO APPEAL

Plaintiffs' motion for leave to appeal dealt specifically with Helen's claim that "absent reversal, Helen is left without legal recourse for her damages suffered as a result

of Boyadjis' malpractice and the Appellate Division's erroneous ruling." That was the sole issue raised by Plaintiffs and the basis of the Supreme Court's grant of the motion for leave to appeal.

Defendant thereafter filed his own motion for leave to appeal to the Supreme Court seeking a review of the entire Appellate Division decision, including but not limited to, "which text to apply when analyzing legal malpractice claims from beneficiaries of an estate," "judicial estoppel," "and the causation standard that applies to legal malpractice actions filed by beneficiaries of the Estate." Defendant's motion for leave to appeal to the Supreme Court was denied, and therefore these issues are not properly before the Court.

POINT II.

THE LOWER COURT'S RULINGS REGARDING THE SCOPE OF A LAWYER'S DUTY TO A NON-CLIENT ARE CONSISTENT WITH EXISTING CASE LAW

In its brief, the NJSBA urges the Court to adopt an "exceedingly narrow" and "limited" view on when a non-client may institute a legal malpractice action against an attorney. See New Jersey State Bar Association Brief ("NJSBA Br.") at 8. As an initial matter, the NJSBA acknowledges that whether an attorney's duty exists to a non-client is fact dependent. Id. at 4. Despite this concession, as set forth above, the NJSBA seemingly takes the contradictory position that although these facts should be fleshed out during a full trial, the Court should decline to extend this

duty to the present matter. In so arguing, the NJSBA additionally requests that the Court ignore the existing precedent in New Jersey that an attorney can be held liable for damages caused to a third party as a result of his professional malpractice.

More specifically, in Petrillo v. Bachenberg, this Court held that an attorney has an independent duty of care to a third-party if the attorney knows or **should** know that the third-party may rely on the attorney's acts to their detriment. In Petrillo, this Court was faced with the issue of whether "the attorney for the seller of real estate owes a duty to a potential buyer." Petrillo v. Bachenberg, 139 N.J. 472, 474 (1995). The buyer in Petrillo alleged that she was damaged by the seller's attorney when she received a misleading copy of a percolation test report that induced her to sign a contract to purchase the property. Id. In finding that the seller's attorney **did** owe a duty of care, the Petrillo Court held "that attorneys may owe a duty of care to non-clients when the attorneys know, or should know, that non-clients will rely on the attorneys['] representations and the non-clients are not too remote from the attorneys to be entitled to protection." Id. at 483-84. Importantly, Petrillo stood for the proposition that the buyer's attorney "had a duty not to mispresent negligently the contents of a material document on which he knew others would rely to their financial detriment." Id. at 489.

More recently, the holding of Petrillo was discussed at length in the unpublished case of Varelli v. White, a case specifically on point given the status of the Respondents as beneficiaries of an estate. The Varelli Court explained:

> In Petrillo v. Bachenberg, 139 N.J. 472, 482-85 (1995), our Supreme Court held that an attorney owes an independent duty of care to a non-client when the attorney "intended or should have foreseen that the [non-client] would rely on the [attorney's] work" or when the attorney "know[s], or should know, that non-clients will rely on the attorney['s] representations and the non-clients are not too remote from the attorney[ ] to be entitled to protection." To sustain a malpractice claim, a non-client must show reliance on the attorney's actions or representations was reasonably foreseeable by the attorney, as it is the reasonably foreseeable reliance by the non-client on the attorney's representation that imposes the duty of care.

Varelli v. White, No. A-4675-16T3, 2019 WL 3229679 (App. Div. July 18, 2019) at *9. Varelli involved an attorney who prepared a Will and power of attorney for a woman suffering from Alzheimer's disease without ever meeting with her personally and without supervising the execution of the documents. Id. at *2. The Court in Varelli overturned the trial court's ruling that the defendant did not owe a professional duty to the Plaintiff's beneficiaries by reasoning:

> Even though defendant did not sign a retainer agreement with plaintiffs, the judge properly denied summary judgment on the question of whether he had a duty to plaintiffs. A testator intends his or her attorney to protect the interests of beneficiaries of his or her estate. Restatement (Third) of The Law Governing Lawyers § 51 (Am. Law Inst. 2000). As beneficiaries of the estate,

> plaintiffs were entitled to rely on defendant to comply with the standards of the profession.

Id. at *14.

Importantly, when the Court ruled that the trial court erred in dismissing the Plaintiffs' claim that the attorney had breached fiduciary obligations owed to them, the Court held that the issue **should have been submitted to the jury**. In making this ruling, the Court quoted the Appellate Division case of Stewart v. Sbarro, that:

> [T]he determination of whether the duty undertaken by an attorney extends to a third party not in privity with the attorney involves a balancing of factors such as: (1) 'the extent to which the transaction was intended to affect the plaintiff'; (2) the foreseeability of harm to the plaintiff; (3) 'the degree of certainty that the plaintiff suffered injury'; (4) 'the closeness of the connection between the defendant's conduct and the injury suffered'; (5) 'the moral blame attached to the defendant's conduct'; and (6) 'the policy of preventing future harm.

Id. at *8, quoting Stewart v. Sbarro, 142 N.J. Super. 581, 593 (App. Div. 1976). The Court reviewed the Stewart factors and found that there was a duty owed by stating:

> …the following considerations may be drawn by the fact-finder: (1) defendant's drafting of decedent's Will was intended to benefit the beneficiaries of the Will, i.e., plaintiffs; (2) it was foreseeable that drafting a Will for a person that lacked capacity and was unduly influenced would cause harm to plaintiffs; (3) it was a certainty that plaintiffs suffered harm inasmuch as the parties stipulated that the estate lost $244,000 and plaintiffs had to engage in costly, protracted litigation to recover those assets; (4) there was a connection between defendant's drafting of the Will and the loss to the estate, but it is unclear how close the connection was, given that [a niece of the decedent],

> an intentional tortfeasor, depleted the assets of the estate; (5) it is unclear whether moral blame should be attached to defendant's conduct, given that [the niece] was the primary reason why the estate suffered a loss; and (6) it is unclear how this matter would affect the policy of preventing future losses.

Id.

In addition to Varelli, this issue of duty was also addressed in Rathblott v. Levin where the Plaintiff beneficiary claimed that the failure of the decedent's attorney to properly document the testamentary capacity of the decedent caused the estate's assets to be depleted by a will contest. Rathblott v. Levin, 697 F. Supp. 817, 818 (D.N.J. 1988). In denying summary judgment to the defendant attorney, the Rathblott Court reinforced the "simplicity test" for surmounting the requirement for privity with an attorney in order to make a malpractice claim as established in R.J. Longo Construction Co., Inc. v. Schragger, as follows:

> (1) the extent to which [the attorney/client relationship] was intended to affect the plaintiff; (2) the foreseeability of reliance by the plaintiff and the harm it could thereby suffer; (3) the degree of certainty that plaintiff has been harmed; and (4) the need from a public policy standpoint of preventing future harm without unduly burdening the profession.

Id. at 819, quoting R.J. Longo Construction Co., Inc. v. Schragger, 218 N.J. Super. 206, 209 (App. Div. 1987). In applying these factors, the Rathblott Court stated "we think it fairly obvious that Plaintiff was intended to be the beneficiary of the relation between [the decedent] and defendant," but that "[t]he foreseeability of Plaintiff's

reliance and the degree of certainty of harm are matters that must await factual proof at trial." Id. at 820.

Based on the current state of law in New Jersey, the issue of whether Appellant owed a duty to Respondents when he rendered legal services to decedents is grounded on well-established law based on foreseeability. More specifically, the factors set forth in both Varelli and Rathblott clearly establish a basis of a duty owed by Boyadjis, because Boyadjis **knew** his actions would affect Respondents as beneficiaries. Applying this established precent and the Stewart factors, it is clear that a duty of care existed between Boyadjis and Respondents. The NJSBA's request for the Court to limit or narrow this duty is simply unsupported by existing case law and must be disregarded.

POINT III.

THE COURT SHOULD DISREGARD THE NJSBA'S AMICUS BRIEF WHERE IT RAISES ISSUES NOT RAISED BELOW AND ARE OUTSIDE OF THE PROVISIONS OF THE ORDER WHICH LEAVE WAS GRANTED

"The basic rule applicable to appellate practice is that questions or issues not raised in the lower court will not ordinarily be reviewed on appeal." Abel v. Bd. of Works of City of Elizabeth, 63 N.J. Super. 500, 510 (App. Div. 1960). Specifically, "[i]t is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the

jurisdiction of the trial court or concern matters of great public interest." Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). This is because "[i]t is axiomatic that on appeal an appellant's brief **must address in form and substance the specific order or judgment** pursuant to which the Appellate Division granted appellant leave to appeal." Hayling v. Hayling, 197 N.J. Super. 484, 487 (App. Div. 1984)(emphasis added). Thus, if a party "undertakes to present a point that seems not to have been raised or considered in the courts below and that was not properly set up in the petition of appeal…[u]nder those circumstances appellant is not entitled to argue the same before us." Am. Nat. Red Cross v. Lester, 129 N.J. Eq. 28, 29 (1941).

Here, although the issue was not raised by Boyadjis below and neither Plaintiff nor Defendant raised the issue in the motion for leave to appeal to the Supreme Court, and it is not part of the appeal before the Court, the NJSBA argues in their *amicus curiae* brief, that non-clients cannot recover attorney's fees pursuant to Saffer v. Willoughby, in legal malpractice cases. See NJSBA Brief at 9. Not only was this issue absent from Boyadjis' motions for summary judgment and reconsideration, and Respondents' current appeal, but Boyadjis' cross-appeal, which was denied by the Court, also neglected to raise this issue. As a result, the NJSBA improperly attempts to bypass the black letter law in New Jersey and seeks review on an issue outside of the limited question on appeal:

whether the Appellate division erred by concluding there was no duty owed by Boyadjis to Helen. As the issue of a non-client's entitlement to attorney's fees is outside the scope of the issues rules on by the trial court and was not raised on appeal**,** the NJSBA's request for review on this issue should be entirely disregarded.

Even if the Court does review the NJSBA's improper request, the NJSBA's position that a non-client cannot recover attorney's fees unless there is intentional misconduct by the attorney is misplaced. As an initial matter, the plain language of Saffer v. Willougby allows a jury to assess damages for "the reasonable legal expenses and attorney fees incurred…in prosecuting the legal malpractice claim," including legal fees that "are consequential damages that are proximately related to the malpractice." Saffer v. Willoughby, 143 N.J. 256, 272 (1996). The purpose of a legal malpractice claim is to put a Plaintiff in as good a position as he (she) could have been had the attorney kept his contract. 143 N.J. at 271. As cited by the NJSBA, the Supreme Court in In re Niles provided that an executor who is accused of the "development or modification of estate documents that create or expand the fiduciary's beneficial interest in the estate," **can** be liable to a beneficiary for attorney's fees. In re Niles, 176 N.J. 282, 299–300 (2003).

The NJSBA's suggestion that Innes v. Marzan-Lesneich, 435 N.J. Super. 198 (App. Div. 2014) aff'd 224 N.J. 584 (2016), provides precedent for limiting the doctrine of Saffer v. Williams supra. is misplaced. The Innes case is based on a

unique set of facts where an attorney released a passport allowing a child to be removed from the Country and against the wishes of one parent. Id. at 205-06. Additionally, the Innes Court's decision actually supports the case at bar, where Innes stands for the proposition that an attorney fee award is appropriate, where a third-party was relying on an agreement by counsel, which resulted in "consequential damages suffered as a result of [the attorney's] actions." Id. at 244. The NJSBA's interpretation of Innes as requiring some intentional conduct is overly broad. Here, under the precedent of Petrillo v. Backenberg, supra if a lawyer owes an independent duty of care to a third party and that duty is breached, it is no different than a breach of duty to a client, and the fee shift provision should apply in both situations.

Here, Boyadjis' role regarding the Wills that gives rise to the malpractice, and thus provides for a mechanism where the beneficiaries' attorney's fees can be recovered. Additionally, in its holding, the Appellate Division dispensed with the requirement that there be an attorney-client relationship, holding that Boyadjis owed Alice a duty of care, even as a non-client, as a foreseeable beneficiary. Thus, a jury **could** find that Boyadjis is responsible for the beneficiaries' attorney's fees as either the estate representative, or under his duty of care. Consequently, the NJSBA's attempt to limit the beneficiaries' available damages to instances where there is intentional conduct should not be adopted.

CONCLUSION

Respondents' motion for leave to appeal should be granted, and the decision below reversed, in part.

Respectfully submitted,

Jay J. Rice
JAY J. RICE

Dated: June 26, 2025