

BOISE, FRIDAY, AUGUST 21, 2020, AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**DAVID KALB, acting in the capacity of)
Conservator of BILLY KYSER, JR., an)
incapacitated person,)**

Plaintiff-Respondent,)

v.)

Docket No. 47057

CRAIG R. WISE, a legal professional,)

Defendant-Appellant.)

Appeal from the district court of the First Judicial District of the
State of Idaho, Kootenai County. Barbara A. Buchanan, District
Judge.

James, Vernon & Weeks, P.A., Coeur d'Alene, attorneys for
Appellant.

Lake City Law Group, PLLC, Priest River, attorneys for Respondent.

This appeal concerns the extent of an attorney's duty to third party-beneficiaries of a will drafted by the attorney. Shortly after Carolyn A. Kyser retained attorney Craig Wise to represent her in divorce proceedings from her husband, Bill E. Kyser, Sr., Carolyn requested Wise prepare a will that bequeathed her entire estate in equal shares to her two sons, Brent Kyser and Billy Kyser, Jr. Billy suffered from developmental disabilities, as a result, Billy's share was to be held in trust for his benefit. Without the assistance of counsel, Carolyn and Bill executed a property settlement agreement in which Carolyn and Bill agreed to retain conditional sequential life estates in the family home, with the remainder going to Brent and Billy as tenants in common upon the death of the last surviving parent. In 2002, Wise and the attorney representing Bill in the divorce, prepared a quitclaim deed memorializing the property settlement agreement (the "2002 Deed").

Bill died in 2004. Carolyn died in 2011. Upon Carolyn's death, Brent and Billy had the right to immediate possession of the family home as tenants in common. In 2011, Brent hired

Wise to represent him as the personal representative in the probate of Carolyn's will. In 2012, Brent hired Wise to prepare a quitclaim deed transferring Billy's interest in the home to Brent (the "2012 Deed"). Billy executed the 2012 Deed and returned it to Wise. In 2017, David Kalb, on behalf of Billy, filed a malpractice suit alleging that Wise owed Billy a duty as a beneficiary of Carolyn, an unrepresented person, and as an incapacitated person. Kalb alleged Wise breached these duties by preparing the 2002 Deed, Carolyn's will, and the 2012 Deed. After a court trial the district court held Wise breached the duty he owed to Billy as a beneficiary of Carolyn's will by preparing the 2012 Deed because it frustrated Carolyn's testamentary intent that her estate be divided equally between her two sons Brent and Billy. Wise appealed to this Court.