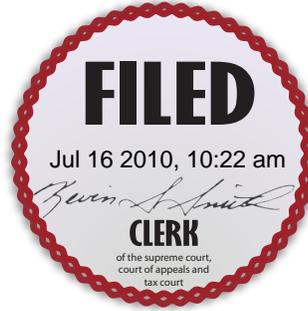


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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WENDY D. THOMAS, AS PERSONAL )  
REPRESENTATIVE OF THE ESTATE OF )  
WILLIAM T. DOLLARD, DECEASED, )

Appellant-Plaintiff, )

vs. )

No. 06A05-0907-CV-427

CAROL SPARKS DRAKE, and PARR, RICHEY, )  
OBREMSKEY & MORTON, )

Appellees-Defendants. )

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APPEAL FROM THE BOONE SUPERIOR COURT  
The Honorable Matthew C. Kincaid, Judge  
Cause No. 06D01-0705-CT-206

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**JULY 16, 2010**

**PETITION FOR REHEARING**

**BARTEAU, Senior Judge**

Estate of William T. Dollard petitions for rehearing in *Thomas v. Drake*, Cause No. 06A05-0907-CV-427, challenging the Court's opinion. We grant Estate's petition and affirm our original opinion.

William and Peggy Dollard, who had no children together but had children from previous marriages, executed joint and contractual wills. Peggy pre-deceased William, and William hired Drake to assist him with the legal matters of Peggy's estate. During this time, Peggy's children raised concerns about William's compliance with the restrictions of the couple's joint wills and sought judicial oversight in the Brown Circuit Court. A special administrator was appointed and, later, a constructive trust was imposed.

When William died, Estate filed this action against Drake alleging legal malpractice based upon William's alleged waste and distribution of assets after Peggy's death due to Drake's alleged failure to advise and/or her proffer of negligent advice. Drake filed a motion for summary judgment, which the trial court eventually granted, and Estate appealed. On appeal, we affirmed the trial court's entry of summary judgment for Drake.

The particular paragraph from this Court's original opinion at issue on rehearing is as follows:

The situation might have been different if the beneficiaries, dissatisfied with the reduced value of the estate assets, had brought a claim against William's estate for his alleged breach of the couple's joint and contractual wills. In that scenario, if a judgment were entered against Estate based upon William's alleged breach of the wills, Estate might have suffered

damages in some amount. Those damages might then serve as the basis for an action by Estate against Drake and Law Firm for causing William to breach due to negligent or non-existent legal advice. However, this is not the situation at hand.

*Thomas v. Drake*, No. 06A05-0907-CV-427 (Ind. Ct. App. April 13, 2010). On rehearing, Estate contends that the Court overlooked the fact that the beneficiaries had obtained a judgment against William. Specifically, it appears Estate is claiming that the imposition of the constructive trust in Brown Circuit Court with regard to Peggy's estate is a judgment against William and his estate.

Estate is confusing the imposition of a constructive trust with a money judgment. A constructive trust does not equate to a money judgment; rather, a constructive trust is imposed where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. *Zoeller v. East Chicago Second Century, Inc.*, 904 N.E.2d 213, 221 (Ind. 2009), *reh'g denied*. Further, this type of trust is in the nature of an equitable remedy rather than an independent cause of action. *Id.* Conversely, a money judgment is an order that requires one party to pay a specific sum of money to another party. *See Hilliard v. Jacobs*, 916 N.E.2d 689, 694 (Ind. Ct. App. 2009), *trans. denied*. If the beneficiaries had a money judgment against William or his estate for breach of the contractual wills, they could have attempted to collect on that judgment by proceeding against the estate. William's estate would have been required to pay the judgment and would have incurred damages in the amount of the judgment. Estate could then have sued Drake in a legal

malpractice action for causing the damages by allegedly giving negligent advice to William or by failing to give him legal advice.

Here, there was no money judgment against William that his estate is required to pay. Because Estate could show no damages (i.e., one element of a legal malpractice claim), we affirmed the trial court's entry of summary judgment in favor of Drake. *See Van Kirk v. Miller*, 869 N.E.2d 534, 541 (Ind. Ct. App. 2007), *trans. denied* (stating that as long as attorney and law firm negated at least one element of client's legal malpractice claim, trial court's grant of summary judgment to attorney and law firm would be upheld on appeal). Therefore, we grant Estate's Petition for Rehearing and affirm our original opinion.

NAJAM, J., and BRADFORD, J., concur.