

KING V. KING: ELEVENTH CIRCUIT CERTIFIES
QUESTIONS CONCERNING BREACH OF FIDUCIARY DUTY
IN CONFIDENTIAL RELATIONSHIP BETWEEN AN ADULT
AND A MINOR TO THE SUPREME COURT OF GEORGIA

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In *King v. King*, the United States Court of Appeals for the Eleventh Circuit addressed the parameters of Georgia law governing the duties owed to a minor beneficiary when a confidential relationship exists between that minor and an adult.¹ The Eleventh Circuit found no Georgia precedent controlling whether the presence of a confidential relationship created a duty to disclose that, if breached, would create a tort claim for a breach of fiduciary duty; thus, the Eleventh Circuit certified three questions to the Supreme Court of Georgia, allowing the court “an opportunity to address these questions in the first instance.”²

Elkin King’s biological father passed away in a plane crash in 1985.³ Elkin’s mother, Peggy, settled a claim against the airline company on behalf of herself and Elkin.⁴ Two hundred thousand dollars of that settlement was to be set aside for Elkin’s benefit and managed by Peggy and Forrest, Elkin’s then-stepfather.⁵ Peggy and Forrest placed the settlement funds in a Charles Schwab account entitled “Elkin’s Account with Custodian of Forrest King.”⁶ “Apparently, the last of the Settlement Funds . . . was used by Peggy . . . around 2005 as a down payment for a condominium.”⁷ Although there was a factual dispute as to Elkin’s knowledge of the settlement account, Elkin claimed that he learned of the fund’s existence in 2017, approximately twenty-eight

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¹ See *King v. King*, 46 F.4th 1259, 1267 (11th Cir. 2022) (per curiam).

² See *id.* at 1267.

³ *Id.* at 1262.

⁴ *Id.*

⁵ *Id.* at 1262. It was suggested by Peggy’s attorney to place the settlement funds in an account under Forrest’s name. *Id.*

⁶ *King*, 46 F.4th at 1262. The account with Charles Schwab was created sometime after Peggy reached the settlement agreement in 1989. See *id.*

⁷ *Id.*

years after the settlement fund account was created.⁸ According to Elkin, “he would have taken control of the Settlement Funds had he known about them when the was [eighteen].”⁹

Elkin filed suit against Forrest in the United States District Court for the Middle District of Florida in November 2018, alleging conversion of the settlement funds and a breach of fiduciary duty because Forrest “failed to disclose and concealed the fact of the settlement” and “failed and refused to account for [the Settlement Fund] proceeds or to pay the proceeds to [Elkin].”¹⁰ Granting summary judgment for Forrest, the district court held that, even though Forrest and Elkin were in a confidential relationship, Forrest’s only duty was “to ensure the Settlement Funds were used to [Elkin]’s benefit.”¹¹ The district court decided that Forrest properly used the funds for Elkin’s benefit, discharged his fiduciary duties, and did not convert the settlement funds.¹²

Elkin argued on appeal that, because “he was entitled to control the Settlement Funds,” Forrest’s failure to disclose the existence of the settlement funds when Elkin reached the age of majority established a breach of fiduciary duty.¹³ Reviewing the district court decision *de novo*, the Eleventh Circuit determined that Elkin was “entitled to control the Settlement Funds” and that a confidential relationship possibly existed between Forrest and Elkin.¹⁴ However, the Eleventh Circuit did not directly answer whether Forrest breached a fiduciary duty.¹⁵

First, the Eleventh Circuit determined that Elkin had “a right to control the Settlement Funds when he turned [eighteen]” after considering an applicable statute concerning “children recovering for the wrongful death of a parent.”¹⁶ Because the statute treated settlement funds for the wrongful death of a parent “as if [the funds] were personal property descending from the decedent to the . . . children,” any right Peggy or Forrest had to control the funds ended once Elkin turned

⁸ *Id.* Elkin testified in a deposition that his maternal grandfather was the first person to inform him of the settlement funds. *Id.*

⁹ *Id.*

¹⁰ *King*, 46 F.4th at 1262–63 (alterations in original).

¹¹ *Id.* at 1263 (internal quotation marks omitted).

¹² *Id.*

¹³ *Id.* at 1263–64.

¹⁴ *Id.* at 1263–65.

¹⁵ *See id.* at 1267–68.

¹⁶ *King*, 46 F.4th at 1264. “Under the version of § 51-4-2 applicable during the 1989 settlement, children recovering for the wrongful death of a parent receive an equal share of the recovery ‘as if it were personal property descending from the decedent to the surviving spouse and to the children.’ § 51-4-2(d)(1) (1991).” *King*, 46 F.4th at 1264; *see* GA. CODE ANN., § 51-4-2 (2022).

eighteen years old.¹⁷ Therefore, Elkin had the right to take control of the settlement funds.¹⁸

Second, the Eleventh Circuit addressed whether Elkin and Forrest entered into a confidential relationship.¹⁹ Under Georgia law, the existence of a confidential relationship renders “the failure to disclose a material fact . . . fraud[ulent] for purposes of tolling the statute of limitations.”²⁰ Additionally, “a confidential relationship may establish the existence of a fiduciary duty for a breach of fiduciary duty claim.”²¹ The Eleventh Circuit agreed with the district court that a jury could reasonably find that a confidential relationship arose when Forrest “placed Elkin’s Settlement Funds into a bank account in his name and thus situated himself so ‘as to exercise a controlling influence over the will, conduct, and interest of’ Elkin.”²²

Because the existence of a confidential relationship might also “establish the existence of a fiduciary duty,” the Eleventh Circuit recognized that Forrest’s failure to disclose could potentially constitute both fraud for tolling as well as a breach of fiduciary duty.²³ Yet, the court did not answer this question because “no Georgia case addresses whether a breach of the duty to disclose can support a breach of fiduciary duty claim.”²⁴

Due to the lack of Georgia case law on point, the Eleventh Circuit was uncertain of how to answer this question as well as how an adult fiduciary in a confidential relationship may sufficiently discharge this duty to disclose.²⁵ Therefore, the Eleventh Circuit certified the following questions to the Supreme Court of Georgia:

- (1) If a confidential relationship creates a duty to disclose, which, if breached, would constitute fraud sufficient to toll the statute of limitations, would that duty to disclose also support a breach of fiduciary duty tort claim under Georgia law?

¹⁷ See *King*, 46 F.4th at 1264.

¹⁸ *Id.* at 1264–65.

¹⁹ *Id.* at 1265. A confidential relationship is “[a]ny relationship . . . where one party is so situated as to exercise a controlling influence over the will, conduct, and interest of another or where, from a similar relationship of mutual confidence, the law requires the utmost good faith.” GA. CODE ANN. § 23-2-58 (2021).

²⁰ *King*, 46 F.4th at 1265.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 1265–66.

²⁴ *Id.* at 1266–67.

²⁵ See *id.* at 1266–7.

(2) If so, may an adult fiduciary in a confidential relationship with a minor beneficiary without a written agreement discharge his duty to disclose by disclosing solely to the minor's parents or guardians?

(3) If the adult fiduciary does have an obligation to disclose to the minor beneficiary directly without a written agreement, when must the adult fiduciary disclose or redisclose to the minor beneficiary?²⁶

By granting deference to the Supreme Court of Georgia, the Eleventh Circuit adhered to the system of federalism and allowed the Georgia court the opportunity to answer this novel question on its own.²⁷

²⁶ *King*, 46 F.4th at 1267.

²⁷ *See id.*