

An elderly woman, who had two adult children, wished to employ a live-in companion so that she might continue to live in her own home. The woman, however, had only enough income to pay one-half of the companion's \$2,000 monthly salary. Learning of their mother's plight, her son and daughter agreed with each other in a signed writing that on the last day of January and each succeeding month during their mother's lifetime, each would give the mother \$500. The mother then hired the companion.

The son and daughter made the agreed payments in January, February, and March. In April, however, the son refused to make any payment and notified his sister and mother that he would make no further payments.

Will the mother succeed in an action for \$500 brought against the son after April 30?

- A. No, because a parent cannot sue her child for breach of a promise for support.
- B. No, because the son and daughter intended their payments to their mother to be gifts.
- C. Yes, because by making his first three payments, the son confirmed his intent to contract.
- D. Yes, because the mother is an intended beneficiary of a contract between the son and daughter.

## Explanation:

### Third-party beneficiaries

(ie, nonparties who benefit from contract)

Type	Definition	Right to enforce
Intended	<ul style="list-style-type: none"><li>Receive <i>direct</i> benefit from contract because contracting parties intended to benefit them</li><li>Eg, A promises to paint B's house if B promises to pay \$500 to C</li></ul>	Yes
Incidental	<ul style="list-style-type: none"><li>Receive <i>indirect</i> benefit from contract even though there was no contractual intent to benefit them</li><li>Eg, A promises to buy B a car manufactured by C</li></ul>	No

A **third-party beneficiary** is a nonparty to a contract who receives some benefit from that contract. The third party can **enforce the contract** if he/she is an ***intended* beneficiary**—ie, one whom the contracting parties intended to benefit directly.

Here, the son and daughter entered into the contract to give the mother \$500 each month. Although the mother was not a party to that contract, the son and the daughter intended to confer a gift upon the mother—\$500 monthly from each child. Therefore, the mother was an *intended* beneficiary of the contract and will succeed in an enforcement action against the son (**Choice B**).

**(Choice A)** There is no rule that a parent cannot sue a child for breach of a promise for support, but such a promise may be unenforceable for another reason—eg, if the promise lacks consideration. Here, however, the son and daughter's exchanged promises were supported by [consideration](#).

**(Choice C)** The son confirmed his intent to contract when he *agreed* with the daughter that each would give the mother \$500 monthly. Therefore, the first three payments are irrelevant to the son's intent to contract.

### Educational objective:

A person who is not a party to a contract may still enforce that contract if he/she is an intended beneficiary—ie, a third party whom the contracting parties intended to benefit directly.

### References

- Restatement (Second) of Contracts § 302 (Am. Law Inst. 1981) (intended and incidental beneficiaries).

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