IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIV.
CASE NO. 50 2012 CP 004391 XXXX NB

IN RE: ESTATE OF SIMON L. BERNSTEIN,
Deceased.
_____/

CASE LAW AUTHORITY

COMES NOW, Creditor and Interested Person, William E. Stansbury ("Stansbury"), by and through his undersigned counsel and hereby submits the following case law authority in connection with the matters to be heard on March 2, 2017 at 1:30 p.m.:

ISSUES:

I. WHETHER TED BERNSTEIN SHOULD BE APPOINTED AS ADMINISTRATOR *AD LITEM*

A. *Woolf v. Reed,* 389 So.2d 1029 (Fla. 3rd DCA, 1980)
B. *Arzuman v. Estate of Prince Bander BIN Saud Bin, etc.*, 879 So.2d 675 (Fla. 4th DCA 2004)
C. *Estate of Bell v. Johnson*, 573 So.2d 57 (Fla. 1st DCA, 1990)
D. §731.201(23), Fla. Stat.
E. §733.504, Fla. Stat.
F. §733.602(1), Fla. Stat.
G. §736.0813, Fla. Stat.

II. WHETHER WILLIAM STANSBURY SHOULD BE DISCHARGED FROM FURTHER RESPONSIBILITY FOR FUNDING THE ESTATE'S PARTICIPATION IN THE CHICAGO LIFE INSURANCE LITIGATION; ASSUMPTION OF RESPONSIBILITY BY THE ESTATE AND REIMBURSEMENT TO WILLIAM STANSBURY

H. *In re Estate of Wejanowski,* 920 So. 2d 190 (Fla. 2d DCA 2006)
I. *Bookman v. Davidson*, 136 So. 3d 1276 (Fla. 1st DCA 2014)
J. *In re Paine's Estate,* 174 So. 430 (Fla. 1937)
K. § 733.612(20), Fla. Stat.

Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to those listed on the attached service list, on this 23rd day of February, 2017.

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3.A.

KeyCite Yellow Flag - Negative Treatment
Disagreed With by In re Estate of Bierman, Fla.App. 4 Dist., October 9, 1991

389 So.2d 1026
District Court of Appeal of Florida, Third District.

Shirley WOOLF, Appellant,
v.
David REED et al., Appellees.

Nos. 79-479, 79-480 and 79-505.
|
Sept. 9, 1980.
|
Rehearing Denied Nov. 25, 1980.

Appeal was taken from an order of the Circuit Court, Dade County, Francis J. Christie, J., which appointed an administrator ad litem in the probate of decedent's estate. The District Court of Appeal held that: (1) trial court's appointment of an administrator ad litem with authority to determine any liability of attorney, who had acted as legal counsel for executrix of her father's estate until executrix' death, to estate of executrix arising out of administration of executrix' father's estate was supported in the record; and (2) insofar as court sought to delegate its judicial authority to appointed administrator ad litem, court's act was void ab initio.

Affirmed in part; reversed in part and remanded.

West Headnotes (6)

[1] **Executors and Administrators**
Proceedings for Appointment

Trial court's appointment of administrator ad litem with authority to determine any liability of attorney, who had acted as legal counsel for executrix of her father's estate until executrix' death, to estate of executrix arising out of administration of executrix' father's estate was supported by record. Rules of Probate and Guardianship Procedure, Rule 5.120(a).

Cases that cite this headnote

[2] **Executors and Administrators**
Grounds for Appointment

Administrator ad litem is court-appointed advocate for interests of estate, where whose interests are jeopardized, and where acting representative, if any, will not or cannot defend them. Rules of Probate and Guardianship Procedure, Rule 5.120(a).

1 Cases that cite this headnote

[3] **Executors and Administrators**
Temporary or Special Appointment

Administrator ad litem is officer of the court, insofar as is every attorney certified to practice therein; however, his primary and overriding duty is to the estate, rather than to the bench.

Cases that cite this headnote

[4] **Executors and Administrators**
Temporary or Special Appointment

Court may not mandate specific acts through appointment of administrator ad litem, such as holding of hearings, but, rather, imposes upon administrator fiduciary duty to the estate and so empowers him to minister to specific estate interests, not as judicial officer making findings of fact and conclusions of law, but as fiduciary who owes highest duty to the estate to safeguard those specific interests which he has been commissioned to protect.

2 Cases that cite this headnote

[5] **Executors and Administrators**

⚷Temporary or Special Appointment

Appointed administrator ad litem becomes solely responsible to the estate for administration of that portion of its affairs entrusted to him by court, and thus supplants in that regard authority of personal representative, who continues to be responsible for administration of all other aspects of estate's business.

4 Cases that cite this headnote

[6] **Constitutional Law**
⚷Delegation of Powers by Judiciary

Insofar as court sought to delegate its judicial authority to appointed administrator ad litem, court's act was void ab initio.

2 Cases that cite this headnote

Attorneys and Law Firms

***1027** Sibley, Giblin, Levenson & Glaser, Thomas E. Lee, Jr., Miami, for appellant.

Robert A. Ginsburg, County Atty. and Murray A. Greenberg and Roy Wood, Asst. County Attys., Rafael K. Yunes, Miami Beach, Mershon, Sawyer, Johnston, Dunwody & Cole and Mark V. Silverio and Roland C. Goss, Miami, Smith, Mandler, Smith, Werner, Jacobowitz & Fried, Miami Beach, for appellees.

Steel, Hector & Davis, Miami, for Dade County Bar Assn., as amicus curiae.

Before HENDRY, BASKIN and DANIEL S. PEARSON, JJ.

Opinion

PER CURIAM.

We review the appointment by the circuit court of an administrator ad litem in the probate of Pat B. Elbert's estate.

A short review of the facts is in order.

Pat Elbert, until her death in 1974, acted as the executrix of her father's estate; appellant was her legal counsel in that undertaking. Upon the death of Pat Elbert, Sun Bank was appointed administrator of the father's estate, and appellant's connection with the father's estate ended.

Appellant was a nominated trustee under the will of Pat Elbert; moreover, she served as attorney for the personal representative of the Pat Elbert estate.

Records of administration kept for the father's estate disclosed an apparent indebtedness to that estate from the Pat Elbert estate. The personal representative of Pat's estate, Patricia Byrne, negotiated a compromise and settlement between the two estates which she submitted to the court, in the form of a settlement stipulation, for approval. Thereafter, Ms. Byrne informed the court of her discovery that appellant had obtained from the father's estate a release from liability to that estate, negotiated at some cost to appellant.

Appellee Reed was the nominated co-trustee, with appellant, of a trust established in the Pat Elbert will, to be funded from her estate. He has resigned that position. It is he who first requested the appointment of an administrator ad litem-a request subsequently joined in by the University of Miami, which holds certain remainder interests in the trust, and by the Dade County Bar Association, as amicus curiae. Appellees contend that the Pat Elbert estate may have a claim against appellant for all or part of the funds in question, and that appointment of an administrator ad litem is necessary to properly protect the estate's interests.

Appellee's request culminated in the appointment of an administrator ad litem with the authority to ". . . determine the nature and extent, if any, of the liability of SHIRLEY WOOLF, to the (Pat Elbert) ***1028** Estate and/or its beneficiaries, arising out of the administration of the ROBERT G. ELBERT (the father's) ESTATE."

[1] Appellant contends that the appointment of an administrator ad litem is improper without a prior finding that an acting administrator has engaged in misconduct, or is incapable of protecting the estate's interests in the matter for which the appointment is made. Moreover, appellant urges that the authority with which the administrator ad litem was clothed by the court was excessive.

We dispose of appellant's first contention by reference to the language of Fla.R.P. & G.P. 5.120(a):

> When it is necessary that the estate of a decedent . . . be represented in any probate . . . proceeding and . . . the personal representative . . . is or may be interested adversely to the estate . . ., or the necessity arises otherwise, the court may appoint an administrator ad litem . . ., without bond or notice for that particular proceeding.

In our review of the record, and in light of the relationship between appellant and Ms. Byrne, as personal representative for the estate of Pat Elbert, we find adequate support for the trial court's appointment of an administrator ad litem.

[2] Appellant's second claim, however, is well-founded. The special administrator was seemingly appointed as an adjunct of the court, in the nature of a special master. But an administrator ad litem is a court-appointed advocate for the interests of an estate, where those interests are jeopardized, and where the acting representative, if any, will not or cannot defend them. See In re Estate of Herlan, 209 So.2d 225 (Fla.1968); Shambow v. Shambow, 5 So.2d 454, 149 Fla. 278 (1942), reviewed on other grounds, 15 So.2d 837, 153 Fla. 762 (1943); Fasel v. Cox, 128 So. 33, 99 Fla. 968 (1930); Edmonson v. Frank J. Rooney, Inc., 171 So.2d 566 (Fla. 3d DCA 1965).

[3] [4] [5] An administrator ad litem is an officer of the court, insofar as is every attorney certified to practice therein. However, his primary and overriding duty is to the estate, rather than to the bench; the court may not mandate specific acts through his appointment, such as the holding of hearings, but rather imposes upon the administrator a fiduciary duty to the estate, and so empowers him to minister to specific estate interests, not as a judicial officer making findings of fact and conclusions of law, but as a fiduciary, who owes the highest duty to the estate to safeguard those specific interests he has been commissioned to protect. The appointee becomes solely responsible to the estate for the administration of that portion of its affairs entrusted to him by the court, and thus supplants in that regard the authority of the personal representative, who continues to be responsible for the administration of all other aspects of the estate's business.

[6] Insofar as the court below sought to create such a limited role, it may properly do so. Insofar as it sought to delegate its judicial authority to its appointee, its act was void ab initio.

Affirmed as to the appointment, reversed as to the powers conferred; and remanded for action by the trial court not inconsistent with this opinion.

All Citations

389 So.2d 1026

End of Document

3.B.

879 So.2d 675
District Court of Appeal of Florida,
Fourth District.

Mark P. ARZUMAN, a/k/a Mark P. Arzoumanian, Appellant,
v.
The ESTATE OF Prince Bander BIN Saud Bin, etc., Appellee.

No. 4D03-2406.
|
Aug. 11, 2004.

Synopsis

Background: Personal representative of estate filed petition for discharge and approval of final accounting. The Fifteenth Judicial Circuit Court, Palm Beach County, Gary L. Vonhof, J., issued final order granting petition. Claimant against estate appealed.

[Holding:] The District Court of Appeal, Klein, J., held that appeal was not timely.

Affirmed.

West Headnotes (2)

[1] Executors and Administrators
⇐ Persons Entitled to Object

Claimant against estate was an "interested person" in proceedings to approve final accounting and discharge personal representative. West's F.S.A. § 731.201(21).

1 Cases that cite this headnote

[2] Executors and Administrators
⇐ Perfection of Appeal and Effect Thereof

Time for claimant against estate to appeal order approving settlement of separate wrongful death action against estate began to run when trial court approved settlement, rather than when trial court granted personal representative's motion to disburse funds, approve final accounting, and discharge personal representative; order approving settlement finally determined right of claimant in that it resulted in estate having no assets with which to pay his claim. West's F.S.A. R.App.P.Rule 9.110(a)(2).

1 Cases that cite this headnote

Attorneys and Law Firms

*675 Mark P. Arzuman, a/k/a Mark P. Arzoumanian, Boca Raton, pro se.

Lawrence Bunin of Lawrence Bunin, P.A., Plantation, for appellee.

Opinion

KLEIN, J.

Appellant, a claimant against the appellee estate, appeals a final order granting the personal representative's motion to disburse funds, approve final accounting, and discharge personal representative. He argues that the trial court erred in approving the settlement of a wrongful death claim in which the estate was a plaintiff, but we conclude that this appeal is not timely as to the order approving the settlement, which was a final order.

*676 The decedent died in an airplane accident, and the estate filed a negligence suit which was settled for a total of $750,000. The settlement, which apportioned $700,000 to decedent's mother and $50,000 to the estate, was approved by the court. The low amount to the estate resulted from the fact that the decedent reported no income. The aviation lawyer who obtained the recovery testified that the estate had no recoverable damages. Claimant, who had a pending lawsuit against the estate, filed an appeal from the March 2002 order approving the settlement, but subsequently dismissed it.

In April 2003, the personal representative filed a petition for discharge and approval of final accounting, noting that claimant's lawsuit was still pending, but asserting that the estate would have no assets to pay any judgment claimant might obtain in the future. Following a hearing

the court granted the petition, finding that if claimant obtained a judgment, it would be a class 8 claim under section 733.707, Florida Statutes, and that, after paying expenses having a higher priority, the estate would have no funds remaining. It is this order, which was entered in May 2003, which claimant has appealed, but his primary argument is that the court erred in approving the wrongful death settlement a year earlier.

[1] The estate argues that claimant is not an "interested person" under section 731.201(21), Florida Statutes (2002), which defines interested person as:

> any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved.... The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

The closest case is *Montgomery v. Cribb,* 484 So.2d 73 (Fla. 2d DCA 1986), in which a claimant's claim against an estate had been stricken, and the order striking the claim was on appeal. The second district held that the claimant was an interested party. We agree with that decision and conclude that claimant was an interested person.

[2] The estate next argues that claimant was required to appeal the order approving the settlement when it was entered. Final orders in probate proceedings are defined under rule 9.110(a)(2), as orders which "finally determine a right or obligation of an interested person as defined in the Florida Probate Code."

We conclude that the order approving the settlement of the tort claim did "finally determine a right" of this claimant. Section 733.708, Florida Statutes (2002), which addresses the compromise of lawsuits filed by estates, provides that the probate court may authorize the settlement "if satisfied that the compromise will be for the best interest of the interested persons," and that an order authorizing settlement "shall relieve the personal representative of liability or responsibility for the compromise."

In this case once the order approving the settlement became final, the personal representative was, by statute, absolved of further responsibility. The order approving the settlement accordingly did finally determine a right of the claimant in that it resulted in the estate having no assets with which to pay his claim.

We are of course aware that, when we decide that an appellant should have appealed an earlier order, it can result in *677 grave consequences.[1] In probate cases, however, where the order of final discharge may not be entered for years after the opening of an estate, interim appeals of orders which finally determine rights or obligations are necessary for the orderly administration of the estate. If we were to review the order approving settlement at this late date, it is doubtful that any remedy would be available which would benefit claimant.

We have considered the issues which appellant has raised regarding the final order of discharge and find them to be without merit. Affirmed.

SHAHOOD, J., and EMAS, KEVIN M., Associate Judge, concur.

All Citations

879 So.2d 675, 29 Fla. L. Weekly D1844

Footnotes

1 Even if we had reviewed the order approving the settlement, we would have affirmed, because as we noted earlier, the estate had no damage recoverable in the wrongful death claim.

End of Document

3.C.

573 So.2d 57
District Court of Appeal of Florida,
First District.

In re the ESTATE OF Katherine V. BELL,
also known as Virginia Bell, Deceased.
William HUNTER, Daniel Hunter and
Marywil Hunter Croson, Appellants,
v.
Oleta JOHNSON, Personal Representative
of the Estate of Katherine V. Bell,
also known as Virginia Bell, Appellee.

No. 90-1318.
|
Dec. 26, 1990.

Will beneficiaries moved to compel production of estate assets or to remove another beneficiary as personal representative. The Circuit Court, Hamilton County, David E. Bembry, J., denied motion, and beneficiaries appealed. The District Court of Appeal, Nimmons, J., held that certificates of deposit were estate assets, even though beneficiary who was also personal representative was listed as trust beneficiary on one and co-owner of other, absent language in the power of attorney expressly authorizing gift of testatrix' assets to beneficiary.

Reversed in part; affirmed in part; and remanded.

West Headnotes (3)

[1] **Executors and Administrators**
⇦ Trust Estates and Other Equitable Estates and Interests

Executors and Administrators
⇦ Ownership of Property at Time of Death

Principal and Agent
⇦ Purpose and Terms of and Consideration for Sale or Conveyance

Certificates of deposit purchased under power of attorney by beneficiary with testatrix' funds were assets of testatrix' estate, even though beneficiary was listed as trust beneficiary on one certificate and co-owner of other, where power of attorney did not expressly authorize gift of testatrix' assets to beneficiary, and where testatrix did not document wish to make gift although she had ample opportunity to do so.

3 Cases that cite this headnote

[2] **Witnesses**
⇦ Agency

Dead man's statute barred testimony of will beneficiary as to statements evidencing testatrix' intent to authorize gift to beneficiary under power of attorney. West's F.S.A. § 90.602.

4 Cases that cite this headnote

[3] **Executors and Administrators**
⇦ Hostility or Adverse Interest

Personal representative who held conflicting and adverse interests against estate was required to be removed, where personal representative had purchased certificates of deposit under power of attorney for her own benefit with testatrix' funds, and where court found certificates were estate assets.

2 Cases that cite this headnote

Attorneys and Law Firms

*57 Thomas W. Brown and Donna Houghton Thames of Brannon, Brown, Haley, Robinson & Cole, P.A., Lake City, for appellants.

*58 David D. Eastman of Parker, Skelding, Labasky & Corry, Tallahassee, for appellee.

Opinion

NIMMONS, Judge.

Appellants, beneficiaries of decedent Katherine V. Bell's will, appeal a final order denying their motion to compel production of estate assets or remove the personal representative, and finding two certificates of deposit are not estate assets. We reverse in part and affirm in part.

On January 7, 1985, Katherine V. Bell, also known as Virginia Bell, executed her last will and testament. In the will she bequeathed all funds remaining in her estate, after debts had been paid, to Oleta Johnson (a first cousin), Marywil Hunter Croson (a niece), William Miles Hunter, Jr. (a nephew), and Daniel Thomas Hunter (a nephew), to be divided equally among them. Bell also bequeathed her home, the land upon which it was situated, and all household furniture and fixtures to Oleta Johnson, and named Johnson personal representative. At the same time the will was drawn, Bell executed a power of attorney naming Oleta Johnson as attorney-in-fact. Both of these documents were executed approximately three weeks after Bell entered a nursing home where she remained until her death on February 21, 1989. There was no dispute that Ms. Bell was alert and mentally competent until a few weeks before she passed away.

On April 12, 1985, Johnson, using the power of attorney, purchased with $37,000 of Bell's funds a certificate of deposit in that sum at the First Federal Savings and Loan Association of Live Oak. That CD was set up with Bell's name as "trustee" and Oleta Johnson as "beneficiary." On July 12, 1985, in a similar fashion, Johnson purchased with $40,000 of Bell's funds another Certificate of Deposit at the Hamilton County Bank, n/k/a Barnett Bank. That CD was set up in the names of "Katherine V. Bell or Oleta Johnson."

Following Bell's death, Johnson filed a petition for administration and was appointed as personal representative. In an inventory filed by Johnson, the two CD's were referred to with the statement that, notwithstanding the names of the owners of the CDs as reflected on the certificates themselves, Johnson intended "that all of the principal and accrued interest of [the certificates] shall be a part of the estate assets."

The appellants objected to the appellee's accounting of funds and monies received or disbursed from the estate, so the trial court required a full and complete accounting of all the estate funds from the time Johnson became cosigner on any of the decedent's accounts or from January 1, 1985, whichever was first.

A special report prepared by a certified public accountant was submitted, but the appellants remained unsatisfied and filed another motion to compel the personal representative to make a full and complete accounting of the decedent's funds, including receipts from interest on the certificates of deposit, income tax refunds, and rental income. At the hearing on the motion, Johnson testified that she and Bell, her cousin, enjoyed a close relationship for over twenty years and when Bell was ill, Johnson willingly took care of her and visited her in the nursing home at least three times a week. Johnson testified Bell gave her the interest checks on the certificates of deposit after reviewing them and Johnson, with her power of attorney, would sign Bell's name to them. Johnson also testified the tenants renting Bell's home simply made the rental checks out to Johnson per Bell's wishes. Johnson indicated none of the other beneficiaries were close to Bell and had visited only a few times in the previous forty years.

The trial judge denied the appellants' motion to compel and the appellants filed another motion to compel production of the assets or, in the alternative, to remove the personal representative. Johnson filed a motion to withdraw the certificates of deposit from the estate's assets. In the trial court's order, the appellants' motion was denied and the certificates of deposit, the decedent's house, and all rental income associated with it were found to be the personal property of Johnson.

***59** The appellants raise three issues on appeal: (1) whether the trial court erred in finding the two certificates of deposit were not estate assets; (2) whether the trial court erred in denying the appellants' motion to compel a full and complete accounting; and (3) whether the trial court erred in not removing the personal representative based on a conflict of interest.

According to *Johnson v. Fraccacreta,* 348 So.2d 570 (Fla. 4th DCA 1977), a general power of attorney does not give the agent authority to make a gift of the principal's property. A conveyance that exceeds the scope of the power of attorney is void. In *Fraccacreta,* the decedent owned real property and, several months before her death, executed a power of attorney appointing her daughter as attorney-in-fact. The daughter used her power of attorney to execute a warranty deed conveying the decedent's property to the decedent and her husband as tenants by the entireties. The administrator ad litem brought the action contending the power of attorney did not authorize the attorney-in-fact/agent to make a gift. The court agreed and held that in construing an instrument creating a power of attorney, the court must look to the language of the

instrument and that an agent has no power to make a gift of the principal's property unless that power is expressly conferred by the instrument or unless such power arises as a necessary implication from the powers which are expressly conferred.

[1] [2] The power of attorney executed by Ms. Bell in the case at bar is devoid of any language purporting to authorize Johnson to use Ms. Bell's funds to purchase certificates of deposit in such a way as to create an individual pecuniary interest in Johnson. Furthermore, there were no witnesses to any oral agreement that may have existed between Bell and Johnson. Johnson is precluded, pursuant to the Dead Man's Statute, [1] from testifying as to any statements Bell may have made evidencing her intent to authorize Johnson to appropriate Bell's property for Johnson's own use and benefit.

Under *Hodges v. Surratt,* 366 So.2d 768 (Fla. 2d DCA 1978), the court held the attorney-in-fact for the decedent violated her fiduciary duty by transferring the principal's property to her husband and appropriating funds in the checking account for her own use absent clear language in the power of attorney authorizing such actions.

Hodges was cited with approval in *Krevatas v. Wright,* 518 So.2d 435 (Fla. 1st DCA 1988). Krevatas was a close friend and neighbor of Mrs. Fambrough, a childless widow with no local relatives. Mrs. Fambrough executed a power of attorney designating Krevatas attorney-in-fact and delivered it to him three years later. Approximately three weeks before she died, Fambrough changed her checking account, the balance of which never exceeded $6,000, to a survivorship account, adding Krevatas' name. She also, via her will, left $20,000 and her car to Krevatas, and during her last few weeks, signed documents making gifts to Krevatas and others. Krevatas used the power of attorney to transfer $100,000 into the survivorship account from her other accounts and altered existing CD's totalling $25,000 so that he and one of Mrs. Fambrough's nieces would have survivorship rights.

The court noted an absence of evidence indicating Mrs. Fambrough participated in the transfer of money into her checking account or the creation of survivorship interests in her certificates of deposit. Additionally, the court found Mrs. Fambrough did not intend to give Krevatas more money than was in the checking account at the time she changed it to a survivorship account. This apparent lack of intent was based on the fact that Mrs. Fambrough documented a gift to Krevatas in the last few weeks of her life while she was still alert when she easily could have documented her desire for him to have the money. The court found that neither the power of attorney itself nor the circumstances surrounding the execution of the document demonstrated an express or implied authority for Krevatas to use the power for his personal benefit.

***60** In the case at bar, the facts indicate that the will and the power of attorney were executed approximately three weeks after Ms. Bell entered a nursing home where she remained alert for several years prior to her death in 1989. She had ample opportunity to document in writing her wishes regarding the disposition of her estate assets. However, the language of the power of attorney does not expressly authorize Johnson to make a gift of Bell's assets for her own personal benefit, nor does the will evidence Bell's intent for Johnson to have the funds. Further, there is no evidence of implied authorization from the circumstances surrounding the execution of the documents. Therefore, we reverse the trial court's finding that the two certificates of deposit were not estate assets. [2]

[3] In reversing the first issue, we must also reverse the third issue. According to Section 733.504(9), Florida Statutes, a personal representative may be removed for holding or acquiring conflicting or adverse interests against the estate which will adversely interfere with the administration of the estate as a whole. In holding that the certificates of deposit are to be considered estate assets, a conflict between the personal representative and the estate is created, requiring Johnson's removal as personal representative.

We affirm as to the second issue, since the trial court did not err in failing to compel a full and complete accounting. It is obvious from the record that the appellee testified as to the whereabouts of the funds the appellants claim are unaccounted for. The trial court did not err in refusing to order another accounting.

Accordingly, we reverse in part and affirm in part and remand for further proceedings consistent with this opinion.

SMITH and ZEHMER, JJ., concur.

All Citations

573 So.2d 57, 16 Fla. L. Weekly 37

Footnotes

1 Section 90.602, Florida Statutes.

2 The trial court's order relied in part upon Section 658.56, Florida Statutes. However, that section has no application to the case at bar because Bell had nothing to do with the purchase of the two CD's.

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3.D.

West's Florida Statutes Annotated
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 731. Probate Code: General Provisions (Refs & Annos)
Part II. Definitions

West's F.S.A. § **731.201**

731.201. General definitions

Effective: October 1, 2013
Currentness

Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(1) "Authenticated," when referring to copies of documents or judicial proceedings required to be filed with the court under this code, means a certified copy or a copy authenticated according to the Federal Rules of Civil Procedure.

(2) "Beneficiary" means heir at law in an intestate estate and devisee in a testate estate. The term "beneficiary" does not apply to an heir at law or a devisee after that person's interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, the trustee is a beneficiary of the estate. Except as otherwise provided in this subsection, the beneficiary of the trust is not a beneficiary of the estate of which that trust or the trustee of that trust is a beneficiary. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a beneficiary of the estate.

(3) "Child" includes a person entitled to take as a child under this code by intestate succession from the parent whose relationship is involved, and excludes any person who is only a stepchild, a foster child, a grandchild, or a more remote descendant.

(4) "Claim" means a liability of the decedent, whether arising in contract, tort, or otherwise, and funeral expense. The term does not include an expense of administration or estate, inheritance, succession, or other death taxes.

(5) "Clerk" means the clerk or deputy clerk of the court.

(6) "Collateral heir" means an heir who is related to the decedent through a common ancestor but who is not an ancestor or descendant of the decedent.

(7) "Court" means the circuit court.

(8) "Curator" means a person appointed by the court to take charge of the estate of a decedent until letters are issued.

(9) "Descendant" means a person in any generational level down the applicable individual's descending line and includes children, grandchildren, and more remote descendants. The term "descendant" is synonymous with the terms "lineal descendant" and "issue" but excludes collateral heirs.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will or trust. The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to charges for debts, expenses, and taxes as provided in this code, the will, or the trust.

(11) "Devisee" means a person designated in a will or trust to receive a devise. Except as otherwise provided in this subsection, in the case of a devise to an existing trust or trustee, or to a trust or trustee of a trust described by will, the trust or trustee, rather than the beneficiaries of the trust, is the devisee. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a devisee.

(12) "Distributee" means a person who has received estate property from a personal representative or other fiduciary other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increments to them remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(13) "Domicile" means a person's usual place of dwelling and shall be synonymous with residence.

(14) "Estate" means the property of a decedent that is the subject of administration.

(15) "Exempt property" means the property of a decedent's estate which is described in s. 732.402.

(16) "File" means to file with the court or clerk.

(17) "Foreign personal representative" means a personal representative of another state or a foreign country.

(18) "Formal notice" means a form of notice that is described in and served by a method of service provided under rule 5.040(a) of the Florida Probate Rules.

(19) "Grantor" means one who creates or adds to a trust and includes "settlor" or "trustor" and a testator who creates or adds to a trust.

(20) "Heirs" or "heirs at law" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(21) "Incapacitated" means a judicial determination that a person lacks the capacity to manage at least some of the person's property or to meet at least some of the person's essential health and safety requirements. A minor shall be treated as being incapacitated.

(22) "Informal notice" or "notice" means a method of service for pleadings or papers as provided under rule 5.040(b) of the Florida Probate Rules.

(23) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

(24) "Letters" means authority granted by the court to the personal representative to act on behalf of the estate of the decedent and refers to what has been known as letters testamentary and letters of administration. All letters shall be designated "letters of administration."

(25) "Minor" means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

(26) "Other state" means any state of the United States other than Florida and includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(27) "Parent" excludes any person who is only a stepparent, foster parent, or grandparent.

(28) "Personal representative" means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

(29) "Petition" means a written request to the court for an order.

(30) "Power of appointment" means an authority, other than as an incident of the beneficial ownership of property, to designate recipients of beneficial interests in property.

(31) "Probate of will" means all steps necessary to establish the validity of a will and to admit a will to probate.

(32) "Property" means both real and personal property or any interest in it and anything that may be the subject of ownership.

(33) "Protected homestead" means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship is not protected homestead.

(34) "Residence" means a person's place of dwelling.

(35) "Residuary devise" means a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount. If the will contains no devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount, "residuary devise" or "residue" means a devise of all assets remaining after satisfying the obligations of the estate.

(36) "Security" means a security as defined in s. 517.021.

(37) "Security interest" means a security interest as defined in s. 671.201.

(38) "Trust" means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; [1] business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.071, except to the extent provided in s. 689.071(7); trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(39) "Trustee" includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court.

(40) "Will" means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person's property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.

Credits

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 4; Laws 1977, c. 77-174, § 1; Laws 1985, c. 85-79, § 2; Laws 1987, c. 87-226, § 66; Laws 1988, c. 88-340, § 1; Laws 1993, c. 93-257, § 7. Amended by Laws 1995, c. 95-401, § 6, eff. July 1, 1995; Laws 1997, c. 97-102, § 949, eff. July 1, 1997; Laws 1998, c. 98-421, § 52, eff. July 1, 1998; Laws 2001, c. 2001-226, § 11, eff. Jan. 1, 2002; Laws 2002, c. 2002-1, § 106, eff. May 21, 2002; Laws 2003, c. 2003-154, § 2, eff. June 12, 2003; Laws 2005, c. 2005-108, § 2, eff. July 1, 2005; Laws 2006, c. 2006-217, § 29, eff. July 1, 2007; Laws 2007, c. 2007-74, § 3, eff. July 1, 2007; Laws 2007, c. 2007-153, § 8, eff. July 1, 2007; Laws 2009, c. 2009-115, § 1, eff. July 1, 2009; Laws 2010, c. 2010-132, § 4, eff. Oct. 1, 2010; Laws 2012, c. 2012-109, § 1, eff. July 1, 2012; Laws 2013, c. 2013-172, § 16, eff. Oct. 1, 2013.

Editors' Notes

APPLICABILITY

<The introductory language to § 1 of Laws 2012, c. 2012-109, provides:>

<"Effective July 1, 2012, and applicable to proceedings pending before or commenced on or after July 1, 2012, subsection (33) of section **731.201**, Florida Statutes, is amended to read:">

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Footnotes
1 See § 710.101 et seq.

West's F. S. A. § **731.201**, FL ST § **731.201**
Current through the 2016 Second Regular Session of the Twenty-Fourth Legislature.

End of Document

3.E.

West's Florida Statutes Annotated
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 733. Probate Code: Administration of Estates (Refs & Annos)
Part V. Curators; Resignation and Removal of Personal Representatives
West's F.S.A. § 733.504

733.504. Removal of personal representative; causes for removal

Effective: July 1, 2015

Currentness

A personal representative shall be removed and the letters revoked if he or she was not qualified to act at the time of appointment. A personal representative may be removed and the letters revoked for any of the following causes:

(1) Adjudication that the personal representative is incapacitated.

(2) Physical or mental incapacity rendering the personal representative incapable of the discharge of his or her duties.

(3) Failure to comply with any order of the court, unless the order has been superseded on appeal.

(4) Failure to account for the sale of property or to produce and exhibit the assets of the estate when so required.

(5) Wasting or maladministration of the estate.

(6) Failure to give bond or security for any purpose.

(7) Conviction of a felony.

(8) Insolvency of, or the appointment of a receiver or liquidator for, any corporate personal representative.

(9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole. This cause of removal shall not apply to the surviving spouse because of the exercise of the right to the elective share, family allowance, or exemptions, as provided elsewhere in this code.

(10) Revocation of the probate of the decedent's will that authorized or designated the appointment of the personal representative.

(11) Removal of domicile from Florida, if domicile was a requirement of initial appointment.

(12) The personal representative was qualified to act at the time of appointment but is not now entitled to appointment.

Removal under this section is in addition to any penalties prescribed by law.

Credits

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 69; Laws 1977, c. 77-174, § 1. Amended by Laws 1997, c. 97-102, § 998, eff. July 1, 1997; Laws 2001, c. 2001-226, § 117, eff. Jan. 1, 2002; Laws 2009, c. 2009-115, § 10, eff. July 1, 2009; Laws 2015, c. 2015-27, § 5, eff. July 1, 2015.

Editors' Notes

APPLICABILITY

<Laws 2015, c. 2015-27, § 9, provides:>

<"The amendments made by this act to ss. 733.212, 733.2123, 733.3101, and **733.504**, Florida Statutes, apply to proceedings commenced on or after July 1, 2015. The law in effect before July 1, 2015, applies to proceedings commenced before that date.">

RESEARCH REFERENCES

Forms

Florida Pleading and Practice Forms § 53:64, Petition--To Remove Personal Representative [§§ **733.504** to 733.506, Fla. Stat.; Fla. Prob. R. 5.440].
Florida Pleading and Practice Forms § 53:66, Petition--By Interested Party--Maladministration [§ **733.504**(5), Fla. Stat.; Fla. Prob. R. 5.440].

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West's F. S. A. § **733.504**, FL ST § **733.504**

Current through the 2016 Second Regular Session of the Twenty-Fourth Legislature.

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3.F.

West's Florida Statutes Annotated
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 733. Probate Code: Administration of Estates (Refs & Annos)
Part VI. Duties and Powers of Personal Representative

West's F.S.A. § **733.602**

733.602. General duties

Effective: July 1, 2009
Currentness

(1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of the decedent's will and this code as expeditiously and efficiently as is consistent with the best interests of the estate. A personal representative shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, for the best interests of interested persons, including creditors.

(2) A personal representative shall not be liable for any act of administration or distribution if the act was authorized at the time. Subject to other obligations of administration, a probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a proceeding challenging intestacy or a proceeding questioning the appointment or fitness to continue. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of interested persons.

Credits

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 74; Laws 1977, c. 77-87, § 27; Laws 1977, c. 77-174, § 1; Laws 1979, c. 79-400, § 270; Laws 1989, c. 89-340, § 3. Amended by Laws 1997, c. 97-102, § 1001, eff. July 1, 1997; Laws 2001, c. 2001-226, § 125, eff. Jan. 1, 2002; Laws 2006, c. 2006-217, § 37, eff. July 1, 2007; Laws 2009, c. 2009-115, § 11, eff. July 1, 2009.

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West's F. S. A. § **733.602**, FL ST § **733.602**
Current through the 2016 Second Regular Session of the Twenty-Fourth Legislature.

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3.G.

West's Florida Statutes Annotated
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 736. Florida Trust Code (Refs & Annos)
Part VIII. Duties and Powers of Trustee (Refs & Annos)

West's F.S.A. § **736.0813**

736.0813. Duty to inform and account

Effective: October 1, 2013
Currentness

The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings under this section, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee.

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

Paragraphs (a) and (b) do not apply to an irrevocable trust created before the effective date of this code, or to a revocable trust that becomes irrevocable before the effective date of this code. Paragraph (a) does not apply to a trustee who accepts a trusteeship before the effective date of this code.

(2) A qualified beneficiary may waive the trustee's duty to account under paragraph (1)(d). A qualified beneficiary may withdraw a waiver previously given. Waivers and withdrawals of prior waivers under this subsection must be in writing. Withdrawals of prior waivers are effective only with respect to accountings for future periods.

(3) The representation provisions of part III apply with respect to all rights of a qualified beneficiary under this section.

(4) As provided in s. 736.0603(1), the trustee's duties under this section extend only to the settlor while a trust is revocable.

(5) This section applies to trust accountings rendered for accounting periods beginning on or after July 1, 2007.

Credits

Added by Laws 2006, c. 2006-217, § 8, eff. July 1, 2007. Amended by Laws 2007, c. 2007-153, § 15, eff. July 1, 2007; Laws 2011, c. 2011-183, § 11, eff. June 21, 2011; Laws 2013, c. 2013-172, § 14, eff. Oct. 1, 2013.

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West's F. S. A. § **736.0813**, FL ST § **736.0813**

Current through the 2016 Second Regular Session of the Twenty-Fourth Legislature.

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3.H.

920 So.2d 190
District Court of Appeal of Florida,
Second District.

In re ESTATE OF Peter WEJANOWSKI.
Richard MacDonald, as Personal Representative of the Estate of Peter Wejanowski, Appellant,
v.
Donna Mauriello, as Personal Representative of the Estate of Karen A. Stacy, Appellee.

No. 2D04-3853. | Feb. 15, 2006.

Synopsis

Background: Executor of estate filed motion seeking authority to expend estate funds to prosecute an appeal in a wrongful death action brought against estate. The Circuit Court, Pinellas County, George W. Greer and Ray E. Ulmer, Jr., JJ., denied motion without prejudice to resubmit it after the appeal upon a showing of a monetary benefit to the estate. Executor appealed.

[Holding:] The District Court of Appeal, Casanueva, J., held that trial court could not require executor to demonstrate a monetary benefit before allowing the expenditure of estate funds.

Reversed.

Villanti, J., filed specially concurring opinion.

West Headnotes (5)

[1] **Executors and Administrators**
Resisting Claims Against Estate

Trial court could not require executor of estate to demonstrate a monetary benefit to estate before allowing the expenditure of estate funds for the prosecution of an appeal in a wrongful death action against estate; benefit to estate was the presentation of a good faith appeal, and executor could be held accountable if appeal were subsequently determined to have been frivolous. West's F.S.A. §§ 733.602(1, 2), 733.609.

Cases that cite this headnote

[2] **Attorney and Client**
Frivolous, Vexatious, or Meritless Claims

An appellate attorney has an ethical duty not to prosecute a baseless or frivolous appeal.

Cases that cite this headnote

[3] **Executors and Administrators**
Counsel Fees and Costs

Payment by an estate of appellate fees and costs incurred in an appeal involving the estate cannot be contingent upon prevailing on appeal because neither party can guarantee the outcome.

Cases that cite this headnote

[4] **Executors and Administrators**
Counsel Fees and Costs

The true benefit to an estate provided by an appellate attorney, for purposes of entitlement to payment of appellate fees and costs out of estate assets, is the presentation of a good-faith appeal and its ultimate resolution.

Cases that cite this headnote

[5] **Constitutional Law**
Courts in General
Constitutional Law
Appeal or Other Proceedings for Review

The judicial system affords litigants the right to

resolve disputes with due process, safeguarded by appellate review of the trial court's decisions. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

Attorneys and Law Firms

*190 Thomas C. Jennings, III of Repka & Jennings, Clearwater, for Appellant.

Alan M. Gross of Powell, Carney, Gross, Maller & Ramsay, P.A., St. Petersburg, for Appellee.

Opinion

CASANUEVA, Judge.

Richard MacDonald, as personal representative of the estate of Peter Wejanowski, appeals an order of the probate court that effectively denies him an opportunity *191 to pursue this or three other appeals stemming from the events surrounding the deaths of Mr. Wejanowski and Karen Stacy. The three other pending appeals, 2D04-1493, 2D04-2113, and 2D04-2374, have been abated to await the outcome of this appeal. We reverse.

Mr. Wejanowski and Ms. Stacy lived together unmarried for almost twenty years before their relationship began to deteriorate several months before their deaths. Mr. Wejanowski's health was rapidly declining because he was suffering from end-stage cancer of the throat, Ms. Stacy was romantically involved with another man while living with Mr. Wejanowski, and acrimony permeated their relationship. On the day of his death, Mr. Wejanowski called his friend Mr. MacDonald and requested that he visit him, which Mr. MacDonald did, accompanied by his girlfriend. After a short visit, Mr. Wejanowski excused himself and retired to another room. The couple then heard a gunshot. Responding to the sound, they discovered Mr. Wejanowski, who had committed suicide, lying next to the body of Ms. Stacy. She had been fatally shot four times and had sustained several superficial stab wounds.

Donna Mauriello, as personal representative of Ms. Stacy's estate, filed a wrongful death suit against Mr. Wejanowski's estate. Mr. MacDonald, as personal representative of the Wejanowski estate, hired one lawyer to handle probate matters and another to handle the civil litigation. Ms. Mauriello ultimately prevailed in the wrongful death suit, and Mr. MacDonald filed the first of his now-abated appeals, challenging that judgment for damages.[1] Ms. Mauriello claimed that the appeal was frivolous and that he was wasting estate assets and reducing the estate's ability to pay her judgment. In response to her claims, Mr. MacDonald filed a motion in the trial court to approve costs and fees associated with appeal. The trial court denied his motion without prejudice to resubmit the request at the conclusion of the appeal upon a showing of monetary benefit to the estate and ordered him not to expend estate funds for prosecution of the appeal, to include attorney's fees and costs. It is this order that we reverse.

[1] [2] [3] [4] [5] Requiring Mr. MacDonald to show a monetary benefit to the estate before he is entitled to reimbursement for appellate expenses narrows the definition of "benefit to the estate" to an unworkable level in this appellate context. An appellate attorney has an ethical duty not to prosecute a baseless or frivolous appeal. Payment of appellate fees and costs cannot be contingent upon prevailing on appeal because neither party can guarantee the outcome. The true benefit to an estate provided by an appellate attorney is the presentation of a good-faith appeal and its ultimate resolution. Our system affords litigants the right to resolve disputes with due process, safeguarded by appellate review of the trial court's decisions. *Cf. Brake v. Murphy*, 693 So.2d 663 (Fla. 3d DCA 1997) (reversing an order that required the personal representative and her husband to post a bond in order to file further pleadings in a surcharge proceeding because the order violated the access to the courts provision and due process clause of the state constitution).

Because section 733.602(2), Florida Statutes (2002), removes liability for any act of administration if the act was authorized at the time, personal representatives often *192 attempt to protect themselves from future liability by obtaining pre-approval, i.e., immunity, from the probate court for actions they undertake which do not need court approval. Section 733.602 provides that the personal representative "shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified by this code or ordered by the court, shall do so without adjudication, order, or direction of the court." Among the transactions authorized for the personal representative are hiring attorneys and others to aid him in his duties and prosecuting or defending claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative. § 733.612(19), (20). As a fiduciary, *see* section 733.602(1), if the personal representative breaches

his fiduciary duty, he may be liable to the interested persons for damage or loss resulting from that breach. *See* § 733.609; *see also Landon v. Isler*, 681 So.2d 755 (Fla. 2d DCA 1996) (holding that a personal representative does not breach his or her fiduciary duty, and thus become personally subject to damages, by opposing a debatable claim that later proves valid). When asked by Mr. MacDonald in this case for pre-approval to expend estate monies to prosecute these appeals, the trial court was understandably cautious given the circumstances surrounding the couple's deaths and Ms. Mauriello's objections. It would have been a better course of action to neither give nor withhold permission to expend estate monies for these appeals, rather than to give it with conditions that unduly hampered the personal representative in the exercise of his authority. If prosecuting these appeals is later determined to have been frivolous, the personal representative, as any other fiduciary, can be held accountable.

We reverse the order of the trial court that precluded Mr. MacDonald from expending estate monies to prosecute the pending appeals. Should the trial court determine, upon proper motion and after full review of the completed appellate proceedings, that the appeals were not taken in good faith or were frivolous, it has other remedies available to it. *See* § 733.609.

Reversed.

SALCINES, J., Concurs.

VILLANTI, J., Concurs specially.

VILLANTI, Judge, Specially concurring.

I fully concur in the majority opinion but take this opportunity to expound on what I perceive to be an overused and overrated probate procedure-requesting and receiving court approval when it is not necessary or legally required. I suspect this superfluous procedure is used because it is viewed as a means of obtaining a harbor safe from criticism or consequence for the future actions so "authorized." As this case demonstrates, this assumption is incorrect.

Pursuant to section 733.612, Florida Statutes (2002), the personal representative "acting reasonably for the benefit of the interested persons" may perform the "transactions authorized" "without court order." If done, then the personal representative is entitled to the protection afforded by section 733.602(2). Obtaining court approval for actions already authorized by statute does not insulate the personal representative from personal liability, nor does it eliminate the requirements of section 733.612 that the personal representative act reasonably and for the benefit of the interested persons. Additionally, the unnecessary solicitation of court approval itself may arguably even be perceived as a dissipation of estate assets.

All Citations

920 So.2d 190, 31 Fla. L. Weekly D473

Footnotes

1 The two other abated appeals challenge an order of disbursement from the estate and an order denying attorney's fees.

End of Document

3.I.

136 So.3d 1276
District Court of Appeal of Florida,
First District.

Alan B. BOOKMAN, as Successor Personal Representative of the Estate of Deborah E. Irby, Deceased, Appellant,
v.
Dale DAVIDSON, Appellee.

No. 1D13–3086.
|
May 5, 2014.

Synopsis
Background: Successor personal representative of estate filed suit against estate's original personal representative for breach of fiduciary duty, defalcation, malfeasance, devastavit, and for disgorgement of fees, and against estate's former attorney for legal malpractice and for disgorgement of legal fees. Original personal representative filed cross-claim against attorney for legal malpractice, breach of fiduciary duty, and contribution. The Circuit Court, Walton County, David W. Green, J., granted summary judgment in favor of attorney on malpractice claim and dismissed claim for disgorgement against attorney. Successor representative appealed.

Holdings: The District Court of Appeal, Swanson, J., held that:

[1] as a matter of first impression, successor representative had standing and duty to pursue legal malpractice claims against attorney retained by original personal representative, and

[2] although trial court acted within its discretion when it dismissed disgorgement claim on ground that claims should be heard in probate proceedings, court had subject matter jurisdiction over claim.

Affirmed in part, reversed in part, and remanded.

West Headnotes (6)

[1] **Executors and Administrators**
⚖Administrators De Bonis Non
Executors and Administrators
⚖Personal or representative capacity

Successor personal representative of estate had standing and duty, pursuant to statute governing power and rights of successor representatives, to bring legal malpractice suit against attorney who had been retained by estate's original personal representative alleging that the original representative, through attorney's guidance, improperly disclaimed or transferred estate's assets; original representative had power to engage attorney and to pay attorney from estate funds and duty to pursue assets of the estate, and successor representative stepped into the shoes of original representative. West's F.S.A. §§ 733.602, 733.603, 733.612(20), 733.614.

Cases that cite this headnote

[2] **Executors and Administrators**
⚖Administrators De Bonis Non

The powers granted to the original personal representative of an estate flow to a successor personal representative. West's F.S.A. §§ 733.602(1), 733.612(19), 733.614.

Cases that cite this headnote

[3] **Executors and Administrators**
⚖Property in possession of or claimed by heirs, distributees, and others

A personal representative of an estate is required by law to pursue assets and claims of the estate, with value, including those assets which are in the hands of a former personal representative or her or his agents. West's F.S.A. §§ 733.602, 733.603, 733.612(20).

1 Cases that cite this headnote

[4] **Executors and Administrators**
Jurisdiction

Although trial court acted within its discretion when it dismissed disgorgement claims, brought by successor representative of estate against estate's former attorney, on the ground that the claims should be heard in pending probate proceedings, the probate statute governing proceedings for review of compensation for persons employed by estate's personal representative did not preclude trial court's subject matter jurisdiction over disgorgement claim, and thus trial court, in its discretion on remand, could exercise subject matter jurisdiction to hear that issue. West's F.S.A. § 733.6175(2).

1 Cases that cite this headnote

[5] **Judges**
Judicial powers and functions in general

Every judge of the circuit court possesses the full jurisdiction of that court in his or her circuit.

Cases that cite this headnote

[6] **Executors and Administrators**
Decisions reviewable

Statute governing proceedings for review of compensation of personal representatives and employees of estates does not preclude circuit court of general jurisdiction from hearing, in a related civil suit, the issue of compensation of a person who was employed by the personal representative of an estate as a part of the estate's administration. West's F.S.A. § 733.6175(2).

1 Cases that cite this headnote

Attorneys and Law Firms

*1277 John H. Adams, P. Michael Patterson, and Cecily M. Welsh of Emmanuel, Sheppard, and Condon, Pensacola, for Appellant.

W. David Jester and Jonathan B. Minchin of Galloway, Johnson, Tompkins, Burr & Smith, Pensacola, for Appellee.

Opinion

*1278 SWANSON, J.

Appellant, Alan B. Bookman, as successor personal representative of the estate of Deborah E. Irby, appeals the trial court's "Summary Final Judgment as to Count II and Order Dismissing Count III." In it, the court found, as a matter of law, that appellant does not have standing to bring a legal malpractice action against appellee, Dale Davidson, the attorney who was hired by the initial personal representative to aid her in the administration of the estate. The court also granted appellee's motion to dismiss appellant's claim for disgorgement of attorney's fees paid by the estate to appellee on the basis they were excessive. It concluded that while appellant had a right to pursue that claim, it would be more appropriately heard in the estate proceedings, which were still pending. We reverse the trial court's summary final judgment based on a plain reading of section 733.614, Florida Statutes. We affirm on principle, however, the trial court's dismissal of the claim for disgorgement, but hold the court may, in its discretion on remand, exercise its subject matter jurisdiction to hear that issue along with the other counts of the civil case.

According to the undisputed facts, on January 4, 2007, Dana Ford, through appellee, filed a petition for the administration of the estate of Deborah Irby in the Walton County circuit court. On January 24, 2007, Ford was appointed personal representative of the estate and Letters of Administration were issued. Ford engaged the legal services of appellee to advise her concerning her administrative duties until shortly before she resigned as personal representative on February 12, 2010. During the course of his representation of Ford, appellee was paid from estate funds the sum of $195,000.

On February 17, 2010, appellant was appointed successor

personal representative of the estate. After his appointment, appellant filed a civil suit against Ford and appellee. In his Second Amended Complaint, appellant alleged that Ford, through appellee's guidance, improperly disclaimed or transferred out of the estate certain assets belonging to the estate that could have been used to pay its creditors. Appellant sought damages based on allegations that appellee had improperly advised Ford in regards to her responsibilities as personal representative, as well as damages from Ford, personally, for breach of fiduciary duty, defalcation, malfeasance, and devastavit, and also sought disgorgement of personal representative fees paid to her. Ford, in turn, filed an answer raising affirmative defenses, including the defense that her actions were done in good faith and in reliance on the advice of legal counsel. She also filed a cross-claim against appellee for legal malpractice, breach of fiduciary duty, and contribution.

Appellee moved for summary judgment against appellant, in part claiming the undisputed facts established a lack of any attorney-client relationship between appellee and appellant such that appellant, as successor personal representative, could not file a suit against him for malpractice. Primarily, appellee argued a successor personal representative is not in privity with the original personal representative's attorney, a necessary prerequisite to maintaining a malpractice claim under Florida law. He also moved to dismiss appellant's count for disgorgement of the portion of attorney's fees paid to him, urging the probate court had exclusive jurisdiction, or, at least, was the proper court, to review the compensation of professionals involved with the administration of the estate.

The trial court granted appellee's motion for summary judgment, finding appellant lacked standing to sue appellee because he ***1279** was not in privity with appellee. It also dismissed the claim for disgorgement, concluding that while appellant might have a right to pursue a claim for disgorgement of excessive attorney's fees, it was more appropriate that such claim be made in the then-pending estate proceedings. Appellant now challenges these findings and conclusions.

[1] This case presents a question of first impression in Florida, that being whether a successor personal representative of an estate may bring a cause of action for legal malpractice against an attorney hired by her or his predecessor to provide services necessary to the administration of the estate. In reaching our decision to reverse the summary final judgment, we conclude we need not address the privity issue. Instead, our decision is informed by the plain meaning of the language of the relevant statutes in the Florida Probate Code, sections 733.601–733.620, Florida Statutes. *See Petty v. Fla. Ins. Guar. Ass'n,* 80 So.3d 313, 316 n. 2 (Fla.2012); *Srygley v. Capital Plaza, Inc.*, 82 So.3d 1211, 1212 (Fla. 1st DCA 2012); *In re A.G.*, 40 So.3d 908 (Fla. 3d DCA 2010) (holding where the statute's language is clear and unambiguous, courts need not employ principles of statutory construction).

[2] Sections 733.601 through 733.620 set forth the powers, duties, and obligations of the personal representative as regards not only the estate, but an assemblage of other individuals related to the estate's administration, including its beneficiaries, creditors, contractors, accountants, and attorneys. Section 733.602(1), Florida Statutes, prescribes the general duties of the personal representative by providing that the personal representative

> is a fiduciary who shall observe the standards of care applicable to trustees ... [and] is under a duty to settle and distribute the estate of the decedent in accordance with the terms of the decedent's will and [the Florida Probate Code] as expeditiously and efficiently as is consistent with the best interests of the estate.

To accommodate the personal representative's exercise of her or his duties, section 733.612, Florida Statutes, governs the transactions authorized by the personal representative, including the employment of an attorney. *See* § 733.612(19), Fla. Stat. Most significantly, section 733.614 addresses the "[p]owers and duties" of a successor personal representative:

> A successor personal representative has *the same power and duty as the original personal representative* to complete the administration and distribution of the estate as expeditiously as possible, but shall not exercise any power made personal to the personal representative named in the will without court approval.

Therefore, the powers granted to the original personal representative flow to the successor personal representative.

[3] Within this context, the Florida Probate Code expressly

granted to Dana Ford, as personal representative of the estate of Deborah E. Irby, the power to engage appellee to represent her and to pay appellee from estate funds. *See* §§ 733.612(19) & 733.6171(1), Florida Statutes. The Code also grants to the personal representative the power to prosecute lawsuits or proceedings for the protection of the estate and the benefit of interested parties. *See* § 733.612(20), Fla. Stat. Furthermore, Ford, as personal representative, had the duty to act within "the best interests of the estate" and in "the best interests of all interested parties, including creditors." §§ 733.602 & 733.603, Fla. Stat. This means the personal representative is ***1280** required by law to pursue assets and claims of the estate, with value, including those assets which are in the hands of a former personal representative or her or his agents. *See Sessions v. Willard,* 172 So. 242, 245–46 (Fla.1937).

Thus, there is no dispute that Ford, as the estate's personal representative, had standing to bring suit against appellee for legal malpractice. Yet, by virtue of the plain language of section 733.614, we hold all of the power and rights Ford possessed, *including the right to bring suit against appellee on behalf of the estate,* likewise transferred to appellant as the successor personal representative. In essence, appellant stepped into the shoes of Dana Ford when he became the successor personal representative. Consequently, the trial court erred when it entered summary judgment in favor of appellee, claiming appellant lacked standing. Appellant, as successor personal representative, has every right and duty under the Florida Probate Code to pursue legal action for malpractice against appellee on behalf of the estate. *Cf. Onofrio v. Johnston & Sasser, P.A.,* 782 So.2d 1019 (Fla. 5th DCA 2001). The cause is therefore remanded for further proceedings.

[4] [5] Appellant's remaining point concerns the trial court's decision to dismiss his count for disgorgement of attorney's fees against appellee. The court ruled: "While [appellant] may have the right to pursue a claim for disgorgement of excessive fees allegedly charged by [appellee], it is more appropriate that such claim be made in the estate proceedings, which currently remain pending." Section 733.6175(2), Florida Statutes, provides that "[c]ourt proceedings to determine the reasonable compensation of the personal representative *or any person employed by the personal representative,* if required, are *a part of the estate administrative proceedings* ...." (Emphasis added.) Accordingly, it has been held that "the Florida probate court has exclusive jurisdiction [over the matter of compensation] and is obligated to review estate fees upon the petition of a proper party." *In re Winston,* 610 So.2d 1323, 1325 (Fla. 4th DCA 1992). The trial court, then, did not abuse its discretion in holding it was "more appropriate" for the disgorgement claim to be heard in the probate proceedings. Nonetheless, the trial court did not lack subject matter jurisdiction to consider the claim for disgorgement. The "court" for purposes of the Florida Probate Code is defined generally as "the circuit court." § 731.201, Fla. Stat. Any circuit court has "exclusive original jurisdiction" over "proceedings relating to the settlement of the estates of decedents and minors, the granting of letters testamentary ..., and other jurisdiction usually pertaining to courts of probate." § 26.012(2)(b), Fla. Stat. In this respect, "every judge of the circuit court possesses the full jurisdiction of that court in his or her circuit and [ ] the various divisions of that court operate in multi-judge circuits for the convenience of the litigants and for the efficiency of the administration of the circuits' judicial business." *Maugeri v. Plourde,* 396 So.2d 1215, 1217 (Fla. 3d DCA 1981) (holding, however, in the case before it, the clear language of section 744.387(3)(a), Florida Statutes (1977), mandated that "the only court having jurisdiction to approve the settlement of a minor's claim in a pending action is the court in which the action is pending"). *See also Fort v. Fort,* 951 So.2d 1020, 1022 (Fla. 1st DCA 2007) (citing *Maugeri,* and also citing *In the Interest of Peterson,* 364 So.2d 98, 99 (Fla. 4th DCA 1978), for the holding: "All circuit court judges have the same jurisdiction within their respective circuits.... The internal operation of the court system and the assignment of judges to various divisions ***1281** does not limit a particular judge's jurisdiction.") (internal quotations omitted). *Accord Weaver v. Hotchkiss,* 972 So.2d 1060, 1062 (Fla. 2d DCA 2008).

[6] Unlike the statutory language addressed in *Maugeri,* we do not read section 733.6175(2) as precluding a circuit court of general jurisdiction from hearing, in a related civil suit, the issue of compensation of a person who was employed by the personal representative of an estate as a part of the estate's administration. On remand, the trial court, in its discretion and for the convenience of the court and the parties, may hold a joint trial of all the claims if it is shown that a joint trial will not prejudice a party or cause inconvenience. *See Yost v. Am. Nat'l Bank,* 570 So.2d 350, 352 (Fla. 1st DCA 1990).

AFFIRMED, in part, REVERSED, in part, and REMANDED for further proceedings consistent with this opinion.

BENTON and OSTERHAUS, JJ., concur.

All Citations

136 So.3d 1276, 39 Fla. L. Weekly D932

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3.J.

128 Fla. 151
Supreme Court of Florida.

In re PAINE'S ESTATE.
WILLIAMS
v.
GARNETT.

May 1, 1937.
|
Rehearing Denied June 2, 1937.

Action by W. J. Garnett, as administrator de bonis non of the estate of Maggie G. Paine, deceased, against C. H. Williams. From an order of the circuit court which affirmed a judgment of the county judge's court for plaintiff, and denied defendant's petition for rehearing, defendant appeals.

Reversed and remanded, with directions.

West Headnotes (10)

[1] **Executors and Administrators**
Forfeiture or Deprivation of Compensation

Only commissions on sale of estate property, not compensation of administrator and other charges, are forfeited by administrator by failure to file annual returns. Comp.Gen.Laws 1927, §§ 5541, 5546.

Cases that cite this headnote

[2] **Executors and Administrators**
Forfeiture or Deprivation of Compensation

Where administrator does not give proper attention to his duties, court has discretion to refuse to allow him compensation for services. Comp.Gen.Laws 1927, §§ 5541, 5546.

Cases that cite this headnote

[3] **Executors and Administrators**
Services

Administrator may employ counsel when necessary or proper to protect estate or to enable administrator properly to manage estate, and where suits are instituted in good faith against administrator in his representative capacity, he must employ counsel to defend such suits.

1 Cases that cite this headnote

[4] **Executors and Administrators**
Counsel Fees and Costs

Attorneys' fees, where determined by court to be reasonable in amount and rendered for services necessary or proper to protection of estate, will be paid out of estate in settlement of administrator's account unless suits in which services were rendered were collusive or not properly defended, even where administrator has mismanaged estate, since mismanagement may be penalized by denying administrator compensation.

1 Cases that cite this headnote

[5] **Executors and Administrators**
Actions Against Foreign Executors or Administrators

Ordinarily, executor or administrator appointed in one jurisdiction cannot be sued in his representative capacity in any other jurisdiction.

2 Cases that cite this headnote

[6] **Executors and Administrators**

Actions Against Foreign Executors or Administrators

Where administrator was appointed in Florida for woman who died in Florida, but administrator moved to Kentucky and took estate property with him, including property in which deceased had only life estate, remaindermen held entitled to sue administrator in Kentucky courts for return of specific property to which remaindermen had title and proceeds of sale thereof, since property was subject of jurisdiction of Kentucky courts, and hence administrator was entitled to credit for money paid in satisfaction of consent judgment entered in such action.

Cases that cite this headnote

[7] **Executors and Administrators**
Actions Against Foreign Executors or Administrators

In action brought in Kentucky against administrator appointed in Florida, to recover specific property and proceeds of sale thereof, Kentucky law governed as to whether suit might be maintained, but Florida law governed as to liability of administrator.

Cases that cite this headnote

[8] **Executors and Administrators**
Accounting and Settlement

Administrator appointed in Florida held not entitled to credit on final accounting for money paid on consent judgment entered in Kentucky action against him for waste committed by decedent as life tenant of realty, since such action was a "local action" for damages by general creditor of estate, and maintainable in Kentucky only if ancillary administration had been taken out.

1 Cases that cite this headnote

[9] **Life Estates**
Timber

Tenant for life without impeachment for waste may cut wood to same extent as owner of fee, provided tenant does not cut trees planted for ornament or shelter, or commit equitable waste, or cut willfully or maliciously.

1 Cases that cite this headnote

[10] **Executors and Administrators**
Compromises by Creditors

Administrator may compromise claim or suit brought against estate if compromise is fair, beneficial to estate and free from fraud, negligence, or misconduct, but not suit brought in court of state which had no jurisdiction thereof.

Cases that cite this headnote

***152** ****431** Appeal from Circuit Court, Pinellas County; John I. Viney, judge.

Attorneys and Law Firms

***153** McKay, Macfarlane, Jackson & Ramsey and Chester H. Ferguson, all of Tampa, for appellant.

Baskin, Jordan & Richard, of Clearwater, for appellee.

Opinion

PER CURIAM.

This is an appeal from an order of the circuit court affirming certain orders of the county judge's court, and denying a petition for rehearing. The orders of the county judge's court appealed to the circuit court were those

orders sustaining certain objections made to the report of C. H. Williams, as administrator of the estate of Maggie G. Paine, deceased, denying a rehearing and entering judgment in favor of the estate against C. H. Williams former administrator, in the sum of $4,269.17.

It appears that the First National Bank of St. Petersburg, Fla., was, on May 26, 1930, appointed administrator of the estate of Maggie G. Paine, deceased. Thereafter the First National Bank of St. Petersburg became insolvent, and Gertie M. Dickinson, Carrie M. Barker, George A. McElwain, Elizabeth T. Graves, Mamie T. Bassett, Lulu L. Goff, Nell O. Garnett, and Jimmie Graves Thompson, nieces and nephews and next of kin of the deceased, petitioned the county judge to remove the First National Bank of St. Petersburg as administrator of the estate and to appoint C. H. Williams of Hopkinsville, Ky., as administrator. Whereupon the county judge, on September 10, 1930, entered an order appointing C. H. Williams administrator de bonis non of the estate of Maggie G. Paine, deceased, and letters of administration were issued to him. Edgar H. Dunn of St. Petersburg was designated as the resident agent for the administrator. Upon his appointment, C. H. Williams returned to his domicile in Kentucky, and carried with him or had forwarded to him the entire estate, consisting of cash, notes, bonds, and jewelry, and ***154** there proceeded to administer it without taking out ancillary proceedings.

On May 17, 1934, Lulu L. Goff, Florence De Bar, Elizabeth T. Graves, Jimmie G. Thompson, Nell Garnett, Mamie T. Bassett, George F. Thompson, James G. Thompson, Rebecca T. Crockett, Ruth T. Wilson, and Rachel T. Griffin, heirs at law of Maggie G. Paine, deceased, filed their petition praying that the court remove C. H. Williams as administrator of the estate and appoint W. J. Garnett of Pembroke, Ky., administrator de bonis non of the estate; that C. H. Williams be required to give an accounting; that he be required to pay the legal rate of interest on the money retained in his hands for an unreasonable period of time; that he be denied compensation as administrator of the estate because of his failure to properly administer it and file the proper reports.

The petition alleged that C. H. Williams, as administrator, has in his hands, after payment of all debts and costs of the estate, a substantial sum of money and certain articles of personal property, consisting of shares of stock, jewelry, notes, and other articles; that petitioners and other interested parties have repeatedly requested him to convert said assets into money so that it might be distributed, or that distribution be made in kind, but he has refused and still refuses to do either; that part of said property consists of stock in the Planter's Bank & Trust Company of Hopkinsville, Ky., which petitioners and others frequently requested him to sell while market conditions were favorable, but he refused and still refuses to sell said stock, with the result that it is worth only about half of what it was worth when he was first requested to sell it; that said administrator has failed to take steps to collect certain notes and money due the estate, which collection may become ***155** impossible by reason of delay; that although more than three years have elapsed since said administrator was appointed and received his letters of administration, yet he has not filed any report whatever; that his failure to properly administer the estate and file his reports as required by law are without just cause or excuse; that upon his appointment he received approximately $9,000 in cash, which has been in his hands since that time; that upon information and belief petitioners allege that said administrator paid out a substantial part of that money without receiving proper authority from this court or otherwise; that petitioners ****432** believe said administrator has paid out money on certain proper charges against the estate, but have no knowledge of the amount because of his failure to file any reports; that said administrator has had in his hands for more than three years a large sum of money belonging to the estate.

The answer of the administrator set up affirmative matter of defense by averring that although he was appointed administrator in September, 1930, the money did not come into his hands until September, 1931, because of long-drawn-out litigation to establish the fact that the funds of the estate on deposit with the defunct First National Bank of St. Petersburg were trust funds; that he made an effort to sell the stock of the Planter's Bank & Trust Company of Hopkinsville, Ky., but at that time a bitter campaign was going on between that bank and the other bank of Hopkinsville, the financial structure at Nashville, Tenn., broke down, the National Bank of Kentucky at Louisville failed, and all demand for bank stock was cut off. The answer then alleged that Maggie G. Paine had, by a former marriage, been the wife of V. A. Garnett, who died and willed the major portion of his estate, both real and personal, ***156** to his widow, Maggie G. Paine, for life, and also made her executrix of his will; that title could be traced from the intangibles of Garnett's estate to much of the assets that came into the hands of C. H. Williams as administrator of the Paine estate; that said widow afterwards married a Mr. Paine; that on December 23, 1930, a writ of garnishment was served on C. H. Williams as administrator of the estate, and concurrently a suit was filed attacking the validity of the claim of the Paine estate to any of the property, contending that all assets in the hands of C. H. Williams, as administrator of the Paine estate, was in fact property of the remaindermen under the will of V. A. Garnett, and it was found during

the course of the litigation that Maggie G. Paine had not filed with the court a settlement showing what portion of the property came into her hands through the will of V. A. Garnett, which after her death was to go to other persons; that in this case a judgment of $2,500 was rendered in favor of plaintiffs against C. H. Williams as administrator of the Paine estate; that the attorney's fees were not decided upon until the current year, after final disposition of the matter; that plaintiffs contended in that case that the moneys on deposit in the First National Bank of St. Petersburg to the credit of the Paine estate were proceeds from the sale of stock in the bank of Hopkinsville, Ky., which originally belonged to V. A. Garnett, this contention being substantiated by the records of said bank as to fourteen of said shares, but the status of the remaining shares of stock were somewhat indefinite; that the status of fourteen shares of the stock of the Planter's Bank & Trust Company was also doubtful and it is contended that they were bought with money belonging to the Garnett estate. The answer then set up the defense that another suit was filed against C. H. Williams as administrator of the estate of Maggie G. *157 Paine, deceased, alleging that Maggie G. Paine, during her life tenancy of certain lands, cut timber therefrom, which was not for the upkeep of the property, and a judgment for $425 was entered in favor of the remaindermen under the Garnett will. The answer set up the further defense that C. H. Williams made an earnest effort to sell the various properties and collect the debts due the estate, but without avail; that prior to the filing of the petition herein, suit was instituted against Mamie T. Bassett to foreclose a lien on certain property for the amount of $7,500; that the administrator is anxious to close the estate and recently determined to get a court order directing him to sell the stocks belonging to the estate, but ran into difficulties and was blocked from carrying out that plan.

Then followed the administrator's reports, listing the assets of the estate that he received and that have come in since his appointment, and the expenditures and disbursements made from those assets.

The heirs of Maggie G. Paine then filed their exceptions to the report of the administrator, objecting to certain items given in the report. General objections were filed to the report as an entirety because C. H. Williams, as administrator, paid the vouchers without any authority from the county judge of Pinellas county; that he never applied to the court for authority to make any of the disbursements; that he did not file his report within the time allowed by law; that he made each of the payments arbitrarily with a total disregard for the laws of the state of Florida and the authority of the county judge's court of Pinellas county; that from September, 1930, to June, 1934, the estate had a cash balance running as high as $9,000, and at present amounting to $2,388.33, according **433 to the report; that if this money was deposited so as to draw interest, the receipts *158 should show it, and if not so deposited, the administrator is properly chargeable with the amount the estate should have received as interest on said funds.

Trial of the issues was had before the county judge of Pinellas county on September 12, 1934, after which the court entered its order approving the report of the administrator except as to the following items, which were not followed:

"Voucher

No.	To whom Paid	Amount
19	C. H. Williams	$ 350.00
23	James Breathitt, Jr.	250.00
24	James Breathitt, Jr.	250.00
25	John C. Duffy, attorney and Helen	

	Morehead Layne	106.25
26	John C. Duffy and Clarence G.	
	Morehead	212.50
27	John C. Duffy and James W.	
	Morehead	106.25
29	S. Y. Trimble, Trustee	2500.00
30	R. A. Craft, Circuit Clerk	41.17
31	Mrs. Mary W. Keller	3.00
33	James Breathitt, Jr.	200.00
40	White & Clark	250.00

'All other objections are overruled, and the report otherwise approved.'

The administrator filed his petition for rehearing in which he set out in detail what each voucher disallowed by the court was spent for. He requested the order, disallowing these payments, be vacated, because the payments accrued either directly or indirectly by reason of actions instituted in Kentucky, upon which valid judgments were obtained against petitioner-administrator; because ***159** said payments were not made from the assets of the estate of Maggie G. Paine, but from assets in petitioner's hands belonging to certain beneficiaries named in the last will and testament of V. A. Garnett, the husband of Maggie G. Paine, prior to her marriage to Dr. Paine; because said order attempts to require petitioner to pay his successor in trust, funds that do not comprise part of the estate of Maggie G. Paine; and because said order is contrary to law.

The court denied the petition for rehearing and ordered that final judgment for $4,269.17 be entered in favor of the petitioning heirs against C. H. Williams, former administrator; and directing him to pay over to W. J. Garnett, the administrator, the sum of $4,269.17.

C. H. Williams took an appeal to the circuit court, which

court affirmed the orders of the county judge's court appealed from.

Petition for rehearing and reargument of the cause was denied by the circuit court.

From these two orders of the circuit court the former administrator, C. H. Williams, took an appeal to the Supreme Court.

The first question presented is whether an administrator forfeits all of the compensation allowed to him by law because he fails to file his annual returns as required by statute?

The court, in denying C. H. Williams compensation for his services stated that under section 5546, C.G.L., the administrator precluded himself from receiving any compensation for his services and forfeited all commissions by reason of the fact that he did not make annual accountings as required by law.

[1] Section 5546, C.G.L. provides that administrators, unless ***160** otherwise ordered by the court, shall make their annual returns on the first day of June in every year, unless appointed after January first and before June first, then the first annual return may not be filed until the first of June of the second year after the appointment. Then the statute provides:

'If they fail to make such returns before such time, they shall forfeit all commissions on such returns so to be made.'

Section 5541, C.G.L. provides as follows:

'Executors and administrators shall be allowed all reasonable charges on account of disbursement for funeral expenses, and in the administration of the estate of the person deceased, and shall also be allowed a just and fair compensation for their services, and also a compensation not exceeding six per cent. on money arising from the sale of personal property and lands of the deceased.'

In the case of Shepard's Heirs v. Shepard's Administrator, 19 Fla. 300, this statute was construed to give to the administrator four different kinds of allowances or compensation, which are as follows: (1) Reasonable charges on account of funeral expenses; (2) reasonable charges incurred in the administration of the decedent's estate; (3) fair and just compensation for his services; and (4) compensation not exceeding 6 per cent. on money arising from the sale of real and personal property of the decedent.

In the case of Sanderson's Administrators v. Sanderson, 20 Fla. 292, the statute, now section 5546, C.G.L., forfeiting the ****434** commissions of the administrator, upon his failure to file his annual report, was interpreted. The court said at page 319:

'We do not understand the statute to provide for any forfeiture except in the case of the neglect of the administrator 'to render' his annual account to the County Court, and the ***161** forfeiture there does not extend beyond commissions on amounts collected or disbursed and approved and allowed.'

[2] Thus only the fourth class of compensation is forfeited when the administrator fails to file his report pursuant to the provisions of section 5546, C.G.L. The administrator would be entitled to receive compensation or allowances under the first three heads enumerated, even though he failed to file his annual report on time, unless there be other legal reasons why he should not be so entitled. The report of the administrator showed and the testimony likewise revealed that the administrator was entitled to some compensation for his services in procuring by court action the sum of $8,971.37 as a preferred claim from the receiver of the defunct First National Bank of St. Petersburg. There may have been other services such as the sale of Hopkinsville Milling Company stock for $675, the receipt of a cash balance in the Bank of Pembroke, Pembroke, Ky., of $426.03, and the receipt of refund on farm insurance of $3.30, for which the administrator should be compensated. Then there is the consideration to be taken into account by the court, that the administrator did not give proper attention to his duties, so that the value of his services in the first instance would be nullified. In that event, it is in the discretion of the court of refuse to allow him compensation for his services. See Eppinger, Russell & Co. v. Canepa, 20 Fla. 262; Schouler on Wills, Executors & Administrators (6th Ed.) vol. 4, § 3049.

The second question presented is whether the amounts paid by the administrator as fees to attorneys to defend suits brought against him should be allowed as a credit to him.

[3] [4] An administrator may employ counsel, when necessary or proper to protect the estate, or to enable him properly to ***162** manage it, and the reasonable charges for such service will be paid out of the estate, in the settlement of the administrator's account. Brickell v. McCaskill, 90 Fla. 441, 106 So. 470. This allowance should be made when these facts exist, even though the administrator has mismanaged the estate, where the element of mismanagement may be taken care of by the court in determining as above set forth in Eppinger, Russell & Co. v. Canepa, 20 Fla. 262, that the administrator is not entitled to any compensation.

The county judge refused to allow the administrator credit for any sum paid to attorneys who represented him in the handling of the estate's affairs. It seems that where suits are instituted, in good faith, against an administrator in his representative capacity, he has no alternative than to employ counsel to defend those suits. However, if the court finds that the suits were collusive and not properly defended, but were part of a prearranged transaction between both parties and attorneys to have the record show that a judgment was entered against the defendant, then the attorneys would not be entitled to any compensation, and the administrator would not be entitled to allowance for the amounts so paid. The trial court must determine whether, under the circumstances, the employment of counsel was for the purpose of protecting the estate, and, if so, whether the fees paid were reasonable for the services rendered.

The third, fourth, and fifth questions presented are argued together and present the query as to whether judgments rendered against a foreign administrator in the courts of the state of his residence instead of the courts of the state of his appointment, determining the ownership of property within the state of his residence, are entitled to recognition in the state of his appointment, under the full ***163** faith and credit clause of the Constitution of the United States?

Payments by the administrator that were disallowed by the county judge were disallowed under the theory that judgments rendered in Kentucky against an administrator appointed by a Florida court, though a resident of Kentucky, were void, and that there was no duty on the part of the administrator to discharge them by payment, and that such conduct on his part was waste of the assets of the estate.

The record shows that the residuary devisees under the Garnett will brought their bill of complaint in Kentucky against C. H. Williams, as administrator of the estate of Maggie G. Paine, deceased, to recover assets in his possession purporting to belong ****435** to the Paine estate, but which were alleged to belong to the devisees under the Garnett will. Williams was served with process and later filed his answer thereto. Thereafter it was stipulated by the parties that certain assets in the hands of Williams constituted property of the Garnett estate, and a consent judgment for $2,500 was entered in favor of plaintiffs against Williams as administrator of the Paine estate. The court also decreed that James Breathitt, Jr., and the firm of White and Clark be paid $250 each as counsel fees. These amounts were paid by Williams from the assets of the Paine estate. For the alleged waste of timber lands by Maggie G. Paine during her lifetime, when she had only a life interest therein, another consent judgment for $425 was entered in favor of the heirs under the Garnett will against Williams as administrator of the Paine estate, and he also paid this judgment from the assets of the Paine estate.

In each of these cases the petition contained a false statement in alleging that C. H. Williams was appointed ***164** administrator of the Paine estate by the Christian county court in Kentucky, when in fact he was appointed such administrator by the county judge's court of Pinellas county, Fla. This allegation was inserted in the petitions to confer jurisdiction on the Kentucky courts.

In the suit resulting in entry of consent judgment in the amount of $2,500 against the Paine estate, the administrator did not deny the allegation of the petition that he was appointed administrator of the Paine estate in Kentucky. This lax conduct on the part of the administrator has the appearance of an attempt on his part to jeopardize the interests of the Paine estate by permitting the assets of the estate to be bargained away by consent judgments rather than have the issues tried by the court.

[5] The petition in the case resulting in entry of a consent judgment against the Paine estate in the amount of $425 alleged that Mrs. Paine died in Kentucky, whereas she died in Florida, and also alleged that there was no property in the estate subject to execution and that the estate is probably insolvent, all of which allegations were untrue.

'The general rule is that an executor or administrator appointed in one jurisdiction cannot be sued in his representative capacity in any other jurisdiction.' 24 C.J. 1136, § 2720.

Exceptions to the above rule have been made in a number of cases, but the exceptions are not universally recognized.

Practically all of these exceptions to the general rule have been in suits in equity involving peculiar circumstances, Finley v. Keinningham, 79 S.W. 236, 25 Ky.Law Rep. 1955; Hussey v. Sargent, 116 Ky. 53, 75 S.W. 211, 25 Ky.Laws Rep. 315; Kenningham v. Kenningham's Ex'r, 139 Ky. 666, 71 S.W. 497, 24 Ky.Law Rep. 1330; Baker v. Smith, 3 Metc.(Ky.) 264; ***165** Manion's Adm'rs v. Titsworth, 18 B.Mon.(Ky.) 582; Atchison's Heirs v. Lindsey, 6 B.Mon. (Ky.) 86, 43 Am.Dec. 153; Curle v. Moor, 1 Dana(Ky.) 445; Dorsey's Ex'r v. Dorsey's Adm'r, 5 J.J.Marsh.(Ky.) 280, 22 Am.Dec. 33, where the suit was permitted, of necessity, to prevent a failure of

justice. Colbert v. Daniel, 32 Ala. 314; Bergmann v. Lord, 194 N.Y. 70, 86 N.E. 828; Montgomery v. Boyd, 78 App.Div. 64, 79 N.Y.S. 879; McNamara v. Dwyer, 7 Paige (N.Y.) 239, 32 Am.Dec. 627.

[6] Such suits have been maintained where a foreign representative came into another jurisdiction and brought with him assets from the jurisdiction of his appointment, McNamara v. Dwyer, 7 Paige (N.Y.) 239, 32 Am.Dec. 627; Calhoun v. King, 5 Ala. 523; Julian v. Reynolds, 8 Ala. 680, or where he left the jurisdiction of his appointment and became a resident of another jurisdiction. Courtney v. Pradt (C.C.A.) 160 F. 561; Manion's Adm'rs v. Titsworth, 18 B.Mon.(Ky.) 582; Kenningham v. Kenningham's Ex'r, 139 Ky. 666, 71 S.W. 497, 24 Ky.Law Rep. 1330. In such case a bill in equity will lie to compel him to account for such assets to the persons lawfully entitled thereto, where but for the interference of the court of equity there would manifestly be a failure of justice. Colbert v. Daniel, 32 Ala. 314; Hussey v. Sargent, 116 Ky. 53, 75 S.W. 211, 25 Ky.Law Rep. 315. To authorize this proceeding, it must appear that the administrator has assets within the jurisdiction of the court, and is accountable to the complaining party under a will or as a trustee ex maleficio. Lewis v. Parrish, 155 F. 285, 53 C.C.A. 77; Marcy v. Marcy, 32 Conn. 308; Campbell v. Tousey, 7 Cow.(N.Y.) 64; Dillard v. Harris, 2 Tenn.Ch. 196. But a creditor is not entitled to sue under such circumstances. ****436** Baker v. Smith, 3 Metc.(Ky.) 264; Hedenberg v. Hedenberg, 46 Conn. 30, 33 Am.Rep. 10.

'The principle that executors and administrators are not ***166** liable to actions as such in States where they have obtained no letters is not permitted to protect them against the consequences of their own wrong or default. Thus where an executor or administrator removes the property of the estate in his charge, without having completed the administration, to another State, and fails to obtain new letters of administration there, a court of equity will grant relief to any person whose interest is thereby jeoparded, on the ground that, where a trust fund is in danger of being wasted or misapplied, the court of chancery, on the application of those interested, will interfere to protect the fund from loss. The exercise of this authority is in no way inconsistent with the general principle announced as governing the powers and liabilities of executors and administrators, who, as such, derive their powers from, and are amenable only to, the forum of the State under whose laws they hold office. They are in such proceeding treated, not in their official capacity, which is coextensive only with the State in which they receive their appointment, but as persons who, by withdrawing themselves from the jurisdiction of the court having power over them, are unlawfully in possession of the property which is to be protected or adjudged to its lawful owner. 'This is not a suit against the administrator for a debt due from the estate, but it is an assertion of title to the property itself, which, being found in this State, will give the court jurisdiction.'' Woerner-The American Law of Administration, vol. 1, § 164, p. 571 (3d Ed.).

An administrator or executor who is appointed or qualified in another state and there receives assets in his hands may be sued in the tribunals of the state of Kentucky by persons entitled to such assets if he shall have removed to and settled in Kentucky. ***167** Manion's Administrators v. Titsworth, 18 B.Mon. 582; Hussey v. Sargent, 116 Ky. 53, 75 S.W. 211, 25 Ky.Law Rep. 315; Kenningham v. Kenningham's Ex'r, 139 Ky. 666, 71 S.W. 497, 24 Ky.Law Rep. 1330. Where suit against a foreign administrator is allowed, his liability will be determined by the laws of the state of his appointment and not of the state in which he was sued. Manion's Adm'rs v. Titsworth, 18 B.Mon.(Ky.) 582; McNamara v. Dwyer, 7 Paige (N.Y.) 239, 32 Am.Dec. 627.

[7] Under the rules as laid down above, it appears that the suit instituted for the purpose of having certain property in the hands of C. H. Williams, as administrator of the Paine estate, declared to be property of the Garnett estate, might properly have been instituted and maintained in the courts of the state of Kentucky, because the property, ownership of which is claimed by the remaindermen under the Garnett will, and the administrator were both physically in the state of Kentucky, and the suit was against the administrator and the bank, whose stock was involved; provided the final decree in that case was for the return of the property in specie or the payment of the amount of money received from the sale of that property, if it had in fact been sold, and the money had been reasonably identified as being the proceeds from the sale. Otherwise the courts of Kentucky would not have jurisdiction of the case. The laws of Kentucky govern as to whether the suit may be brought or maintained; but the laws of Florida govern as to the liability of the administrator. The payment of this judgment by the administrator should have been allowed on the final accounting if these facts were found to exist.

[8] [9] The suit instituted against the administrator to recover damages for the conduct of the life tenant, Mrs. Maggie G. ***168** Paine, cutting timber from certain lands, which timber was not used for the upkeep of the place, the suit terminating in a consent judgment in favor of the heirs under the Garnett will, was not a claim maintainable in the state of Kentucky under any of the foregoing rules. It was not a claim made under any will that was being administered by Williams, was not a claim against Williams as trustee ex maleficio, was not a claim for specific property in the hands of Williams in the state of

Kentucky; but was, on the contrary, a claim for damages for the conduct of the life tenant, Mrs. Maggie G. Paine, which was a claim by a creditor of the Paine estate, and such case, under the Kentucky law, was not, in these circumstances, maintainable in the courts of Kentucky as an exception to the general rule. This was a local action because it was for damages to the freehold and was maintainable, if at all, only by taking out ancillary administration of the Paine estate in Kentucky.

**437 'A tenant for life without impeachment for waste may cut wood though such cutting would otherwise, at the common law, amount to waste. In other words, he may do any act with reference to woodland that the owner of the fee might do, being restrained only from the commission of willful and malicious waste. He may thin out the timber of a wood's pasturage, or cut off all the timber and cultivate it as a field. If the cutting is not wanton or malicious, and does not amount to equitable waste, it cannot be restrained by the owner of the fee, even if he sells the timber. But even a tenant for life without impeachment for waste may not cut down trees left or planted for ornament or shelter, the question whether the particular timber does answer that description being one of fact, and effect being *169 given to the design of the testator as to what is ornamental.' 27 R.C.L. 1030, § 19.

Therefore the entry in this case of the consent judgment against Williams as administrator of the Paine estate was without authority of law of the Kentucky courts, and the county judge of Pinellas county, Fla., correctly refused to allow payment of this judgment as a proper charge against the Paine estate.

Appellant argued the sixth and seventh questions together, which present the question as to whether an administrator may compromise and settle a valid and subsisting indebtedness against the estate, especially when authorized to do so by the beneficiaries of the estate.

This question embodies two separate propositions: First, that the administrator had the power in these circumstances to compromise the two suits instituted against him in his representative capacity and agree to the entry of judgments in conformity with the compromise; and, second, that the heirs of Maggie G. Paine agreed to accept the consent judgments as binding on the estate in both cases.

In support of the proposition that the heirs had agreed to the compromises made, appellant quotes testimony in his brief, which he states is all of the evidence on the subject. This evidence shows that Mr. Breathitt, attorney for appellant in Kentucky, testified that Dr. Bassett, in undertaking to speak for a great number of heirs, agreed to the settlement. Mr. Richeson said, while cross-examining Mr. Breathitt, that he was induced to agree to this because he was informed that C. H. Williams was administering the Paine estate in Kentucky, which information Mr. Breathitt did not recall. Mr. Richeson stated that he and Mrs. Lulu Goff were in the office of Mr. Breathitt in Kentucky in September, 1932, and had a conversation about this suit. *170 There is no showing made by this evidence that all or even a majority of those interested in the matter agreed to the entry of a compromise judgment in either suit that would bind them. The most that is shown is that Mr. Breathitt referring to the $2,500 judgment testified that Dr. Bassett, who was representing a great number of the heirs, agreed to the entry of that judgment.

[10] The power of an administrator or executor to compromise claims is stated in the following language in 11 R.C.L. 202, § 225:

'At common law the executor and administrator, having an absolute power of disposal over the whole of the personal effects of a decedent, had authority to compromise or accept any composition or otherwise settle any debt, claim, or thing whatsoever in regard thereto. And he still has such powers in this connection that his compromise of a claim against the estate will be upheld if it is *fair, beneficial to the estate*, and *free from fraud, negligence* or *misconduct*. The same is true as to claims belonging to the estate.' (Italics supplied.)

Thus it is seen that the administrator had the power to compromise these suits if such compromises were fair, beneficial to the estate, and free from fraud, negligence, or misconduct. Under this rule, the administrator had no authority to compromise the suit in which judgment for $425 was entered against him in his representative capacity, because it would not be beneficial to the estate to have a judgment entered against it, when the courts of the state of Kentucky were without jurisdiction to entertain suit upon which the judgment was entered. In the other suit in which a consent judgment was entered against the administrator in his representative capacity for $2,500, the administrator had authority to compromise that claim *171 if it was fair, beneficial to the estate, and free from fraud, negligence, and misconduct.

The trial court must determine this, after it has determined whether the suit is maintainable against the administrator in Kentucky, in these particular circumstances, **438 under the rules as set forth in another part of this opinion.

The orders of the circuit court appealed from are reversed, and the cause is remanded, with directions that the circuit

court order the county judge's court to entertain such further proceedings as will conform to the views expressed in this opinion.

It is so ordered.

ELLIS, C. J., and WHITFIELD, TERRELL, BROWN, BUFORD, and DAVIS, JJ., concur.

All Citations

128 Fla. 151, 174 So. 430

End of Document

3.K.

West's Florida Statutes Annotated
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 733. Probate Code: Administration of Estates (Refs & Annos)
Part VI. Duties and Powers of Personal Representative

West's F.S.A. § 733.612

733.612. Transactions authorized for the personal representative; exceptions

Effective: January 1, 2002

Currentness

Except as otherwise provided by the will or court order, and subject to the priorities stated in s. 733.805, without court order, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) Retain assets owned by the decedent, pending distribution or liquidation, including those in which the personal representative is personally interested or that are otherwise improper for fiduciary investments.

(2) Perform or compromise, or, when proper, refuse to perform, the decedent's contracts. In performing the decedent's enforceable contracts to convey or lease real property, among other possible courses of action, the personal representative may:

(a) Convey the real property for cash payment of all sums remaining due or for the purchaser's note for the sum remaining due, secured by a mortgage on the property.

(b) Deliver a deed in escrow, with directions that the proceeds, when paid in accordance with the escrow agreement, be paid as provided in the escrow agreement.

(3) Receive assets from fiduciaries or other sources.

(4) Invest funds as provided in ss. 518.10-518.14, considering the amount to be invested, liquidity needs of the estate, and the time until distribution will be made.

(5) Acquire or dispose of an asset, excluding real property in this or another state, for cash or on credit and at public or private sale, and manage, develop, improve, exchange, partition, or change the character of an estate asset.

(6) Make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish improvements; or erect new party walls or buildings.

(7) Enter into a lease, as lessor or lessee, for a term within, or extending beyond, the period of administration, with or without an option to renew.

(8) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(9) Abandon property when it is valueless or so encumbered, or in a condition, that it is of no benefit to the estate.

(10) Vote, or refrain from voting, stocks or other securities in person or by general or limited proxy.

(11) Pay calls, assessments, and other sums chargeable or accruing against, or on account of, securities, unless barred by the provisions relating to claims.

(12) Hold property in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the property so held.

(13) Insure the assets of the estate against damage or loss and insure against personal and fiduciary liability to third persons.

(14) Borrow money, with or without security, to be repaid from the estate assets or otherwise, other than real property, and advance money for the protection of the estate.

(15) Extend, renew, or in any manner modify any obligation owing to the estate. If the personal representative holds a mortgage, security interest, or other lien upon property of another person, he or she may accept a conveyance or transfer of encumbered assets from the owner in satisfaction of the indebtedness secured by its lien instead of foreclosure.

(16) Pay taxes, assessments, and other expenses incident to the administration of the estate.

(17) Sell or exercise stock subscription or conversion rights or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(18) Allocate items of income or expense to either estate income or principal, as permitted or provided by law.

(19) Employ persons, including, but not limited to, attorneys, accountants, auditors, appraisers, investment advisers, and others, even if they are one and the same as the personal representative or are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act upon the recommendations of those employed persons without independent investigation; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary. Any fees and compensation paid to a person who is the same as, associated with, or employed by, the personal representative shall be taken into consideration in determining the personal representative's compensation.

(20) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative.

(21) Sell, mortgage, or lease any personal property of the estate or any interest in it for cash, credit, or for part cash or part credit, and with or without security for the unpaid balance.

(22) Continue any unincorporated business or venture in which the decedent was engaged at the time of death:

(a) In the same business form for a period of not more than 4 months from the date of appointment, if continuation is a reasonable means of preserving the value of the business, including good will.

(b) In the same business form for any additional period of time that may be approved by court order.

(23) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(24) Satisfy and settle claims and distribute the estate as provided in this code.

(25) Enter into agreements with the proper officer or department head, commissioner, or agent of any department of the government of the United States, waiving the statute of limitations concerning the assessment and collection of any federal tax or any deficiency in a federal tax.

(26) Make partial distribution to the beneficiaries of any part of the estate not necessary to satisfy claims, expenses of

administration, taxes, family allowance, exempt property, and an elective share, in accordance with the decedent's will or as authorized by operation of law.

(27) Execute any instruments necessary in the exercise of the personal representative's powers.

Credits

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 78; Laws 1976, c. 76-172, § 3; Laws 1977, c. 77-87, § 31; Laws 1977, c. 77-174, § 1; Laws 1979, c. 79-400, § 271. Amended by Laws 1997, c. 97-102, § 1009, eff. July 1, 1997; Laws 2001, c. 2001-226, § 135, eff. Jan. 1, 2002.

Notes of Decisions (104)

West's F. S. A. § 733.612, FL ST § 733.612
Current with chapters from the 2016 2nd Regular Session of the 24th Legislature in effect through May 10, 2016

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIV. CASE NO.: 502012CP004391XXXXNB (IH)

IN RE: ESTATE OF SIMON L. BERNSTEIN,
Deceased.
_____/

ORDER ON TRUSTEE'S MOTION TO APPROVE RETENTION OF COUNSEL AND, TO APPOINT TED S. BERNSTEIN AS ADMINISTRATOR AD LITEM TO DEFEND CLAIM AGAINST ESTATE BY WILLIAM STANSBURY

THIS CAUSE came on to be heard before this Honorable Court on March 2, 2017, upon Trustee's Motion to Approve Retention of Counsel and, to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim against Estate by William Stansbury, and the Court having reviewed the file, heard argument of counsel, and being otherwise duly advised in the premises, it is hereby

ORDERED and ADJUDGED that:

1. Trustee's Motion to Approve Retention of Counsel and, to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim against Estate by William Stansbury is hereby DENIED.

2. _____

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DONE AND ORDERED in Palm Beach Gardens, Palm Beach County, Florida this ___ day of _____, 2017.

_____
ROSEMARIE SCHER, Probate Judge

Copies to:
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***Pamela Beth Simon**, 950 North Michigan Avenue, #2603, Chicago. IL 60611; psimon@stpcorp.com*

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIV. CASE NO.: 502012CP004391XXXXNB (IH)

IN RE: ESTATE OF SIMON L. BERNSTEIN,
Deceased.
_____/

ORDER ON MOTION OF CREDITOR, WILLIAM E. STANSBURY, FOR DISCHARGE FROM FURTHER RESPONSIBILITY FOR THE FUNDING OF THE ESTATE'S PARTICIPATION IN THE CHICAGO LIFE INSURANCE LITIGATION AND FOR ASSUMPTION OF RESPONSBILITY BY THE ESTATE AND FOR REIMBURSEMENT OF ADVANCED FEES

THIS CAUSE came on to be heard before this Honorable Court on March 2, 2017, upon Motion of Creditor, William E. Stansbury, for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate and for Reimbursement of Advanced Fees, and the Court having reviewed the file, heard argument of counsel, and being otherwise duly advised in the premises, it is hereby

ORDERED and ADJUDGED that:

1. Motion of Creditor, William E. Stansbury, for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate and for Reimbursement of Advanced Fees is hereby GRANTED.

2. _____

DONE AND ORDERED in Palm Beach Gardens, Palm Beach County, Florida this ___ day of _____, 2017.

_____
ROSEMARIE SCHER, Probate Judge

Copies to:
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