Probate And Trust Case Summaries

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The Supreme Court of Florida held that where a Ward's right to contract has been removed under Fla. Stat. § 744.3215(2)(a), the ward is not required to obtain court approval prior to exercising the right to marry; however, court approval is necessary before such a marriage can be given legal effect.

Smith v. Smith, 42 Fla. L. Weekly S773a (Fla. 2017)

In April of 2010, J. Alan Smith (the "Ward") was determined to be partially incapacitated after sustaining head trauma in an automobile accident. Consequently, the Ward's right to contract and his right to manage property were removed and delegated to John Cramer (the "Limited Guardian"), who was appointed limited guardian of property of the Ward. The court specifically found there was "no incapacity on the part of [the Ward] that would warrant a guardian of a person."

It is undisputed that the Ward met and became engaged to Glenda Martinez Smith ("Glenda") before the Ward was deemed incapacitated. In December of 2011, and subsequent to the Ward having his right to contract and his right to manage property removed, Glenda and the Ward were married, but court approval was not obtained prior to the marriage ceremony. Pursuant to Fla. Stat. § 744.3215(2)(a), if a ward's right to contract is delegated to a guardian, then the ward must seek court approval of a marriage for that marriage to be legally valid. Here, Glenda requested that the Limited Guardian seek court approval, but the Limited Guardian refused.

In early 2013, the Ward's court-appointed counsel ("CAC") filed a petition for annulment based solely on the assertion that the marriage was void because court approval had not been obtained prior to the act of marriage. Glenda then moved to ratify the marriage and the Ward's CAC moved for summary judgment. After a hearing, the court denied Glenda's motion to ratify the marriage and granted the motion for summary judgment filed by the Ward's CAC. The trial court reasoned that Fla. Stat.§ 744.3215(2)(a) requires prior court approval because the "statute does not contemplate the right to ratify or somehow prove an existing marriage," and because neither the Ward nor Glenda obtained court approval before marrying, their marriage was void and incapable of ratification.

Glenda appealed the final judgment of annulment, arguing that neither the statute nor the order that removed the Ward's right to contract explicitly required *prior* court approval, and as such, the marriage could be ratified by obtaining approval after the marriage was solemnized. Glenda also argued that such approval had been obtained during a December 2012 hearing. The Fourth District Court of Appeal ultimately agreed with the trial court's rationale and rejected Glenda's assertions before affirming the trial court's decision. The Fourth DCA explained that, because a "marriage entered into by a person with no right to marry is void ... it follows that in order to enter into a valid marriage, an incapacitated person who has had his or her right to contract removed must first ask the court to approve his or her right to marry," before holding that "the trial court correctly determined that the marriage was void." Moreover, the district court concluded that because the marriage was void from the inception, Glenda's argument that "the court 'ratified' the marriage by acknowledging it at the December 18, 2012 hearing is without merit." The court explained its rationale that "[a] void marriage, in legal contemplation, has never existed and, therefore, cannot be ratified."

After the Fourth DCA issued its decision, Glenda filed a motion to certify a question of great public importance, which the Supreme Court of Florida granted. The certified question asked whether the failure to obtain court approval pursuant to Fla. Stat. § 744.3215(2)(a) renders a ward's marriage "void" or "voidable." The Supreme Court of Florida effectively answered "neither" to the foregoing question, holding that a ward "is not required to obtain court approval prior to exercising the right to marry, but court approval is necessary before such a marriage can be given legal effect." To resolve the certified question, the court undertook a deep analysis of the meaning of the terms "void" and "voidable" as traditionally defined by Florida precedent in the context of marriage. As a result, the Court concluded that the "plain language of section 744.3215(2)(a) reflects that the Legislature did not intend for the type of invalid marriage at issue in this case to be classified as either void or voidable according to how these terms have been defined under Florida precedent." The Court explained the rationale it used in reaching the forgoing conclusion as follows: "[t]he disputed provision does not use the terms 'void' or 'voidable,' nor does it use language that embodies the traditional definitions of these terms." In light of the forgoing, the Supreme Court of Florida determined that the issue presented was not actually whether the marriage of a ward who failed to obtain court approval of such marriage is "void" or "voidable," but rather whether an invalid marriage of a ward can become valid subsequent to the marriage ceremony.

The Court explained that Fla. Stat. § 744.3215(2)(a) makes a ward's "right to marry" contingent on court approval if the right to contract has been removed. Thus, the ability of a ward who has lost the right to contract to enter into a valid marriage

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depends on court approval, and if the right to marry is not approved, any attempt by the ward to marry would result in an invalid marriage. However, as used in the context of Fla. Stat. § 744.3215(2)(a), "the right to marry is subject to court approval" means that the ward's right to marry is contingent on court approval, but that approval may come later in time, such as after the marriage ceremony. After interpreting the plain language of the statute, the Court noted that "[a]lthough the validity of the marriage itself depends on court approval, nowhere in the statute does it provide that court approval must be obtained prior to marrying." In other words, while court approval is required for a "valid marriage," court approval is not a condition precedent and such approval may be obtained subsequent to the marriage.

The Court also explained that an "invalid marriage" is distinct from a "void marriage" because an "invalid marriage" may be subject to ratification, thus making the marriage valid, whereas a "void marriage" cannot be ratified. Similarly, the Court explained that "the plain language of section 744.3215(2)(a) is likewise inconsistent with the traditional meaning of a "voidable marriage," which is "good for every purpose" until it is challenged, and "good ab initio" if it is not challenged within the parties' lifetimes. The statute at issue, however, makes a ward's "right to marry" contingent on court approval if the right to contract has been removed, so the ward's ability to enter into a "valid marriage" depends on court approval and "if the right to marry is not approved, any attempt by the ward to marry would result in an invalid marriage." Thus, the Court explained that unlike the traditional meaning of a "voidable marriage," which is "good for every purpose" until it is challenged, if ever, if court approval is never obtained in the context of section 744.3215(2)(a) "the invalidity of the marriage cannot be cured, and the marriage can be given no effect."

After undertaking the forgoing analysis, the Court concluded that that the Legislature did not intend for the concept of a "void" or "voidable" marriage to apply to the disputed provision of section 744.3215. Thus, the Court held that "section 744.3215(2)(a) does not preclude the possibility of ratification of a marriage if the court subsequently gives its approval, but an unapproved marriage is invalid and can be given legal effect only if court approval is obtained." In short, while an unapproved marriage obtained in the context of section 744.3215(2)(a) can be of no legal effect until court approval is obtained, it is also neither "void" nor "voidable" as those terms are traditionally used in the context of marriage.

The Court concluded its analysis, noting that the interpretation of Fla. Stat. § 744.3215(2)(a) that "the Legislature likely intended—that, absent court approval, a marriage entered into by a ward whose right to contract has been removed is invalid, but ratifiable—advances both objectives of the Florida Guardianship Laws." The Court articulated these dual objectives as follows: (1) to protect the ward and the ward's estate "by allowing a court to assess the risk of abuse and exploitation before the alleged spouse acquires any rights as a result of the marriage"; and (2) upholding "the ward's fundamental right to marry to the greatest extent possible by allowing for the possibility of ratification."

While the Court ultimately disagreed with Glenda's argument that the marriage had, in fact, been ratified, it also found that the parties are not foreclosed from seeking court approval based on its decision. Therefore, the Court quashed the decision of the Fourth DCA and remanded to the circuit court.

Having filed a notice and request for copies under probate rule 5.060 and being an active participant in guardianship proceedings does not necessarily entitle him to participate in the proceedings involving requests for attorney's fees by the ward's attorney, as the court must still consider the nature of the proceedings, which the probate court properly did.

Hernandez v. Hernandez, 42 Fla. L. Weekly D1969b (Fla. 3d DCA 2017)

Antonio Hernandez, a son of Elena Hernandez (the "Ward"), appealed a trial court order determining he was not an interested person with standing to contest attorney's fees and costs in the guardianship of his mother. A plenary guardianship was established for the Ward after her other son, Eusebio, filed a petition to determine incapacity. The court determined the Ward completely incapacitated, and the court appointed Eusbeio as plenary guardian. Following the appointment, Eusebio sought and obtained court authority to file an ejectment action against Antonio, Antonio's wife and Antonio's son, and also to file suit against them for undue influence, among other causes of action. The undue influence case included an allegation that Antonio and his family transferred $240,000 of the Ward's assets to Antonio's son, most of which was then used to purchase real property in Antonio's wife's name.

Once the guardianship was established, Eusebio moved the Ward to an Assisted Living Facility (ALF) and petitioned the court to sell the Ward's homestead. Antonio objected and wanted the Ward moved back into her home, despite the improvement in her medical condition once living at the ALF. Eusebio also sought court approval on numerous occasions for the payment of attorney's fees for the attorneys handling the litigation, which the court approved without notice to Antonio. Antonio moved to set aside the fee orders, but the trial court denied the relief, holding that Antonio was not an "interested person" within the definition of Fla. Stat. § 731.201(23).

Despite Antonio's participation in the proceeding, the Third District Court of Appeals affirmed the trial court's finding that Antonio was not an interested person. The Third District Court of Appeal relied on *Hayes v. Guardianship of Thompson*, 952 So. 2d 498 (Fla. 2006), in which the Supreme Court of Florida

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concluded that a determination of who is an interested person in a given proceeding will "vary from time to time and must be determined according to the particular purpose of, and the matter involved in, any proceedings." Antonio argued that he was an interested person, as he was an active participant in the proceedings, and filed a notice and request for copies under Florida Probate Rule 5.060. However, the Third District Court of Appeal found that Antonio's involvement was necessitated by his alleged mistreatment of the Ward and misappropriation of her funds, and he therefore was not an interested person in the attorney's fees proceeding. The court noted that, as the Florida Supreme Court held in *Hayes*, there must be a balance between carefully scrutinizing fee petitions and ensuring they are not subject to endless challenge by those only seeking to protect their future inheritance. Here, the court found the balance was met and there was no error by the trial court judge in finding that Antonio lacked standing.

The Court held that the probate court's "inherent jurisdiction" extends to trust matters. Thus, where trustee's conceded failure to file timely and accurate accountings with the beneficiaries was a breach of duty to the beneficiaries, and the beneficiary's pleadings clearly apprised him of the claims against him and relief sought, freezing of the trust assets was a proper remedy.

Landau v. Landau, 42 Fla. L. Weekly D2026A (Fla. 3d DCA 2017)

David Landau ("David") appealed a trial court order freezing the assets of the trust of his late-wife, Flois Landau ("Flois"), under which he was serving as trustee. He was also serving as personal representative of Flois's estate. Susan Landau ("Susan"), one of Flois's daughters and a residuary trust beneficiary, moved to freeze the trust assets upon receipt of an unsigned trust accounting that raised concerns regarding David's actions as trustee and the status of the estate and trust assets.

Susan first filed a complaint to compel trust accountings, which led to David providing the unsigned trust accounting. The accounting was apparently missing assets valued at approximately $1,000,000, so Susan amended her complaint to include breach actions, removal as trustee and a temporary injunction. The court noted that in February 2017, a hearing was held and the trial court judge deferred on an injunction or removal, graciously giving David time to comply with Florida Statutes. Nonetheless, at a continued hearing in May 2017, David still had not served a 2016 accounting, fixed the 2015 accounting, or filed tax returns for 2015 or 2016. The trial court therefore ordered the trust assets frozen until David completed and filed the 2016 accounting. David appealed.

The Third District Court of Appeal affirmed the trial court decision freezing assets, indicating that the "probate court's inherent jurisdiction to protect the assets under its supervision is well established." *See In re Estate of Barsanti*, 773 So. 2d 1206, 1208 (Fla. 3d DCA 2000); *Estate of Conger v. Conger*, 414 So. 2d 230 (Fla. 3d DCA 1982). The Third District Court of Appeal specifically rejected David's arguments that freezing trust assets violated due process and applicable rules, and extended the holdings in *Barsanti* and *Conger* to trust matters.

Testamentary aspects of a revocable trust are invalid unless the trust document is executed by the settlor with the same formalities as are required for execution of a will, and reformation is unavailable to remedy error in execution of a revocable trust amendment lacking the requisite formalities. Moreover, the imposition of constructive trust is not appropriate where there was an error in execution of the revocable trust at issue.

Falkenthal v. Mors-Kotrba, 42 Fla. L. Weekly D1133a (Fla. 2d DCA 2017)

Ralph Falkenthal ("Falkenthal") created a revocable trust while residing in Illinois. He later moved to Florida and, while residing in Florida, separately executed two amendments to the trust, prepared by his Illinois attorney. Both amendments were executed in the presence of two witnesses but were only signed by one of the witnesses. The second amendment devised real property to Donna Lindenau ("Lindenau"). Falkenthal died and his daughter, Judy Mors-Kotrba, as successor trustee of the trust, filed a declaratory action seeking to determine the validity of the amendments. Lindenau filed a counterclaim, which she later amended, seeking to reform the trust to correct a mistake, arguing that the error in not having two witnesses sign the second amendment was a mistake of law.

Falkenthal's other children filed a motion for summary judgment, taking the position that the amendments were invalid, as they were not executed in compliance with Florida law. The trial court denied the motion for summary judgment, held a trial, and ultimately granted the reformation action. Falkenthal's other children appealed.

The Second District Court of appeal reversed, holding that reformation is not an appropriate remedy despite the parties agreement that the decedent's clear intention was to leave the real property to Lindenau. Specifically, the court found that Fla. Stat. § 736.0415 provides that a trust can be reformed "to conform . . . to the settlor's intent if it is proved by clear and convincing evidence that both the accomplishment of the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement." However, Lindenau was not seeking reformation of the terms of the trust, but instead seeking to remedy an error in execution, and therefore the relief did not fall under Fla. Stat. § 736.0415. Lindenau also sought the imposition of a constructive trust under the Tipsy Coachman doctrine, but the court held that a constructive trust is not available where there is an error in the execution of the document.