

# Temporary Injunctions In Probate, Guardianship And Trust Proceedings

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Temporary Injunctions are an incredibly important tool to probate, trust, and guardianship practitioners. This article explores the rules and procedures applicable to litigants seeking, and courts entering, injunctive relief in the context of probate, guardianship, and trust proceedings.

## A Primer on Temporary Injunctions in Florida

Florida courts have recognized, “a temporary injunction is an extraordinary remedy and will be granted sparingly only after the moving party has alleged and proven facts entitling it to relief.”<sup>1</sup> In order to obtain a temporary injunction, the moving party must establish that “(1) irreparable harm would result if the relief is not granted;<sup>2</sup> (2) an adequate remedy at law is unavailable; (3) a substantial likelihood of success on the merits; and (4) entry of the temporary injunction will serve the public interest.”<sup>3</sup>

Fla. R. Civ. P. 1.610(c) requires that the Order imposing the injunction (1) “specify the reasons for entry” and (2) “describe in reasonable detail the act or acts restrained.” Furthermore, Florida courts have held that “[s]trict compliance with Florida Rule of Civil Procedure 1.610(c)...is required.”<sup>4</sup> As the Florida Fourth District Court of Appeal noted in *4UOrtho, LLC v. Practice Partners, Inc.*, “one against whom [an injunction] is directed should not be left in doubt about what he is to do.”<sup>5</sup> “Based on the clear wording of the rule, the specificity requirement applies to both temporary and permanent injunctions.”<sup>6</sup>

Courts throughout the state of Florida repeatedly have held that the failure of a trial court to specify in its Order *the reasons for the entry of an injunction* is reversible error.<sup>7</sup> In fact, Florida appellate courts “have often recognized that ‘a trial court reversibly errs when an order fails to make *specific findings for each of the elements.*’”<sup>8</sup> The rationale for the foregoing heightened specificity requirement, as articulated by the First District Court of Appeal, is that “[a]ppellate review of temporary injunctions is a matter of right,” and that if a temporary injunction “is to be subject to meaningful review, an order granting a temporary injunction must contain more than conclusory legal aphorisms.”<sup>9</sup>

Finally, based on the plain language of Fla. R. Civ. P. 1.610(b), “[n]o temporary injunction shall be entered unless a bond is given by the movant in an amount the court deems proper, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined.” However, no bond is required for “a temporary injunction issued solely to prevent physical injury or abuse of a natural person.” Based on the foregoing, Florida courts have recognized that “[a]n injunction is defective if it does not require the movant to post a bond” and that a “trial court

cannot waive this requirement nor can it comply by setting a nominal amount.”<sup>10</sup>

## Probate Courts’ Authority to Enter Injunctions and Rules of Procedure

Probate, trust, and guardianship proceedings in the state of Florida are conducted before circuit courts pursuant to Article V Section 20(3) of the Florida Constitution. Article V Section 20(3), states that Florida circuit courts have exclusive original jurisdiction in “proceedings relating to the settlement of the estate of decedents and minors, the granting of letters testamentary, guardianship, involuntary hospitalization, the determination of incompetency, and *other jurisdiction usually pertaining to courts of probate...* [emphasis added].” With regard to the substantive law applicable in probate, trust, and guardianship proceedings, practitioners must look to several different chapters of Florida Statutes, depending upon the nature of the proceeding. The Florida Probate Code comprises Chapters 731 through 735 of the Florida Statutes and sets forth the substantive rights of all persons in probate proceedings; Chapter 744 is The Florida Guardianship Law, which governs guardianship proceedings; and Chapter 736 contains the Florida Trust Code which, except as otherwise provided therein, “applies to express trusts, charitable or noncharitable, and trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust.”<sup>11</sup>

A Florida circuit court, sitting in its probate capacity, “has inherent jurisdiction to monitor the administration of an estate and to take such appropriate action as it may deem necessary to preserve the assets of the estate for the benefit of the ultimate beneficiaries.”<sup>12</sup> Florida courts expanded upon this principle by expressly determining that this inherent jurisdiction authorizes the circuit court, sitting in its probate capacity, “to issue temporary injunctions freezing assets claimed to belong to a decedent’s estate.”<sup>13</sup> Also, a probate court has the inherent power to enter a temporary injunction *without notice*.<sup>14</sup> Finally, because the function of temporary injunctions is not to determine the ownership of a disputed asset, but merely to preserve the asset pending the outcome of that determination, a probate court has the authority to issue temporary injunctions freezing assets claimed to belong to a decedent’s estate, even though ultimate ownership of those assets may be in dispute.<sup>15</sup>

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While it is beyond dispute that circuit courts presiding over probate, trust, and guardianship proceedings have the inherent authority to issue injunctions, neither the Florida Probate Code, nor the Florida Guardianship Law, nor the Florida Trust Code set forth the procedures for obtaining injunctive relief. Rather, a party or practitioner seeking injunctive relief must proceed one step further to determine the applicable procedure for obtaining injunctive relief, notwithstanding the fact that the presiding court has the authority to issue injunctive relief. In probate and guardianship proceedings, the procedures for the enforcement of vested substantive rights are provided in the Florida Probate Rules, which are broken into several parts.<sup>16</sup> Part I applies to probate and guardianship proceedings. Part II applies to probate proceedings only and Part III applies exclusively to guardianship proceedings. The Florida Rules of Civil Procedure, on the other hand, govern all trust proceedings.<sup>17</sup> And while it would seem at first blush as though probate and guardianship proceedings are governed by a different set of rules than those that govern trust proceedings, the Florida Probate Rules also provide in Part I that after service of formal notice in adversarial probate and guardianship proceedings “[t]he Florida Rules of Civil Procedure govern, except for rule 1.525 (which deals with taxing costs and attorneys’ fees),” and that the “proceedings, as nearly as practicable, must be conducted similar to suits of a civil nature.”<sup>18</sup>

### **Injunctions in Probate and Guardianship Proceedings**

The Third District Court of Appeal explained the following in the seminal case of *Estate of Conger v. Conger*,<sup>19</sup> which has been cited by appellate courts throughout the state of Florida:

A circuit court, sitting in its probate capacity, has inherent jurisdiction to monitor the administration of an estate and to take such appropriate action as it may deem necessary to preserve the assets of the estate for the benefit of the ultimate beneficiaries.”

“Furthermore, a probate court has the authority to issue temporary injunctions freezing assets claimed to belong to a decedent’s estate, even though ultimate ownership of those assets may be in dispute.”<sup>20</sup> Similarly, “[a] circuit court has the inherent authority to monitor a guardianship and to take action it deems necessary to preserve the assets for the benefit of the beneficiaries.”<sup>21</sup> In *Barsanti*, the court noted that “the function of the temporary injunction was not to determine the ownership of the stock but to preserve the asset pending the outcome of that determination, consistent with the duty of the personal representative to marshal and preserve the assets of the estate for distribution.”<sup>22</sup> Thus, it is clear that a probate court has the authority to issue temporary injunctions to preserve the assets for the benefit of the beneficiaries in both probate and guardianship proceedings.

Neither the Florida Probate Code nor Florida Guardianship

Law, nor the applicable parts of the Florida Probate Rules, set forth the procedure for obtaining the foregoing injunctive relief in probate and guardianship proceedings. However, Fla. Prob. R. 5.025(d)(1) provides “[a]fter service of formal notice, the proceedings, as nearly as practicable, must be conducted similar to suits of a civil nature” and are governed by the “Florida Rules of Civil Procedure,” which do contain the procedure for obtaining the foregoing injunctive relief.<sup>23</sup> While Fla. Prob. R. 5.025(a) contains a non-exclusive list of proceedings that “are adversary...otherwise ordered by the court,” Fla. Prob. R. 5.025(b) goes on to note that “[o]ther proceedings may be declared adversary by service on interested persons of a separate declaration that the proceeding is adversary.” Thus, a proceeding that is already adversarial in nature based upon Fla. Prob. R. 5.025(a), or one that has been declared adversarial in nature pursuant to Fla. Prob. R. 5.025(b), will be governed by the “Florida Rules of Civil Procedure,” including Fla. R. Civ. P. 1.610 in the context of temporary injunctions.

### **Injunctions in Trust Proceedings**

While the Florida Trust Code — like the Florida Probate Code and Florida Guardianship Law — does not actually set forth the procedure for obtaining injunctive relief, it expressly authorizes the court presiding over a trust proceeding to “remedy a breach of trust” by, in pertinent part, “[e]njoin[ing] the trustee from committing a breach of trust.” However, the issuance of injunctions is not limited to the foregoing specifically enumerated instance. Courts presiding over trust proceedings, like all proceedings, may grant temporary injunctive relief where the moving party establishes that:

- “(1) irreparable harm will result if the temporary injunction is not entered;
- (2) an adequate remedy at law is unavailable;
- (3) there is a substantial likelihood of success on the merits; and
- (4) entry of the temporary injunction will serve the public interest.”<sup>24</sup>

In the 2017 case of *Landau v. Landau*,<sup>25</sup> the Third District Court of Appeal reviewed an order freezing trust assets, which the appellate court treated and reviewed “as an injunction to preserve assets of the estate and the trust for the protection of the ultimate beneficiaries.” While the *Landau* court cited to *Barsanti*<sup>26</sup> and *Conger*<sup>27</sup> and observed that “[t]he probate court’s inherent jurisdiction to protect the assets under its supervision is well established,” it did not discuss the procedure for obtaining an injunction.<sup>28</sup> However, in April of 2018, the Fourth District Court of Appeal set forth the following requirements for the issuance of injunctive relief in the context of trust litigation:

For temporary injunctive relief, a movant must demonstrate: (1) irreparable harm would result if the relief is not granted; (2) an adequate remedy at law is

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unavailable; (3) a substantial likelihood of success on the merits; and (4) entry of the temporary injunction will serve the public interest. *Univ. Med. Clinics, Inc. v. Quality Health Plans, Inc.*, 51 So.3d 1191, 1195 (Fla. 4th DCA 2011) (citing *Foreclosure FreeSearch, Inc. v. Sullivan*, 12 So.3d 771, 775 (Fla. 4th DCA 2009)). The movant must also show a clear legal right to the injunction. *McKeegan v. Ernst*, 84 So.3d 1229, 1230 (Fla. 4th DCA 2012).<sup>29</sup>

In *Dubner*, the probate court at the trial level had granted a verified motion for injunctive relief filed by the Personal Representative of an estate, who was also the Successor Co-Trustee of the Decedent's revocable trust,<sup>30</sup> and ordered a financial broker to release any hold or freeze on the trust accounts.<sup>31</sup> There, the Fourth District Court of Appeal ultimately reversed the probate court's temporary injunction order after finding that the injunction was defective

(1) for failure to comply with the procedural and substantive requirements for temporary injunctions;

(2) because the moving party failed to meet the burden for issuance of a temporary injunction; and

(3) for failure to include a bond in accord with the express requirements of Florida Rule of Civil Procedure 1.610(b).

While probate and guardianship proceedings will—or at least should—always be pending before a circuit court sitting in its probate capacity, this will not necessarily be the case in trust litigation.<sup>32</sup> Nevertheless, the same standards and procedures apply for the issuance of temporary injunctions in adversarial probate, adversarial guardianship, and trust proceedings.<sup>33</sup> While the Florida Rules of Civil Procedure only govern adversarial probate and adversarial guardianship proceedings, Fla. Prob. R. 5.025(a) is not an exclusive enumeration of those proceedings that are or may be adversarial. Fla. Prob. R. 5.025(b) enables any proceeding to be “declared adversary by service on interested persons of a separate declaration that the proceeding is adversary,” thus giving rise to the applicability of the Florida Rules of Civil Procedure in that particular proceeding.

#### **A Brave New World: Ex Parte Injunctions Under Fla. Stat. § 825 (2018)**

In addition to the foregoing regarding injunctions in the context of probate, guardianship, and trust proceedings, effective as of July 1, 2018, probate, guardianship, and trust litigators *may* have additional tools at their disposal in the fight against exploitation of vulnerable adults, and particularly Florida's elderly population. While the instant article is focused only on injunctions pursuant to Florida Probate Code, Florida Guardianship Law, and the Florida Trust Code, practitioners should be aware of several new statutory provisions.


First, Fla. Stat. § 825.1035 (2018) creates a new cause of action authorizing immediate *ex parte* injunctions freezing contested assets in exploitation cases. Additionally, Fla. Stat. § 825.1036

(2018), which creates a new set of civil and criminal penalties for exploiters who violate an injunction entered pursuant to Fla. Stat. § 825.1035 (2018).

This new statutorily authorized injunction pursuant to Fla. Stat. § 825.1035 (2018) does not require that a party be represented by an attorney, nor is a party prohibited from filing an action simply because another cause of action is currently pending between the parties. Moreover, under the new statutory scheme a petition for an immediate *ex parte* injunction may be filed by any of the following:

- A vulnerable adult in imminent danger of being exploited or his or her guardian;
- A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; or
- A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian of the vulnerable adult.

The petition must be filed in the circuit court of the county in which the vulnerable adult resides, unless a guardianship proceeding is already pending at the time of filing, in which case the petition must be filed in that proceeding. There is no minimum requirement of residency before an individual or entity may petition the court under this new statute, nor is there a requirement that actual exploitation has to have occurred before an injunction may be issued.

With regard to the new enforcement mechanism, Fla. Stat. § 825.1036 (2018) makes the violation of an injunction for protection against exploitation of a vulnerable adult a first degree misdemeanor (or a third degree felony if the individual has two or more prior convictions for the violation of an injunction). Moreover, the statute expressly allows members of law enforcement to arrest an individual, without a warrant, when there is probable cause to believe the injunction has been violated. Finally, this new statute authorizes the court to enforce a violation of an injunction through a civil or criminal contempt proceeding, and the state attorney to prosecute a violation as a criminal violation. If an individual is arrested by a law enforcement officer for violating an injunction under Fla. Stat. § 901.15(6) (2018) he or she must be held in custody until (expeditiously) brought before the court to enforce the injunction.<sup>34</sup> 



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Section of the Florida Bar and was recently appointed as a Co-Vice Chair of the Section's ActionLine Committee for 2019-2020. Mr. McDermott is also a graduate of the Florida Fellows Institute for the American College of Trust and Estate Counsel.

#### Endnotes

- 1 See, e.g., *Dania Jai Alai Intern., Inc. v. Murua*, 375 So.2d 57, 58 (Fla. 4th DCA 1979).
- 2 Fla. R. Civ. P. 1.610 "requires a showing to a substantial certainty that immediate and irreparable damage will result unless the temporary injunction is issued." See *Minimatic Components, Inc. v. Westinghouse Elec. Corp.*, 494 So.2d 303, 304 (Fla. 4th DCA 1986).
- 3 See *Dubner v. Ferraro*, 242 So. 3d 444, 447 (Fla. 4th DCA 2018); see also *Univ. Med. Clinics, Inc. v. Quality Health Plans, Inc.*, 51 So.3d 1191, 1195 (Fla. 4th DCA 2011)(citing *Foreclosure FreeSearch, Inc. v. Sullivan*, 12 So.3d 771, 775 (Fla. 4th DCA 2009)).
- 4 *Eldon v. Perrin*, 78 So. 3d 737, 738 (Fla. 4th DCA 2012).
- 5 18 So. 3d 41, 43 (Fla. 4th DCA 2009)(quoting *Pizio v. Babcock*, 76 So.2d 654, 655 (Fla.1954)).
- 6 *Premier Lab Supply, Inc. v. Chemplex Industries, Inc.*, 10 So. 3d 202, 207 (Fla. 4th DCA 2009).
- 7 See, e.g., *McKeegan v. Ernst*, 84 So. 3d 1229, 1230 (Fla. 4th DCA 2012)("[A] trial court reversibly errs when an order fails to make specific findings for each of the elements."); see also *University Medical Clinics*, 51 So.3d at 1195 ("Clear, definite, and unequivocally sufficient factual findings must support each of the four conclusions necessary to justify entry of a temporary injunction" and "Although the record supports the trial court's holding, the order is flawed."); *City of Jacksonville v. Naegele Outdoor Advertising Co.*, 634 So. 2d 750, 754 (Fla. 1st DCA 1994); *Green v. Studen*, 622 So. 2d 197 (Fla. 4th DCA 1993)("We agree with appellant that the trial court erred in entering a temporary injunction without making the findings required under Rule 1.610(c) of the Florida Rules of Civil Procedure."); *Hopkins v. Hopkins*, 623 So. 2d 586, 587(Fla. 4th DCA 1993)("the temporary injunction is defective because it fails to "specify the reasons for entry," as required by rule 1.610(c), Fla. R. Civ. P").
- 8 See, e.g., *Dubner*, 242 So. 3d at 447 (citing *Wade v. Brown*, 928 So. 2d 1260, 1262 (Fla. 4th DCA 2006))[emphasis added].
- 9 See *Naegele Outdoor Advertising*, 634 So. 2d at 753.
- 10 See, e.g., *Rosenberg ex rel. Rosenberg*, 117 So. 3d at 827; see also *Andrist v. Spleen*, 142 So. 3d 950 (Fla. 4th DCA 2014) (" A temporary injunction may not be entered unless a movant posts a bond in an appropriate amount for "costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined.").
- 11 See Fla. Stat. §736.0102(1) (2013).
- 12 *Conger's Estate v. Conger*, 414 So. 2d 230, 233 (Fla. 3d DCA 1982).
- 13 See *In Re: Estate of Barsanti*, 773 So. 2d 1206, 1208 (Fla. 3 DCA 2000).
- 14 See, e.g., *Maldonado v. Buchsbaum*, 259 So. 3d 302, 305 (Fla. 4th DCA 2018)(reversed on other grounds where the "temporary injunction issued below is not endorsed with the date and hour of entry and does not require a bond," as required by Fla. R. Civ. P. 1.610(a)(2) and 1.610(b), which "omissions render the injunction defective. *Bieda*, 42 So. 3d at 861 (requiring strict compliance with Rule 1.610 to uphold a temporary injunction without notice"); see also *Ripoll v. Comprehensive Personal Care Services, Inc.*, 963 So. 2d 789, 790 (Fla. 3d DCA 2007); *Barsanti*, 773 So. 2d at 1209; *Perez v. Lopez*, 454 So. 2d 777, 778 (Fla. 3d DCA 1984); *Conger*, 414 So. 2d at 233.
- 15 See *Markowitz v. Merson*, 869 So. 2d 728 (Fla. 4th DCA 2004).
- 16 See Fla. Prob. R. 5.010.
- 17 See Fla. Stat. § 736.0102(1) (2013).
- 18 See Fla. Prob. R. 5.025(d)(2).
- 19 414 So. 2d 230, 233 (Fla. 3d DCA 1982).
- 20 See *Barsanti*, 773 So. 2d at 1208.
- 21 See *Ripoll*, 963 So. 2d at 789 (citing *Barsanti*, 773 So.2d 1206).
- 22 See *Markowitz v. Merson*, 869 So. 2d 728 (Fla. 4th DCA 2004) (citing *Barsanti v. 773 So.2d at 1209*).
- 23 See Rule 1.610, Fla. R. Civ.

- 24 See *Burtoff v. Tauber*, 85 So.3d 1182, 1183.
- 25 230 So.3d 127, 129-130 (Fla. 3d DCA 2017).
- 26 773 So.2d at 1208.
- 27 414 So.2d 230.
- 28 230 So.3d at 129-130.
- 29 See *Dubner*, 242 So.3d at 447.
- 30 The verified motion for injunctive relief was filed in both his capacity as (1) Personal Representative of the Estate and Successor Co-Trustee of the Decedent's revocable trust.
- 31 See *Dubner*, 242 So.3d at 447.
- 32 Rather, Fla. Stat. § 736.0203 (2006) merely provides that "[t]he circuit court has original jurisdiction in this state of all proceedings arising under this code." While Fla. Stat. § 736.0201(5) (2011) provides that a "proceeding for the construction of a testamentary trust may be filed in the probate proceeding for the testator's estate," and that any such proceedings shall be governed by the Florida Probate Rules," not all trust proceedings must necessarily be filed in a probate proceeding or before a circuit court sitting in its probate capacity. In fact, Fla. Stat. § 736.0201(1) (2011), mandates that "[e]xcept as provided in subsections (5) and (6) and s. 736.0206, judicial proceedings concerning trusts shall be commenced by filing a complaint" [emphasis added].
- 33 See Fla. Prob. R. 5.025(d)(2)("The Florida Rules of Civil Procedure govern, except for rule 1.525"; see also Fla. Stat. § 736.0201(1) (2011), ("Except as provided in subsections (5) and (6) and s. 736.0206, judicial proceedings concerning trusts . . . shall be governed by the Florida Rules of Civil Procedure.").
- 34 Pending a hearing, the court may require respondent to post bail in accordance with Chapter. 903, Florida Statutes, and the applicable rules of criminal procedure.

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