

“You be the Judge” Probate Seminar

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YOU BE THE JUDGE...

- (1) What Did the Lawyers Do?
 - (2) What Did the Trial Court Do?
 - (3) What Did the Appellate Court Do?
-

(1) What Did The Lawyers Do?

- **The Facts:**
 - Mom: Died in Palm Beach County, Florida as the beneficiary of approximately \$150 million
 - The Kids:
 - (1) Mom's biological son
 - (2) Mom's biological daughter
 - (3) Mom's Step-son (who was the son of her late husband)
 - The Estate Plan:
 - Before Dad Died: 1/3 each (Equal!)
 - After Dad Died: \$3 Million ITF Step-son, residuary to mom's biological kid

(1) What Did The Lawyers Do?

- **The Litigation:**
- **(1) *Palm Beach County Will Contest* (2015)**
 - Stepson Challenges LWT
- **(2) *Palm Beach County Trust Contest* (2015)**
 - Stepson Challenges LWT
- **(3) *Palm Beach County Civil Litigation* (2016)**
 - Stepson v. biological son and biological daughter (in individual capacities)
 - Challenging life-time transfers from mom to biological son and biological daughter
- **(4) *Broward County Civil Litigation* (2017)**
 - Unjust enrichment, constructive fraud, tortious interference with a business relationship, exploitation of a vulnerable adult, and declaratory action) seeking to recoup approximately \$100 million.
 - **Stepson Against:**
 - (1) Biological son and biological daughter (Individually)
 - (2) Seven companies holding real property in Broward County, Florida
 - (3) The bank that holds the assets of the Seven Companies, the Trust, and the Estate

(1) What Did The Lawyers Do?

- What would you do?
- What Did the Lawyers *Actually* Do?
 - Venue: Palm Beach County Trust Action
 - Motion: PR and Trustees filed Emergency Verified Motion for Injunctive Relief
 - Relief Sought: That the Court “enter an emergency temporary injunction that will require Morgan Stanley to unfreeze all of the accounts named in the Broward County action until such time, if ever, that a judgment is obtained in favor of the Plaintiff.”
 - Legal Authority: Rule 1.610, Fla. R. Civ. P.

(1) What Did The Lawyers Do?

Rule 1.610, Fla. R. Civ. P.- Injunctions

In order to obtain a temporary injunction, the moving party must establish 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.” *See Burtoff v. Tauber*, 85 So.3d 1182, 1183 (Fla. 4th DCA 2012) (quoting *Univ. Med. Clinics, Inc. v. Quality Health Plans, Inc.*, 51 So.3d 1191, 1195 (Fla. 4th DCA 2011)).

(2) What Did the Trial Court Do?

- **Potential Issues:**

- (1) The Emergency Motion relates to a matter properly proceeding before the Circuit Court in Broward County, Florida
 - Stepson argued that the Court lacked jurisdiction over the subject matter of the Emergency Motion or the Order that was entered on same
- (2) The dispute between Morgan Stanley and PR/Trustee, to the extent one exists, was a matter of contract
 - Stepson argued the accounts were not actually frozen by a Court Order, but rather have apparently been frozen as a result of Morgan Stanley's contractual right
- (3) The Emergency Motion failed to satisfy the burden required for the issuance of a temporary injunction
 - Stepson argued the Emergency Motion does not meet the standard for the issuance of a temporary injunction.
 - "In order to obtain a temporary injunction, a party must prove the following: (1) that it will suffer irreparable harm unless the status quo is maintained; (2) that it has no adequate remedy at law; (3) that it has a substantial likelihood of success on the merits; and (4) that a temporary injunction will serve the public interest." *Net First Nat. Bank v. First Telebank Corp.*, 834 So.2d 944, 949 (Fla. 4th DCA 2003).

(2) What Did the Trial Court Do?

- What would you do?
- What Did the Trial Court *Actually* Do?
 - Oral Pronouncement: “And my order is going to be, at this point, unfreeze everything regardless . . . Unfreeze everything. Oh, and make sure you put in there ‘over the strenuous objection of the [Appellant].’ . . . And nothing is going to be done any differently for ten days from the date of the order so that you folks will have plenty of time to do what you want to do, whether it's in Broward or whether it's on Palm Beach Lakes Boulevard.”
 - Order: Granting Emergency Motion

(3) What Did the Appellate Court Do?

- **Arguments on Appeal:**

- (1) The Injunction Order failed to make specific findings—or any findings—for each of the elements required for the issuance of an injunction pursuant to Rule 1.610(c), Florida Rules of Civil Procedure
 - It is well settled that “[a] trial court reversibly errs when an order fails to make specific findings for each of the elements” because “Florida Rule of Civil Procedure 1.610(c) provides that ‘[e]very injunction shall specify the reasons for entry....’” *McKeegan v. Ernst*, 84 So.3d 1229, 2130 (Fla. 4th DCA 2012) (citing *Wade v. Brown*, 928 So.2d 1260, 1262 (Fla. 4th DCA 2006) (citation omitted))
 - “In order to obtain a temporary injunction, a party must prove the following: (1) that it will suffer irreparable harm unless the status quo is maintained; (2) that it has no adequate remedy at law; (3) that it has a substantial likelihood of success on the merits; and (4) that a temporary injunction will serve the public interest.” *Net First Nat. Bank v. First Telebank Corp.*, 834 So.2d 944, 949 (Fla. 4th DCA 2003).
- (2) The Injunction Order should be reversed because its “vague language rendered the injunction overly broad.”
- (3) The Injunction Order is defective because it does not require the movant, Appellees, to post a bond.
 - *See Florida High School Athletic Ass'n v. Rosenberg ex rel. Rosenberg*, 117 So.3d 825 (Fla. 4th DCA 2013) (“An injunction is defective if it does not require the movant to post a bond. The trial court cannot waive this requirement nor can it comply by setting a nominal amount.”) (internal citations omitted).

(3) What Did the Appellate Court Do?

- **Order on Appeal:**

- The Trial Court entered the Injunction Order that directs non-party Morgan Stanley to “unfreeze the accounts” and did so “over the strenuous objections of the [Stepson]”
- The Injunction Order did not contain a single reference to the four elements that must be present before a temporary injunction may issue: “(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.”
- Rather, the Injunction Order entered by the Trial Court simply recited the procedural history, directed Morgan Stanley to wait ten days before unfreezing the accounts it had previously frozen, noted Appellant’s strenuous objection, and directed Morgan Stanley to unfreeze the listed financial accounts

- **Law on Injunctions:**

- Rule 1.610, Fla. R. Civ. P.- Injunctions
- In order to obtain a temporary injunction, the moving party must establish 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.” See *Burtoff v. Tauber*, 85 So.3d 1182, 1183 (Fla. 4th DCA 2012) (quoting *Univ. Med. Clinics, Inc. v. Quality Health Plans, Inc.*, 51 So.3d 1191, 1195 (Fla. 4th DCA 2011)).
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(3) What Did the Appellate Court Do?

- **Injunctions in Probate and Trust:**

- *Landau v. Landau*, 230 So.3d 127 (Fla. 3d DCA 2017)
 - We review the order as an injunction to preserve assets of the estate and the trust for the protection of the ultimate beneficiaries. We will affirm the order absent a clear abuse of discretion. *State Inv. Holding, Inc. v. Merrick P'ship, LLC*, 103 So.3d 232 (Fla. 3d DCA 2012). . . . The probate court's inherent jurisdiction to protect the assets under its supervision is well established. *In re Estate of Barsanti*, 773 So.2d 1206, 1208 (Fla. 3d DCA 2000); *130 *Estate of Conger v. Conger*, 414 So.2d 230 (Fla. 3d DCA 1982).
- *In re Estate of Barsanti*, 773 So.2d 1206 (3d DCA 2000)
 - Second, the Estate has a clear legal right to this relief. This Court held in *Estate of Conger v. Conger*, 414 So.2d 230, 233 (Fla. 3d DCA 1982):
 - “[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.” (citations omitted)
- *Estate of Conger v. Conger*, 414 So.2d 230, 233 (Fla. 3d DCA 1982):
 - “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.”

(3) What Did the Appellate Court Do?

- What would you do?
- What Did the Appellate Court *Actually* Do?
 - Reversed!
 - **Rationale 1**: “The trial court failed to make the requisite findings.”
 - **Rationale 2**: “The defendants failed to demonstrate a substantial likelihood of success or irreparable harm.”
 - **Rationale 3**: “While the defendants argue the beneficiary waived the bond challenge, we disagree and see no basis for avoiding the bond requirement. See Fla. R. Civ. P. 1.610(b).

(3) What Did the Appellate Court Do?

- *Dubner v. Ferraro*, 242 So.3d 444 (Fla. 4^o DCA 2018)

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