Probate And Trust Case Summaries

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The failure to contain a legal description of real estate in a disclaimer of interest in estate does not invalidate the disclaimer. Even if the Statute of Frauds applies, a disclaimer meets the statute's requirements if in writing and signed by declarant.

Lee v. Lee, 44 Fla. L. Weekly D283a (Fla. 3d DCA Jan. 23, 2019)

The Third District Court of Appeal ("Third District") reverses a trial court order declaring a disclaimer of interest in an estate as deficient, finding the probate court's decision to be improper. The decedent died intestate, and subsequently Nicole Lee, appellee, disclaimed her interest in the estate assets, which she later claimed was deficient.

Decedent, Andre Lee, died intestate in Miami, Florida survived by his three children, Camille Lee, Bruce Lee, and Nicole Lee. The estate contained real property located in Miami and the proceeds of a wrongful death action. On July 14, 2014, the Miami Probate Court appointed appellant, Camille Lee, as personal representative of the estate. On July 8, 2014, Nicole Lee, appellee, executed a "Disclaimer of Interest in Property of Estate," which was signed in front of two witnesses and notarized. Within the disclaimer, appellee irrevocably disclaimed all rights, title, interest, current or prospective in "All Estate assets." On December 11, 2014, appellant filed a petition for discharge. On April 9, 2015, appellant filed the disclaimer with the court and the court issued an order granting the distribution of assets. On May 24, 2016, appellee filed an objection, in which she argued that the disclaimer was deficient. The probate court found that the disclaimer was insufficient under Fla. Stat. § 739.104(3) (2014) and it violated the statute of frauds since the disclaimer did not specifically identify the real property being disclaimed.

The Third District determined that the probate court erred in its invalidity determination. Under Fla. Stat. § 739.104(3) (2014), "[t]o be effective, a disclaimer must be in writing, declare the writing as a disclaimer, describe the interest or power disclaimed, and be signed by the person making the disclaimer and witnessed and acknowledged in the manner provided for deeds of real estate to be recorded in this state. In addition, for a disclaimer to be effective, an original of the disclaimer must be delivered or filed in the manner provided in Fla. Stat. § 739.301 (2014)."[1] Additionally, Fla. Stat. § 739.601(1)-(2) (2014) states that "(1) A disclaimer of an interest in or relating to real estate does not provide constructive notice to all persons unless the disclaimer contains a legal description of the real estate to which the disclaimer relates and unless the disclaimer is filed for recording in the office of the clerk of the court in the county or counties where the real estate is located. (2) An effective disclaimer meeting the requirements of subsection (1) constitutes constructive notice to all persons from the time of filing. Failure to record the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer."[2] The Third District stated that even if a disclaimer is not recorded, it still is valid between the disclaimant and the person to which property passes due to the disclaimer regardless of whether the disclaimer includes the real property description. Therefore, the appellee's disclaimer met the statutory requirements. While it is not recordable under Florida Statutes, the language used does not affect its validity. Even if the statute of frauds were to apply, the disclaimer is in writing and signed by appellee. The Third District reversed the order and remanded for proceedings consistent with the opinion.

A will fails statutory requirements under Fla. Stat. § 732.502 (2013) and may not be admitted to probate where the decedent only signed his first name and not his full customary signature. A later self-proving affidavit is insufficient to validate the will where the decedent served as a witness to himself and did not include any other witness signatures.

Bitetzakis v. Bitetzakis, 44 Fla. L. Weekly D343f (Fla. 2d DCA February 1, 2019)

The Second District Court of Appeals (the "Second District") reverses a circuit court order admitting a will because it was not in compliance with the signature requirements under Fla. Stat. § 732.502 (2013). The decedent signed only his first name on his will due to a mistaken belief that a notary was required. He then had a self-proving affidavit notarized, in which he was the sole listed witness to himself signing the affidavit.

Decedent, George Bitetzakis, passed away in January 2017 and his grandson, who was appointed personal representative of the estate, petitioned the court to admit a will dated September 2013 to probate. Decedent's daughter, Alison Bitetzakis, responded that the will had not been executed properly under the statute. The probate court held an evidentiary hearing where it was determined that

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two witnesses first signed the will and while decedent was signing but then his wife stopped him. She directed him to stop because she believed that he was required to sign the will in front of a notary. A notary was, in fact, not required to notarize the will. The decedent only signed his first name on the will and not his full customary signature. The next day, the decedent went to a notary, without the will but instead with a self-proving affidavit which was signed in front of the notary and listed the decedent as his own witness.

The trial court found that the document followed Florida Statutes. Even though the decedent stopped signing his name due to a mistaken belief that a notary was required, he nevertheless showed his intent to sign the document and for the document to constitute his last will and testament. The fact that he also went to a notary the next day with a self-proving affidavit also showed his intent.

The Second District, however, reversed the lower court's opinion and ruled that the lower court erred in their decision because the decedent did not sign his name at the end of the will using his full customary signature. Under Fla. Stat. § 732.501(1) (2013), to properly execute a will, the testator "must sign the will at the end" or the testator's name "must be subscribed at the end of the will by some other person in the testator's presence and by the testator's direction."[3] Strict compliance is required. Under *Allen v. Dalk*, a will cannot be admitted to probate if the testator failed to sign his or her name to the will.[4] Here, the decedent signed something that was "less than his full customary signature." Under Black's Law Dictionary, a signature is defined as "a person's name or mark written by that person . . . esp., one's handwritten name as one ordinarily writes it."[5] There is no evidence that the decedent intended the signing of his first name to constitute his signature and assent to the document. Evidence shows that he intentionally stopped signing his name. The self-proving affidavit signed the next day shows that the decedent did not believe his prior signature constituted assent to the will. Therefore, the Second District reversed the probate court order and remanded for further proceedings.

Florida Statutes require a surviving spouse to make an election to take an interest in a decedent's homestead property within six months of decedent's death. The court may not grant an extension of time to make the election claiming excusable neglect.

Samad v. Pla, 44 Fla. L. Weekly D726a (Fla. 2d DCA March 15, 2019)

The Second District reversed a circuit court order granting an extension of time to file an election to take an undivided one-half interest in the decedent's homestead property as a tenant in common because the trial court erred as a matter of law in granting the extension and deeming the extension timely.

The decedent's surviving spouse, Pla, failed to make an election to take an undivided one-half interest as a tenant in common of homestead property or file a petition for approval to make the election within the six months of the decedent's death. Upon realizing this failure, which occurred approximately seven-and-a-half months after her husband's death, Pla moved for an extension of time to make the election under Florida Probate Rule 5.042(b)(2), claiming excusable neglect. The Probate Court agreed with Pla that excusable neglect warranted an extension of time and that the requirements of excusable neglect had been shown in this case.

Under Fla. Stat. § 732.401(2) (2017), a surviving spouse takes a life estate in decedent's homestead property unless he or she elects to take an undivided one-half interest as a tenant in common.[6] The surviving spouse is required to make the election within six months of the decedent's death and the time "may not be extended except . . . [upon a] petition by an attorney in fact or by a guardian of the property of the surviving spouse for approval to make the election." The petition must be timely within the six-month time limit. Florida Probate Rule 5.042(b)(2) provides that "[w]hen an act is required or allowed to be done at or within a specified time *by these rules, by order of court, or by notice given thereunder*," the court may grant an extension of time if the request is made before the expiration of the specified time or after the expiration if "the failure to act was the result of excusable neglect."[7] (Emphasis added.) Because the election was *statutory* and not under the Probate Rules, Florida Probate Rule 5.042(b)(2) does not apply to acts which are required to be done within a specified time period *by statute*. The Second District held that because Pla failed to comply with requirements of Fla. Stat. § 732.401(2) (2017), the trial court erred in granting the time extension. The probate court order was reversed.

A trust directive requiring the trustee to distribute estate assets to the remainder beneficiary is triggered when a charitable foundation is not in existence at the time of decedent's death. The relation back doctrine is not applicable if it would frustrate the expressed intentions of decedent in the trust.

Sibley v. Estate of Sibley, 2019 Fla. App. LEXIS 5031 (Fla. 3d DCA 2019)

The Third District affirmed the circuit court holding that a charitable foundation, which had been designated as a decedent's trust beneficiary, was not in existence at the time of decedent's death.

Charles Sibley, the brother of the decedent and trustee of the Curtiss F. Sibley Revocable Living Trust, was required by the court to distribute all trust assets to the residual beneficiary.

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Prior to his death in 2011, the decedent executed a will and revocable living trust which stated that all remaining trust assets were to be distributed to the CURTISS F. SIBLEY CHARITABLE FOUNDATION (the "Foundation"), and if the Foundation was no longer in existence, the remaining assets should go to FELLOWSHIP HOUSE FOUNDATION ("Fellowship House").

In 2017, Fellowship House filed a Petition to Reopen for Subsequent Administration claiming that the Foundation was not in existence at the time of decedent's death, so therefore the estate assets should have been distributed to Fellowship House. Following an evidentiary hearing which occurred in September 2018, it was established that The Foundation had been dissolved in September 2011, three months prior to decedent's death, and had not been reinstated until July 9, 2012, seven months after decedent's death. At the hearing, Charles Sibley testified that he had never funded the foundation, opened a bank account for the foundation, or filed any paperwork with the IRS. The trial court concluded that the Foundation had not been in existence and the time of decedent's death and ordered Charles Sibley to forward all assets and monies in the estate to Fellowship House.

On appeal, Charles Sibley claimed that the trial court had erred by not relating back the reinstatement of the foundation to the date of dissolution, citing to Fla. Stat. § 607.1422(3) (2011) which stated that when a reinstatement of a corporation was effective, it "relates back," having the effective date of the dissolution. The Third District, however, found that the Foundation was "no longer in existence" at the time of decedent's death, and its only authorized function at that time was "to wind up and liquidate its business and affairs." The Third District rejected Sibley's argument and stated that the statute was not relevant to the issue here, and that if they were to apply the relation-back provision, the administration of the estate might never finalize because a dissolved beneficiary could at any point in the future reinstate themselves, which would also frustrate the settlor's intent.

The Third District framed the question in this case not as to whether the dissolved foundation could continue carrying on business if reinstated, but whether the Foundation was in existence at the time of decedent's death. Therefore, the Third District ruled that the Foundation had not been in existence on that date and that Charles Sibley, as trustee, must distribute all assets to Fellowship House.

Local policy that presumes the need for a restricted depository in all probate cases is improper. Whether there is a cause for a restricted depository should be decided on a case by case basis.

Goodstein v. Goodstein, 263 So. 3d 78 (Fla. 4th DCA 2019)

The Fourth District Court of Appeal ("Fourth District") affirmed the designation of a restricted depository in this case but stated that the trial court should not have a "blanket policy" requiring restricted depositories in all probate cases. The probate court required a restricted depository for the decedent's estate assets and that restricted depositories were required in all probate cases in the court's jurisdiction due to local policy.

The decedent was survived by one adult son and two minor children, all of whom were the beneficiaries. The beneficiaries petitioned for the use of a restricted depository for estate assets due to a recently enacted local policy requiring restricted depositories in all probate cases. However, the decedent's father, who was the personal representative, avoided the requirement because it had been opened prior to the effective date of the policy. The probate court agreed that all probate cases were required to designate a restricted depository and that the policy "reduced expenses and increased productivity by encouraging attorneys to resolve cases more quickly." The probate court granted the petition and ordered a restricted depository be designated.

According to Fla. Stat. § 69.031(1) (2018), "[w]hen it is expedient in the judgment of any court having jurisdiction of any estate in process of administration by any guardian, curator, executor, administrator, trustee, receiver, or other officer, *because the size of the bond required of the officer is burdensome or for other cause, the court may order part or all of the personal assets of the estate placed with a bank, trust company, or savings and loan association* . . . designated by the court . . . ."[8] (Emphasis added.) The Fourth District stated that the emphasized language makes it clear that a policy requiring a depository in all probate cases would be inconsistent with state law. The restricted depository may only be used when the size of the bond required of the administrator is burdensome, or "for other cause." Therefore, trial courts should look at each case individually to see if it fits under either stated reason for the designation of a depository. The Fourth District affirmed but warned against the use of such local policy regarding designation of restricted depository.

Endnotes

1 Fla. Stat. § 739.104(3) (2014).
2 Fla. Stat. § 739.601(1)-(2) (2014).
3 Fla. Stat. § 732.501(1)(a) (2013).
4 *Allen v. Dalk*, 826 So. 2d 245, 247 (Fla. 2002).
5 *See Signature, Black's Law Dictionary* (10th ed. 2014).
6 Fla. Stat. § 732.401(2) (2017).
7 Fla. Prob. R. 5.042(b)(2).
8 Fla. Stat. § 69.031(1) (2018).