

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Meredith Fiel and Lisa Fiel v. Douglas F. Hoffman, as Personal Representative of the Estate of Ben H. Novack, Jr., Narcy Novack, Marchelo Gaffney, Patrick Gaffney, May Azaleh Abad, and Harvey E. Morse, P.A.

Meredith Fiel and Lisa Fiel v. Douglas F. Hoffman, as Personal Representative of the Estate of Ben H. Novack, Jr., Narcy Novack, Marchelo Gaffney, Patrick Gaffney, May Azaleh Abad, and Harvey E. Morse, P.A., 169 So. 3d 1274 (Fla. 4th DCA 2015) (Fla. 4th DCA 2015) · No. 4D14-1048

SUMMARY

In Fiel v. Hoffman, the Florida Fourth District Court of Appeal held that Florida's Slayer Statute (§ 732.802) unambiguously disinherits only the person who unlawfully kills the decedent and does not extend to the slayer's innocent children or grandchildren. The court also held that a complaint alleging a will was entirely tainted by a primary beneficiary's undue influence, undertaken to benefit both herself and other family members named in the will, states a cause of action to revoke the entire will under § 732.5165, reversing the trial court's dismissal of that claim.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	WARNER; LEVINE; CONNER
JURISDICTION	Florida
DOCKET	4D14-1048
DISPOSITION	affirmed_in_part_and_reversed_in_part
PROCEDURAL POSTURE	Appeal from final order of dismissal with prejudice in probate proceeding.
STANDARD OF REVIEW	de novo (motion to dismiss)
PRECEDENTIAL VALUE	binding_authority
PARTIES	Meredith Fiel, Lisa Fiel v. Douglas F. Hoffman, as Personal Representative of the Estate of Ben H. Novack, Jr., Narcy Novack, Marchelo Gaffney, Patrick Gaffney, May Azaleh Abad, Harvey E. Morse, P.A.

TOPICS

probate

undue influence

will contests

pleadings

motions to dismiss

PRACTICE AREAS

Probate Law

Trusts and Estates

Wills and Testaments

Undue Influence

QUESTIONS PRESENTED

1. Whether Florida's Slayer Statute, § 732.802, bars the children and grandchildren of a murderer from inheriting under the decedent's will.
2. Whether the complaint stated a cause of action for revocation of the wills based on undue influence where the complaint alleged that the entire will was tainted by the primary beneficiary's undue influence, even though the stepdaughter and step-grandsons did not personally participate.

HOLDINGS

1. The Slayer Statute is clear and unambiguous; it disinherits only the surviving person who unlawfully and intentionally kills or participates in procuring the death of the decedent. The statute does not extend to the slayer's children or grandchildren.
2. Allegations that a will in its entirety was the product of undue influence by one beneficiary, undertaken to benefit both that beneficiary and other family members named in the will, state a cause of action to revoke the entire will; such allegations are sufficient to survive a motion to dismiss.

KEY QUOTATIONS

"The statute is clear and unambiguous and disinherits only the slayer, or anyone who participates in the killing of the decedent, from any rights to the victim's estate."

"It is not for the Court to legislate new laws or amendments to existing laws that are clear and unambiguous, that is exclusively a legislative process."

"To interpret the statute to preclude the stepchildren from recovering would require us to add words to the statute, something we cannot do. If the Legislature deems as a public policy matter that anyone inheriting through the slayer should be barred from receiving any share of a victim's estate, it can amend the statute to accomplish that result."

"Appellants alleged that Narcy used 'undue influence through duress, threats, physical attacks, home invasions and extortions' to 'cause[] Ben Novack to sign two wills which completely altered Ben Novack's intended estate plan.' They alleged that the contested wills 'were entirely tainted due to the degree of undue influence caused by Narcy Novack'; 'in totality [were] the product of undue influence'; and were 'void because of undue influence of Narcy Novack.' Appellants also alleged 'The provisions for [the stepdaughter and step-grandsons] have been tainted by the undue influence.' These allegations are sufficient to survive a motion to dismiss because they allege that the undue influence tainted the entire will, including the bequests to the stepdaughter and step-grandsons."

FACTUAL BACKGROUND

Ben Novack was murdered in 2009. His wife Narcy Novack was convicted of the murder. The will being probated devised the estate to Narcy (if she survived) or if not, \$150,000 to Narcy's daughter and the residue in trust for Narcy's two grandsons. Under the Slayer Statute, Narcy was treated as having predeceased Ben, leaving the daughter and grandsons as sole beneficiaries. Appellants (Ben's cousins) sought to enforce an earlier will devising the residue to Ben's mother, and if she did not survive, to them. They alleged that Narcy used physical violence and threats to procure the two later wills.

PROCEDURAL HISTORY

After Narcy Novack sought probate of Ben Novack's will, the trial court appointed Douglas Hoffman as personal representative. The court determined that under the Slayer Statute, Narcy was not entitled to participate and was treated as predeceased, leaving her daughter and grandsons as sole beneficiaries. Appellants Meredith and Lisa Fiel filed a complaint and amended complaint to invalidate the wills, asserting claims for undue influence and seeking to bar the stepdaughter and step-grandsons from inheriting under the Slayer Statute. The personal representative moved to dismiss, and the court granted the motion. After voluntary dismissal of remaining counts, final order of dismissal was entered, prompting this appeal.

DISPOSITION

affirmed_in_part_and_reversed_in_part

REMAND INSTRUCTIONS

Remand for further proceedings on the undue influence count.

CASES CITED

- Carter v. Carter, 88 So. 2d 153 (Fla. 1956)
- Nable v. Godfrey's Estate, 403 So. 2d 1038 (Fla. 5th DCA 1981)
- In re Estate of Margaret H. Benson, Deceased; In re Estate of Scott R. Benson, Deceased; Carol Lynn Benson Kendall v. Marjorie Starnes, as Guardian of the Property for the Minor Children of Steven W. Benson, and Steven W. Benson, In re Estate of Benson, 548 So. 2d 775 (Fla. 2d DCA 1989)
- In re Estate of Fairweather, 444 So. 2d 464 (Fla. 2d DCA 1983)
- Chatman v. Currie, 606 So. 2d 454 (Fla. 1st DCA 1992)
- Lopez v. Rodriguez, 574 So. 2d 249 (Fla. 3d DCA 1991)
- Swain v. Estate of Tyre ex rel. Reilly, 57 A.3d 283 (R.I. 2012)
- Heinzman v. Mason, 694 N.E.2d 1164 (Ind. Ct. App. 1998)
- In re Estate of Mueller, 655 N.E.2d 1040 (Ill. App. Ct. 1995)
- In re Kiggins' Estate, 67 So. 2d 915 (Fla. 1953)
- In re Van Horne's Estate, 305 So. 2d 46 (Fla. 3d DCA 1974)
- Wehrheim v. Golden Pond Assisted Living Facility, 905 So. 2d 1002 (Fla. 5th DCA 2005)
- Sun Bank/Miami, N.A. v. Hogarth, 536 So. 2d 263 (Fla. 3d DCA 1988)

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