

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Golden & Cowan, P.A. v. Estate of Kosofsky

45 So. 3d 986 (Fla. Dist. Ct. App. 2010) · No. 3D09-3170 · Decided October 20, 2010

SUMMARY

The Florida Third District Court of Appeal affirmed an order determining that certain property was the decedent's homestead. Although the trial court improperly admitted telephonic testimony from Israel over an objection and without an oath administrator present, the error was harmless because independent evidence supported the same result.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Ramirez, C.J.; Cope, J.; Rothenberg, J.
JURISDICTION	Florida
DECIDED	October 20, 2010
DOCKET	3D09-3170
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting a petition to determine homestead and allowing the telephonic testimony of Philip Gilbert.
STANDARD OF REVIEW	Abuse of discretion for the admission of telephonic testimony; harmless-error review for evidentiary error.
PRECEDENTIAL VALUE	published
PARTIES	Golden & Cowan, P.A., et al. v. The Estate of Hilda Kosofsky

TOPICS

- probate procedure
- evidence
- harmless error
- appellate procedure
- standard of review

PRACTICE AREAS

- probate
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court improperly permitted telephonic testimony after Golden & Cowan objected to its admission.
2. Whether the admission of the telephonic testimony constituted reversible error when independent evidence supported the homestead determination.

HOLDINGS

1. Although Florida Rule of Judicial Administration 2.530(d)(1) permits telephonic testimony when all parties consent, the trial court improperly introduced the testimony after Golden & Cowan objected.
2. The improper admission of the telephonic testimony was harmless error because independent evidence would have led the trial court to reach the same conclusion and did not result in a miscarriage of justice.

KEY QUOTATIONS

“holding that improperly admitted evidence constitutes harmless error, unless admitting the evidence “[h]as resulted in a miscarriage of justice.”” (987)

FACTUAL BACKGROUND

The proceeding concerned whether particular property constituted the deceased's homestead. Philip Gilbert testified by telephone from Israel, and Golden & Cowan objected before the testimony was introduced. The record also contained independent evidence, including Gilbert's declaration in the petition that the property was the deceased's homestead.

PROCEDURAL HISTORY

The trial court entered an order determining that the subject property was the decedent's homestead and permitted Philip Gilbert to testify telephonically from Israel. Golden & Cowan appealed, arguing that the telephonic testimony was improperly admitted despite its objection and without a notary public or other authorized person present to administer an oath. The district court affirmed, holding that any error was harmless because independent evidence supported the same result.

DISPOSITION

affirmed

CASES CITED

- White Constr. Co. v. Dupont, 455 So. 2d 1026, 1029 (Fla. 1984)

OPINION

PER CURIAM.

45 So.3d 986 (2010) GOLDEN & COWAN, P.A., et al., Appellants. v. The ESTATE OF Hilda KOSOFSKY, Appellee. No. 3D09-3170. District Court of Appeal of Florida, Third District.

October 20, 2010. *987 Golden & Cowan and William H. Glasko, for appellants. Ray Strauss, for appellee.

Before RAMIREZ, C.J., and COPE and ROTHENBERG, JJ. PER CURIAM. This is an appeal from an order granting appellee Golden & Cowan, P.A., et al.'s Petition to Determine Homestead entered in appellee Estate of Hilda Kosofsky's favor in which the trial court allowed the telephonic testimony of Philip Gilbert.

We affirm because the trial court did not abuse its discretion when it allowed the telephonic testimony. Golden & Cowan argue that the trial court abused its discretion when it allowed the telephonic testimony for two reasons.

The first is that Golden & Cowan objected to the testimony before it was introduced. Next, the trial court allowed Philip Gilbert to testify from Israel without a notary public or any person authorized to administer an oath present.

Under Florida Rule of Judicial Administration 2.530(d)(1), a judge may, if all parties consent, allow the use of telephonic testimony. Although the court considered the inconvenience of making Philip Gilbert travel from Israel to testify over a single asset, the trial court's introduction of the telephonic testimony was improper in light of the objection Golden & Cowan raised.

However, the improper introduction of the telephonic testimony constituted harmless error due to the existence of other independent evidence which would have led the trial court to reach the same conclusion. See *White Constr. Co. v. Dupont*, 455 So.2d 1026, 1029 (Fla.1984) (holding that improperly admitted evidence constitutes harmless error, unless admitting the evidence "[h]as resulted in a miscarriage of justice.").

Here, if the trial court ordered a new trial, the court would have reached the same result finding that the property represented the homestead of the deceased. In the Petition for Determining Homestead, for example, Philip Gilbert declared that the subject property was the *988 homestead of the deceased. This is the same issue that Golden & Cowan raised during Philip Gilbert's telephonic testimony.

Thus, the introduction of the telephonic testimony did not result in a miscarriage of justice. We therefore affirm.