

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

In re the Estate of Jane Greer Kelly Brown

421 So. 2d 752 (Fla. 4th DCA 1982) · No. 81-2130 · Decided November 10, 1982

SUMMARY

The Florida Fourth District Court of Appeal held that a claimant was not required to file a separate independent action in Florida to preserve an estate claim when related litigation was already pending in Bermuda and the personal representative had voluntarily participated in that litigation. The court concluded that the Bermuda proceeding served as the equivalent of an independent action under section 733.705, Florida Statutes, and reversed the order striking the claim.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Walden; Letts, C.J.; Anstead, J.; Walden, J.
JURISDICTION	Florida
DECIDED	November 10, 1982
DOCKET	81-2130
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Shelby Company Limited appealed an order striking its claim against the estate for failure to commence an independent action in Florida within the statutory or stipulated deadline.
STANDARD OF REVIEW	De novo review of the trial court's application of section 733.705, Florida Statutes (1980), to undisputed procedural facts.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion; binding precedent within the Fourth District subject to later contrary authority.
PARTIES	Shelby Company Limited v. Wilson Smith, Esq., as Successor Personal Representative of the Estate of Jane Greer Kelly Brown

TOPICS

- creditor claims
- probate procedure
- estate administration
- statutory interpretation
- civil procedure

PRACTICE AREAS

- probate
- estate administration
- civil procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether pending litigation in Bermuda, in which the decedent's personal representative voluntarily participated, satisfied the requirement of an independent action under section 733.705(3), Florida Statutes (1980), for purposes of preserving Shelby's estate claim.
2. Whether the parties' stipulation required Shelby to commence a separate action in Florida despite the continuing Bermuda litigation.

HOLDINGS

1. Where litigation concerning the matter underlying an estate claim is already pending in a forum selected by the decedent and the personal representative voluntarily participates in that litigation, the pending foreign action may serve as the equivalent of the independent action required by section 733.705(3); the claimant was therefore not required to file a duplicative action in Florida.
2. The stipulation did not require Shelby to abandon or parallel the Bermuda litigation by filing a separate Florida action because it did not mention the Bermuda action or designate Florida as the exclusive forum.

KEY QUOTATIONS

"The Bermuda action was the equivalent of such procedure." (421 So. 2d at 753)

"It would be duplicitous and serve no useful purpose to require the claimant to again make known his claim and file a second independent action." (421 So. 2d at 753)

"Thus, even if Shelby filed the action here in Florida, it would probably have to lie dormant pending the ripening and disposition in Bermuda since the claim here depends upon the outcome there." (421 So. 2d at 754)

FACTUAL BACKGROUND

Shelby's assignor, H. Brent Kelly, asserted a counterclaim in a Bermuda lawsuit initiated by Jane Greer Kelly Brown. After Brown's death, her personal representative voluntarily substituted himself in the Bermuda litigation. Shelby then timely filed a contingent claim in Brown's Florida estate based on the Bermuda counterclaim, but the estate moved to strike the claim after Shelby did not commence a separate Florida action within the period stated in section 733.705(3) and a related stipulation.

PROCEDURAL HISTORY

Shelby's assignor filed a counterclaim in litigation pending in Bermuda against the decedent. After the decedent died, the personal representative voluntarily substituted himself in the Bermuda action. Shelby timely filed a contingent claim in the Florida estate, but the successor personal representative later objected and moved to strike the claim after giving notice under a stipulation extending the time to file an independent action. The trial court granted the motion under section 733.705(3), Florida Statutes (1980), and the appellate court reversed and remanded with instructions to reinstate the claim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reinstate Shelby's claim in the estate.

CASES CITED

- Cloer v. Shawver, 177 So. 2d 691 (Fla. 1st DCA 1965)
- Kornblum v. Heflin, 183 So. 2d 843 (Fla. 2d DCA 1966), cert. denied, 189 So. 2d 632 (Fla. 1966)
- Brown v. Wood, 202 So. 2d 125 (Fla. 2d DCA 1967)
- Ogden v. Ogden, 159 Fla. 604, 33 So. 2d 870 (Fla. 1948)

OPINION

PER CURIAM.

421 So. 2d 752 (1982) In re the ESTATE OF Jane Greer Kelly BROWN, Deceased. SHELBY COMPANY LIMITED, Appellant, v. Wilson SMITH, Esq., As Successor Personal Representative of the Estate of Jane Greer Kelly Brown, Appellee. No. 81-2130. District Court of Appeal of Florida, Fourth District. November 10, 1982. Robert L. Beals of DiGiulian, Spellacy & DiChiara, Fort Lauderdale, for appellant.

Arthur J. England, Jr., of Steel, Hector & Davis, Miami, for appellee. WALDEN, Judge. Shelby Company Limited ("Shelby") filed a claim in the Estate of Jane Greer Kelly Brown ("Estate"), which Estate was being administered in Florida.

The trial court, upon Petition of the Successor Personal Representative, struck the claim. Shelby appeals. We reverse. History. Shelby's assignor, H. Brent Kelly, filed a counterclaim in a Bermuda lawsuit that the decedent, Jane Greer Kelly Brown, had initiated. Thereafter, Shelby filed a timely claim here in the Estate based *753 on "that certain counterclaim filed by H. Brent Kelly against Jane Greer Kelly in the Supreme Court of Bermuda, Case No. 1997 n.o.

184." The claim in the Estate was in excess of \$150,000.00 and was described as being contingent upon "a finding of liability and proof of damages in [the Bermuda lawsuit]." Jane Greer Kelly Brown died on September 5, 1980, and Joseph Brown, as personal representative, substituted for the decedent in the Bermuda law suit. H. Brent Kelly obtained a default judgment on his counterclaim in Bermuda.

In April 1981, Joseph Brown, personal representative, sought to have the judgment set aside. Without particular detail, an objection was filed in the Estate to Shelby's claim. Certain stipulations were made and on October 5, 1981, the successor personal representative, moved to

strike Shelby's claim, saying: "1. Shelby Company Limited filed a Statement of Claim in this estate, which Claim was objected to by the Successor Personal Representative.

2. The Successor Personal Representative entered into a Stipulation with the attorneys of record for Shelby Company Limited, a copy of which is attached hereto as Exhibit A, which extended the time for Shelby Company Limited to bring an independent action on its Claim until 30 days after receipt of notice in writing from the Successor Personal Representative.

3. The Successor Personal Representative has served the written notice as provided in the Stipulation on Shelby Company Limited, stating that an action to enforce its Claim against the estate must be commenced within 30 days, which notice was received by the Shelby Company Limited attorneys of record on July 27, 1981. A copy of the written notice, together with proof of delivery, is attached hereto as Exhibit B. 4.

More than 30 days have elapsed since delivery of the written notice, but no action has been taken to enforce the Claim of Shelby Company Limited and the Claim is, therefore, barred by Section 733.705 of the Florida Statutes."

The recitals were accurate and the trial court struck the claim upon the basis that Shelby had not met the requirements of Section 733.705(3), Florida Statutes (1980) (which provides a cut off date for filing an independent action on a claim after objection) or the extension of time provided by stipulation. This appeal ensued.

Because of the pendency of the Bermuda litigation, this being a jurisdiction chosen by the decedent and acquiesced in by her personal representative when he voluntarily substituted himself, we are of the opinion that it was unnecessary for Shelby to file an independent action in Florida as concerns the Estate.

The Bermuda action was the equivalent of such procedure. *Cloer v. Shawver*, 177 So. 2d 691 (Fla. 1st DCA 1965); *Kornblum v. Heflin*, 183 So. 2d 843 (Fla. 2d DCA 1966), cert. denied, 189 So. 2d 632 (Fla. 1966), and *Brown v. Wood*, 202 So. 2d 125 at 128 (Fla. 2d DCA 1967).

We believe that the rationale and purpose of Section 733.705, Florida Statutes (1980) is to uncover and resolve or bar all pending claims against an Estate so that the administration can be processed expeditiously to the end that assets may be marshalled, proper creditors paid, and distribution made.

In cases such as this where litigation of the matter forming the basis of the claim is pending with the personal representative voluntarily participating, it is obvious that the existence of the claim is known and objected to, and that it is already in the process of judicial determination. It would be duplicitous and serve no useful purpose to require the claimant to again make known his claim and file a second independent action.

Such a step would in nowise aid the administration. It would only create needless expense to those involved plus an added burden to the courts. The Estate attempts to distinguish the Cloer and Kornblum cases. It agrees that an action properly filed in the courts of a sister state can be the predicate for and serve as the equivalent of "an independent action" under the statute.

However, it is the Estate's position that litigation in a foreign place such as Bermuda may not *754 form such predicate because a Bermuda judgment might not have the same stature as that of a sister state. This may be true. Regardless, we reject the notion that the difference is controlling.

The Estate can hardly be heard to say that Bermuda is an ineffective forum when the decedent selected it and energized its judicial machinery against Shelby's assignor, and where the personal representative voluntarily entered the suit and took up the cudgels on behalf of the Estate.

Moreover, a Bermuda judgment is valid here under the principles of comity (even assuming the Estate is not barred from raising objections to the judgment by its participation there under the principles of waiver or estoppel) if the Bermuda court had jurisdiction and the judgment resulted from procedures which would render it valid had it been litigated in this Court.

Ogden v. Ogden, 159 Fla. 604, 33 So. 2d 870 (1948). Finally, the Estate says that Shelby was absolutely obligated by the terms of the stipulation to file an independent action here in Florida or, failing to do so, suffer dismissal of its claim.

We disagree. The stipulation did not mention the Bermuda action or evince any notion of its abandonment and the election of Florida as the sole forum. Indeed, it would be impossible for Shelby to disengage in Bermuda without default or prejudice.

The Bermuda claim was still undecided and unliquidated. Thus, even if Shelby filed the action here in Florida, it would probably have to lie dormant pending the ripening and disposition in Bermuda since the claim here depends upon the outcome there. Again, as we see it, Shelby had the option of paralleling the Bermuda suit by filing an action here.

However, it was not required to do so and, under the circumstances, could elect not to proceed further here in Florida. We fail to see where the Estate has been in anywise prejudiced by the disinclination of Shelby to pursue the action here, but to the contrary.

We reverse and remand with instructions to reinstate Shelby's claim. REVERSED and REMANDED. LETTS, C.J., and ANSTEAD, J., concur.