

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Summer Jasser, Lena Mamone and Anthony Saadeh, as Co-Trustees of the Trust Agreement of Karim H. Saadeh dated June 24, 2009, Appellants, v. Karim H. Saadeh, Appellee

Summer Jasser, Lena Mamone and Anthony Saadeh, as Co-Trustees of the Trust Agreement of Karim H. Saadeh dated June 24, 2009, Appellants, v. Karim H. Saadeh, Appellee, 97 So. 3d 251 (Fla. 4th DCA 2012) (Fla. 4th DCA 2012) · No. 4D09-3974, 4D09-4879, 4D10-140, 4D10-1193, 4D10-3991

SUMMARY

The Fourth District held that a trust executed by a settlor whose right to contract had been removed by an emergency temporary guardian (ETG) with plenary authority was void ab initio for lack of capacity under section 736.0402(1), Florida Statutes. The court also ruled that an agreed order dismissing incapacity proceedings while the ETG remained active was a nullity because the statutory scheme mandates either an incapacity determination or termination of the ETG, and parties who relied on the ETG's continued deprivation of rights were judicially estopped from asserting the dismissal was final.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Warner; Damoorgian; Conner
JURISDICTION	Florida
DOCKET	4D09-3974, 4D09-4879, 4D10-140, 4D10-1193, 4D10-3991
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from final summary judgment declaring trust void ab initio and related orders in consolidated guardianship/trust litigation.
PRECEDENTIAL VALUE	published
PARTIES	Summer Jasser, Lena Mamone and Anthony Saadeh, as Co-Trustees of the Trust Agreement of Karim H. Saadeh dated June 24, 2009 v. Karim H. Saadeh

TOPICS

[guardianship procedure](#)[probate procedure](#)[trusts](#)[elder law](#)[summary judgment](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the May 2009 agreed order dismissing incapacity proceedings was final and not subject to attack.
2. Whether Saadeh lacked the legal right to contract and execute the trust due to the appointment of an emergency temporary guardian with plenary authority.
3. Whether the trust agreement was void ab initio.

HOLDINGS

1. A trust is void ab initio where the settlor lacked legal capacity to create it because an emergency temporary guardian had been granted plenary authority, including the right to contract, thereby removing that right from the ward.
2. An order dismissing incapacity proceedings without determining incapacity and without terminating the emergency temporary guardianship is a nullity; the court retains authority to proceed with the incapacity determination and subsequent relief.

KEY QUOTATIONS

“Because we conclude that the court correctly determined that Saadeh did not have legal authority to create the trust, we affirm the summary judgment.” (at 2)

“Compliance with the requirements of section 744.331 is mandatory and the trial court's failure to adhere to those requirements constitutes reversible error.” (at 9)

“An individual who is competent should not be subject to the control of the courts through guardianship proceedings, temporary or plenary.” (at 9)

“To permit both a ward and the guardian to exercise the right to contract would render the protection afforded by an ETG non-existent.” (at 10)

FACTUAL BACKGROUND

Karim Saadeh, an elderly wealthy man, had his children transfer over a million dollars from his accounts without his knowledge. A professional guardian filed a petition for incapacity and obtained an emergency temporary guardian (ETG) with plenary authority over all rights except voting. While the ETG was in place, an agreed order dismissed the incapacity proceedings and required Saadeh to execute a trust with his children as co-trustees. Saadeh signed the trust but later contested it as void, arguing he lacked legal capacity because his right to contract had been removed. The trial court granted summary judgment voiding the trust ab initio.

PROCEDURAL HISTORY

After a petition for incapacity was filed, an emergency temporary guardian (ETG) was appointed with plenary authority. An agreed order dismissed the incapacity proceedings and required Saadeh to execute a trust. Later, after examining committees found Saadeh competent, the incapacity petition was dismissed. Saadeh then moved

to void the trust, and the trial court granted summary judgment that the trust was void ab initio. The co-trustees appealed.

DISPOSITION

affirmed

CASES CITED

- Borden v. Guardianship of Borden-Moore, 818 So. 2d 604 (Fla. 5th DCA 2002)
- In re Keene, 343 So. 2d 916 (Fla. 4th DCA 1977)
- In re Frederick, 508 So. 2d 44 (Fla. 4th DCA 1987)
- Blumberg v. USAA Cas. Ins. Co., 790 So. 2d 1061 (Fla. 2001)
- In re Guardianship of Graham, 963 So. 2d 275 (Fla. 4th DCA 2007)
- Holmes v. Burchett, 766 So. 2d 387 (Fla. 2d DCA 2000)

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