DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Tillman v. Smith

533 So. 2d 928 (Fla. 5th DCA 1988) · No. No. 88-800 · Decided November 17, 1988

SUMMARY

The Florida Fifth District Court of Appeal held that attorney's fees incurred by an estate beneficiary for legal services benefiting the estate are Class 7 claims under section 733.707, Florida Statutes (1987), rather than Class 1 administrative expenses. The court reasoned that the statute expressly lists personal representatives' attorney's fees in Class 1, implying that other attorney's fees are excluded. The judgment was reversed.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Cobb, J.; Cowart, J.; Daniel, J.
JURISDICTION	Florida
DECIDED	November 17, 1988
DOCKET	No. 88-800
DISPOSITION	reversed
PROCEDURAL POSTURE	The personal representative appealed the trial court's determination that attorney's fees incurred by an estate beneficiary for legal services benefiting the estate had Class 1 rather than Class 7 priority under section 733.707, Florida Statutes (1987).
STANDARD OF REVIEW	The court applied a statutory-interpretation analysis.
PRECEDENTIAL VALUE	Published Florida Fifth District Court of Appeal opinion
PARTIES	Lorraine C. Tillman, as Personal Representative of the Estate of Elmer L. Smith, Deceased v. Virginia Savage Smith

TOPICS

creditor claims · estate administration · statutory interpretation · probate procedure · appellate procedure

PRACTICE AREAS

probate · estate administration · estate litigation

QUESTIONS PRESENTED

1. Whether attorney's fees incurred by an estate beneficiary for legal services benefiting the estate qualify as Class 1 costs and expenses of administration under section 733.707(1)(a), Florida Statutes (1987), or instead constitute Class 7 claims under section 733.707(1)(g).

HOLDINGS

1. Attorney's fees incurred by an estate beneficiary for legal services benefiting the estate are Class 7 claims under section 733.707, Florida Statutes (1987), rather than Class 1 costs and expenses of administration.

KEY QUOTATIONS

> *"As the appellant points out, it is a fundamental rule of statutory interpretation that the mention of one thing implies the exclusion of another (expressio unius est exclusio alterius)."* (929)

> *"The attorney fees at issue must fall within Class 7, not Class 1."* (929)

FACTUAL BACKGROUND

An estate beneficiary incurred attorney's fees for legal services that benefited the estate, including services resulting in tax savings. The trial court classified those fees as costs and expenses of administration under section 733.707(1)(a), giving them Class 1 priority. The personal representative challenged that classification on appeal.

PROCEDURAL HISTORY

The trial court held that the beneficiary's attorney's fees constituted costs and expenses of administration and therefore received Class 1 priority. The District Court of Appeal reversed, holding that the fees fell within Class 7.

DISPOSITION

reversed

CASES CITED

- Peeples v. State, 46 Fla. 101, 35 So. 223 (1903)
- Sessoms v. Johnson, 378 So. 2d 1260 (Fla. 5th DCA 1980)
- Tillman v. Smith, 526 So. 2d 730 (Fla. 5th DCA 1988)