

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

In re Estate of Pearce

481 So. 2d 69 (Fla. 4th DCA 1985) · No. No. 84-1862 · Decided December 31, 1985

SUMMARY

The Florida Fourth District Court of Appeal affirmed an order allowing an amended probate inventory to remove stock that the trial court found was held in trust rather than owned individually by the decedent. The court held that parol evidence could establish a trust in personal property and that testimony from the decedent's attorney was not barred by Florida's Dead Man's Statute.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Downey; Letts; Walden
JURISDICTION	Florida
DECIDED	December 31, 1985
DOCKET	No. 84-1862
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dewitt Pearce appealed an order granting leave to amend the probate inventory by removing stock from the estate because the trial court determined that the stock was held by the decedent as trustee rather than owned individually.
PRECEDENTIAL VALUE	Published Florida district court of appeal opinion; precedential within the applicable Florida appellate hierarchy unless superseded or limited.
PARTIES	Dewitt L. Pearce v. John F. Pearce

TOPICS

- probate procedure
- trust administration
- trusts
- evidence
- appellate procedure

PRACTICE AREAS

- probate
- trusts
- estate planning
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether parol evidence was admissible to establish that stock certificates issued in the decedent's individual name were held in trust as personal property.
2. Whether testimony by the decedent's attorney concerning the decedent's instructions was barred by Florida's Dead Man's Statute.

HOLDINGS

1. The parol evidence rule did not bar evidence offered to establish that the stock certificates constituted the corpus of a trust in personal property, rather than to alter the terms of a written contract.
2. The decedent's attorney was competent to testify because he was not an interested party within the meaning of section 90.602, Florida Statutes (1983).

KEY QUOTATIONS

"It is true that the parol evidence rule "serves as a shield to protect a valid, complete and unambiguous written instrument from any verbal assault that would contradict, add to, or subtract from it or affect its construction."" (481 So. 2d at 70)

"A trust in personal property may be created by deed or may rest entirely on parol, or may be partially in writing and partially in parol, provided the words employed are sufficient to create a trust." (481 So. 2d at 71)

FACTUAL BACKGROUND

Rosa Lee Pearce established a revocable trust and formed Sixty-Nine Ranch, Inc. as part of an estate plan transferring ranch property into corporate stock for the benefit of John Pearce and other beneficiaries. The stock certificates were issued to Rosa Lee Pearce without the designation "as Trustee," but an amendment to the trust agreement soon afterward listed the stock as trust assets. Evidence also showed that Pearce had orally declared that she held the stock in trust and had instructed her attorney to prepare documents reflecting that status; the attorney testified that the failure to include the trustee designation was his mistake.

PROCEDURAL HISTORY

The decedent's sons, who were co-personal representatives, disputed whether stock issued in Rosa Lee Pearce's name individually was an asset of her probate estate or of her revocable trust. The trial court admitted parol evidence, including testimony from the decedent's attorney, and granted leave to amend the inventory to remove the stock. Dewitt Pearce appealed, arguing that the parol evidence rule and Florida's Dead Man's Statute barred the evidence.

DISPOSITION

affirmed

CASES CITED

- Reid v. Barry, 93 Fla. 849, 112 So. 846 (1927)

- *Carlton, Inc. v. Southland Diversified Co.*, 381 So. 2d 291 (Fla. 4th DCA 1980)
- *Sears v. James Talcott, Inc.*, 174 So. 2d 776 (Fla. 2d DCA 1965)
- *Bay Biscayne Co. v. Baile*, 73 Fla. 1120, 75 So. 860 (1917)
- *Florida Northside Bank v. Lowni Corp.*, 213 So. 2d 729 (Fla. 1st DCA 1968), cert. denied, 222 So. 2d 25 (Fla. 1969)
- *McCrary Stores Corporation v. Tunncliffe*, 104 Fla. 683, 140 So. 806 (1932)
- *Rosen v. Rosen*, 167 So. 2d 70 (Fla. 3d DCA 1964)
- *In re Estate of Craft*, 320 So. 2d 874 (Fla. 4th DCA 1975), cert. denied, 336 So. 2d 105 (Fla. 1976)
- *Fraser v. Lewis*, 187 So. 2d 684 (Fla. 3d DCA 1966)
- *Mathews v. Hines*, 444 F. Supp. 1201 (M.D. Fla. 1978)
- *In re Estate of Hatcher*, 439 So. 2d 977 (Fla. 3d DCA 1983)
- *In re Estate of Udell*, 324 So. 2d 703 (Fla. 4th DCA 1975), cert. denied, 336 So. 2d 108 (Fla. 1976)
- *In re Lynagh's Estate*, 177 So. 2d 256 (Fla. 2d DCA 1965)

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