

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Florida district court of appeal opinion; precedential within the applicable Florida appellate hierarchy unless superseded or limited.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)

OPINION

PER CURIAM.

481 So. 2d 69 (1985) *In re the ESTATE OF Rosa Lee PEARCE*, Deceased. No. 84-1862. District Court of Appeal of Florida, Fourth District. December 31, 1985. Rehearing Denied February 3, 1986. *70 George E. Adams of Adams, Hill & Fulford, Orlando, for appellant, Dewitt L. Pearce. George H. Moss of Moss, Henderson & Lloyd, P.A., Vero Beach, for appellee, John F. Pearce.

DOWNEY, Judge. This is an appeal from an Order Granting Leave to File Amended Inventory, determining that certain stocks were held by the decedent, Rosa Lee Pearce, as trustee, rather than owned by her individually, so that they should not have been included as assets of her probate estate. Dewitt L. Pearce, appellant, and John F. Pearce, appellee, are co-personal representatives of the estate of their mother, Rosa Lee Pearce.

This action arose when John Pearce filed a petition to remove certain stock of the Sixty-Nine Ranch, Inc., a Florida corporation, from the probate inventory because the stock was granted to a living trust created by Mrs. Pearce and it was an asset of the trust at the time of her death. Dewitt Pearce contested the removal of the stock from the probate inventory, maintaining that the plain language of the stock certificates indicated that they were issued to Rosa Lee Pearce, individually.

Upon the advice of an estate planner, an attorney, and an accountant, Rosa Lee Pearce executed a revocable trust agreement on September 25, 1981, with certain ranch land inherited from her husband as the trust corpus. Thereafter, upon the advice of the estate planners, Mrs. Pearce formed the Sixty-Nine Ranch, Inc., and title to certain land that she desired to give to John Pearce and her other beneficiaries was transferred to the corporation.

The estate plan involved the conversion of the ranch land (real property) into shares of stock (personal property). There was evidence that, despite the change in the property's character, Mrs. Pearce intended to continue holding such property in trust, rather than in her individual capacity.

The *71 stock was issued on December 29, 1981, to "Rosa Lee Pearce," but less than one month later Mrs. Pearce executed an Amendment to the Rosa Lee Pearce Revocable Trust Agreement, listing the Class A and Class B stock of the Sixty-Nine Ranch, Inc., as assets of the trust to be held for the benefit of John Pearce and his family.

The trial court also admitted and considered testimony that, before and after issuance of the stock, Mrs. Pearce orally declared she was holding it in trust, and that she had instructed her attorney to prepare the necessary legal documents to record her declaration of trust. Mrs. Pearce's attorney testified that title to the ranch stock should have been issued to Rosa Lee Pearce with the designation "as Trustee."

He stated that the issuance to Rosa Lee Pearce in her individual name was a mistake and he accepted responsibility. The attorney further testified that he was responsible for including the ranch stock on the probate inventory and this, too, was his error. Appellant, Dewitt Pearce, contends that any attempt at trial to show that the stock certificates were intended to be issued to Mrs. Pearce as trustee should have been prohibited by the parol evidence rule.

Appellant relies on Florida case law holding that the intent or meaning of a written document should be determined solely from the language of the instrument where such language is clear. *Reid v. Barry*, 93 Fla. 849, 112 So. 846 (1927); *Carlton, Inc. v. Southland Diversified Co.*, 381 So. 2d 291 (Fla. 4th DCA 1980). 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."

Carlton, 381 So.2d at 293. See also *Sears v. James Talcott, Inc.*, 174 So. 2d 776 (Fla. 2d DCA 1965). However, it is also true that parol evidence may serve to establish a trust in personalty. *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 (1969).

Although an oral declaration of a trust in real property is void and unenforceable, trusts in personal property need not be created or proved in writing. E.g., *McCrory Stores Corporation v. Tunnicliffe*, 104 Fla. 683, 140 So. 806 (1932); *Rosen v. Rosen*, 167 So. 2d 70 (Fla. 3d DCA 1964). 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.

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). The parol evidence in this case was

not offered to change the terms of a written contract; it was utilized to establish a trust in personalty.

The evidence was introduced to demonstrate further that the stock certificates were the corpus or res of the trust. Of course, looking at the stock certificates alone one would assume that they were owned individually by Mrs. Pearce, but an examination of the amendment to the trust and the oral declarations made after issuance of the stocks indicate that the stocks were held in trust, as found by the trial court.

Appellant also contends that the trial court erred in allowing the testimony of Mrs. Pearce's attorney (concerning her instruction to him to issue the stock to her with the words "as Trustee" on the certificates) because it violated the Dead Man's Statute.

However, the attorney was not an interested party as contemplated by section 90.602, Florida Statutes (1983) (Dead Man's Statute), because he had no claim of right or title against the decedent or her estate. E.g., *Mathews v. Hines*, 444 F. Supp. 1201 (M.D.Fla. 1978). He had no legal, certain, immediate, and vested interest in the cause that would bar him from testifying.

Id.; see also *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 *72 re Lynagh's Estate*, 177 So. 2d 256 (Fla. 2d DCA 1965).

Accordingly, the Order Granting Leave to File Amended Inventory is affirmed. LETTS and WALDEN, JJ., concur.