

SUPREME COURT OF FLORIDA

Williams v. Kane

88 So. 2d 603 (Fla. 1956) · Decided March 28, 1956

SUMMARY

The Florida Supreme Court reviewed an award of attorney fees and costs to a named executor whose purported will was denied probate for lack of testamentary capacity. The court held that the executor was prima facie justified in offering the will, had not acted in bad faith, and that the probate court did not abuse its discretion in awarding \$1,000 in attorney fees and \$120 in costs.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Prunty, Associate Justice; Drew, C.J.; Terrell, J.; Thornal, J.
JURISDICTION	Florida
DECIDED	March 28, 1956
DISPOSITION	affirmed
PROCEDURAL POSTURE	An attorney named as executor under a purported will sought attorney fees and costs after the probate court refused probate because the testatrix lacked testamentary capacity. The probate court awarded \$1,000 in fees and \$120 in costs; the circuit court affirmed, and the Supreme Court of Florida affirmed the circuit court.
STANDARD OF REVIEW	Whether the probate court misapprehended the legal effect of the evidence as an entirety in determining bad faith, and whether the probate court abused its sound discretion in fixing the amount of attorney fees.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion
PARTIES	Williams v. Kane

TOPICS

- probate procedure
- probate
- estate administration
- estate litigation
- remedies

PRACTICE AREAS

- Probate
- Estate administration
- Attorney fees and costs

QUESTIONS PRESENTED

1. Whether an executor named in a purported will may recover attorney fees and costs after probate of the instrument is refused.
2. Whether the evidence established bad faith that would disqualify the appellant from recovering compensation.
3. Whether the probate court abused its discretion in awarding \$1,000 in attorney fees and \$120 in costs.

HOLDINGS

1. An executor named under a purported will may seek attorney fees and costs when the named executor was prima facie justified in offering the instrument for probate and the instrument was in proper form.
2. The evidence did not establish bad faith sufficient to disqualify the appellant from applying for compensation.
3. The probate court did not abuse its sound discretion by awarding \$1,000 in attorney fees and \$120 in costs.

KEY QUOTATIONS

“Under this statute recovery of attorney fees and costs by an executor under a will can be sought only where it appears that the named executor was prima facie justified in offering the purported will for probate and the purported will instrument must be in proper form.” (604)

“There appears to have been no abuse of the sound discretion of the probate trial judge and this obviously leads to the determination that the Circuit Judge likewise ruled correctly.” (604)

FACTUAL BACKGROUND

The appellant, who had been named executor, offered a purported will for probate and had also drafted the instrument. Probate was denied because the testatrix lacked testamentary capacity. Despite indicia of irregularity, the probate court found insufficient evidence of bad faith to disqualify the appellant from compensation and awarded \$1,000 in fees and \$120 in costs from an estate valued at approximately \$19,500.

PROCEDURAL HISTORY

The Probate Judge refused probate of the purported will, finding that the testatrix lacked testamentary capacity. The circuit court affirmed that order, and the Supreme Court of Florida had previously affirmed the circuit court's probate ruling. The probate court later awarded the appellant executor \$1,000 in attorney fees and \$120 in costs under F.S. § 732.14, and the circuit court affirmed that award. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Williams v. Kane, 88 So. 2d 599 (Fla.)
- In re Zimmerman, 84 So. 2d 560 (Fla.)

OPINION

PRUNTY, J.

PRUNTY, Associate Justice....Appellant having, been named executor under a purported will offered the will for probate. The probate was refused by the Probate Judge who found that the testatrix -' lacked' requisite -testamentary capacity, *604The appellant appealed to the circuit court where the order of the Probate Judge was affirmed and this order of the chancellor was likewise affirmed by this court.

See, Williams v. Kane, Fla., 88 So.2d 599. The appellant sought to have attorney fees and costs allowed under the provisions of F.S. § 732.14, F.S.A. Under this statute recovery of attorney fees and costs by an executor under a will can be sought only where it appears that the named executor was prima facie justified in offering the purported will for probate and the purported will instrument must be in proper form.

Appellees filed cross-assignments of error, claiming that the appellant acted in bad faith and that the court erred in allowing him any fees at all. The probate court by its order found the appellant to be entitled to fees and costs and allowed an attorney's fee of \$1,000 plus costs of \$120. This order and award was affirmed by the circuit court.

The County Judge in his order stated that contentions of counsel had been carefully considered and while indicia of irregularities existed they were not sufficient to show such bad faith as would disqualify the appellant from applying for compensation.

Therefore, on the basis of the holding of this court in the case of In re Zimmerman, Fla., 84 So.2d 560, it does not appear the county judge misapprehended the legal effect of the evidence as an entirety in his findings and likewise the order of the chancellor appealed from was not in error.

As to the amount of the fee, the evidence disclosed the gross value of the estate to approximate \$19,500. The testimony as to attorney's fees ranged from \$1,000 to \$6,250. The appellant who filed the petition for probate was the same attorney that drafted the will in question.

The Probate Judge was in much better position to evaluate the services performed by the attorney executor than in this Court. There appears to have been no abuse of the sound discretion of the probate trial judge and this obviously leads to the determination that the Circuit Judge likewise ruled correctly.

Accordingly, the decree appealed from should be and is hereby Affirmed. DREW, C. J., and TERRELL and THORNAL, JJ., concur.

