

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Ann Boren f/k/a Ann Boren Carney v. Thomas Rogers, Esquire, as
Purported Trustee of the Elaine Mullins Living Trust, Evelyn Vega
Rivera and Estate of Elaine Mullins

Ann Boren f/k/a Ann Boren Carney v. Thomas Rogers, Esquire, as Purported Trustee of the Elaine Mullins Living Trust, Evelyn Vega Rivera and Estate of Elaine Mullins, 243 So. 3d 448 (Fla. Dist. Ct. App. 2018) (Fla. 5th DCA 2018) · No. 5D17-3004

SUMMARY

In a trust contest alleging undue influence, the Florida Fifth District Court of Appeal held that a blanket protective order denying all discovery of trust documents without a finding of good cause or individual analysis of requests departs from the essential requirements of law. Certiorari relief is appropriate where the discovery is relevant to standing and the order effectively eviscerates the petitioner’s claim, causing material injury not remediable on appeal. The court quashed the protective order and remanded for the trial court to either permit discovery or make specific good cause findings.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Lambert, J.; Lambert; Orfinger; Eisnaugle
JURISDICTION	Florida
DOCKET	5D17-3004
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for writ of certiorari to review trial court's discovery protective order.
STANDARD OF REVIEW	Departure from essential requirements of law causing material injury with no adequate remedy on appeal.
PRECEDENTIAL VALUE	binding
PARTIES	Ann Boren f/k/a Ann Boren Carney v. Thomas Rogers, Esquire, as Purported Trustee of the Elaine Mullins Living Trust, Evelyn Vega Rivera, Estate of Elaine Mullins

TOPICS

- appellate procedure
- discovery dispute
- trusts
- standing
- undue influence

PRACTICE AREAS

Civil Procedure

Trusts and Estates

Appellate Practice

QUESTIONS PRESENTED

1. Whether the trial court's blanket protective order denying all discovery departed from the essential requirements of law and caused material injury that could not be remedied on appeal.

HOLDINGS

1. A protective order that precludes all requested discovery without a finding of good cause and without separately analyzing individual requests departs from the essential requirements of law; certiorari relief is appropriate where the discovery is relevant or reasonably calculated to lead to admissible evidence and the order effectively eviscerates a party's claim.

KEY QUOTATIONS

“Certiorari is the appropriate remedy when a discovery order departs from the essential requirements of law, causing material injury to the petitioner throughout the remainder of the proceedings in the trial court, effectively leaving no adequate remedy on appeal.” (at 450)

“In the instant case, the trial court made no finding of good cause, provided no explanation in its order for denying the motion, nor did it separately analyze the individual requests contained in the respective paragraphs of Boren's discovery request.” (at 451)

“because Boren would need the trust documents at trial to establish that she has standing as a prior interested beneficiary in the trust to bring this suit, the order effectively eviscerates her claim, which cannot be remedied on direct appeal because, at the very least, with no access to these documents, Boren lacks the ability to explain or demonstrate on direct appeal how the trust documents would have established her standing.” (at 451)

FACTUAL BACKGROUND

Ann Boren sued to void a 2014 trust and a 2013 trust executed by Elaine Mullins, alleging that Mullins maintained a longstanding estate plan benefiting family members including Boren, but that respondent Evelyn Rivera unduly influenced Mullins — who was in failing health and suffering cognitive deficits — to execute new trusts making Rivera the substantial beneficiary. Boren claimed she would have been a trust beneficiary under Mullins's earlier trusts but for the challenged instruments. Respondent Thomas Rogers was the trustee and the attorney who prepared the trust documents.

PROCEDURAL HISTORY

Boren filed an amended complaint seeking to void two trusts. After Rogers moved for a protective order, the trial court conducted an in-camera review and granted a blanket protective order precluding all discovery. Boren then petitioned the District Court of Appeal for certiorari relief.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

Trial court to permit discovery of requested trust documents or make specific good cause findings; reconsider and address whether good cause exists for objections to remaining documents, including privilege claims regarding private financial information.

CASES CITED

- Anderson v. Vander Meiden ex rel. Duggan, 56 So. 3d 830 (Fla. 2d DCA 2011)
- Allstate Ins. v. Boecher, 733 So. 2d 993 (Fla. 1999)
- Giacalone v. Helen Ellis Mem'l Hosp. Found., Inc., 8 So. 3d 1232 (Fla. 2d DCA 2009)
- Stewart v. Johnson, Stewart v. Johnson, 142 Fla. 425, 194 So. 869 (1940)

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