

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Amanda Perez Lopez and Julia Perez v. Elsa Lopez Perez

470 So. 2d 48 (Fla. 3d DCA 1985) · No. No. 84-719 · Decided May 21, 1985

SUMMARY

The Florida Third District Court of Appeal considered whether evidence rebutted the presumption that a decedent’s second marriage was valid. The court held that the first wife established the absence of a reasonable probability that the decedent had obtained a divorce through records searches, evidence concerning Peruvian and Cuban records, and the decedent’s misrepresentations on the Peruvian marriage certificate. The order recognizing the second wife as the lawful spouse and personal representative was reversed.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Ferguson, J.; Schwartz, C.J.; Baskin, J.
JURISDICTION	Florida
DECIDED	May 21, 1985
DOCKET	No. 84-719
DISPOSITION	reversed
PROCEDURAL POSTURE	Amanda Perez Lopez and Julia Perez appealed an order determining that Elsa Lopez Perez was the decedent's lawful wife, revoking Amanda's letters of administration, and appointing Elsa as personal representative of the intestate estate.
STANDARD OF REVIEW	Appellate review of the trial court's legal determination concerning whether the evidence rebutted the presumption of validity of a second marriage.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion; precedential within the applicable Florida appellate hierarchy.
PARTIES	Amanda Perez Lopez, Julia Perez v. Elsa Lopez Perez

TOPICS

- probate procedure
- estate administration
- marriage
- evidence
- authentication

PRACTICE AREAS

probate

family law

evidence

QUESTIONS PRESENTED

1. Whether the court should abandon or limit the common-law presumption favoring the validity of a second marriage when the alleged first spouse has lived abroad and traveled extensively.
2. Whether Julia's evidence, considered collectively, rebutted the presumption of validity by establishing the absence of a reasonable probability that Gregorio obtained a divorce from her.

HOLDINGS

1. The presumption of validity attaching to a second marriage is not limited to rebuttal by no-divorce certificates from every jurisdiction in which the alleged first spouse resided; other competent evidence may establish the absence of a reasonable probability that a divorce was obtained.
2. Julia rebutted the presumption by showing no divorce records in Florida and Texas, producing a Cuban certificate showing no divorce record, and presenting evidence of Gregorio's false statements and inconsistent conduct in connection with the Peruvian marriage.

KEY QUOTATIONS

"While the alleged first wife is not required to eliminate every remote possibility that a divorce might have been secured by her husband, it is necessary that she tender evidence which when weighed collectively establishes the absence of a reasonable probability that her husband actually secured the divorce." (470 So. 2d at 50)

"Although the Teel and King line of cases discuss the strict requirements for producing 'no-divorce' certificates from every jurisdiction where the other spouse resided, none of the cases preclude the establishment of 'the absence of a reasonable probability' that a divorce was obtained by other kinds of proof." (470 So. 2d at 51)

FACTUAL BACKGROUND

Gregorio Perez married Julia in Cuba in 1949, and they had a daughter, Amanda. The family later lived in Texas and Florida, and Gregorio supported Julia and continued living with her when he was not traveling abroad. In 1981, Gregorio married Elsa in Peru, falsely representing on the Peruvian marriage certificate that he had never been married and was Cuban rather than a United States citizen. Julia presented no-divorce records from Florida and Texas, a Cuban civil-registry certificate, and testimony concerning divorce-record practices in Cuba and Peru.

PROCEDURAL HISTORY

Gregorio Armando Perez died intestate in November 1983. Amanda, his daughter by Julia, was appointed personal representative. Elsa later sought substitution as personal representative, claiming to be Gregorio's lawful wife based on a 1981 Peruvian marriage certificate. After a trial concerning the validity of the second marriage, the trial court ruled in Elsa's favor; the Third District reversed.

DISPOSITION

reversed

CASES CITED

- Teel v. Nolen Brown Motors, Inc., 93 So. 2d 874 (Fla. 1957)
- Perkins v. Richards Constructors, Inc., 111 So. 2d 494 (Fla. 2d DCA 1959)
- Roberts v. Roberts, 124 Fla. 116, 167 So. 808 (1936)
- King v. Keller, 117 So. 2d 726 (Fla. 1960)
- King v. Keller, 141 So. 2d 259 (Fla. 1962)
- In re Findlay, 253 N.Y. 1, 170 N.E. 471 (1930)
- Fishman v. Fishman, 48 A.D.2d 876, 369 N.Y.S.2d 756 (1975)
- Dolan v. Celebrezze, 381 F.2d 231 (2d Cir. 1967)
- Johnson v. Johnson, 51 So. 2d 421, 422 (Fla. 1951)

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