

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

Richard Merli v. Donna Merli

Merli v. Merli, No. 4D21-1888, 2022 WL 57846 (Fla. 4th DCA Jan. 5, 2022) · No. 4D21-1888

SUMMARY

A partial marital settlement agreement that does not explicitly waive spousal rights and fails to resolve all disputes (such as alimony) is not a “complete property settlement” under Fla. Stat. § 732.702(1) and therefore does not waive a surviving spouse’s intestate rights. When a spouse dies during a pending divorce, the dissolution action abates and the marriage is terminated by death, not by final judgment, preserving the surviving spouse’s inheritance rights. The Fourth District affirmed the probate court’s appointment of the surviving wife as personal representative and rejected the decedent’s brother’s claim that the partial agreement constituted a waiver.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Harper, Bradley (Associate Judge); Ciklin; Artau
JURISDICTION	Florida
DOCKET	4D21-1888
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the probate court's order granting final summary judgment in favor of Appellee Donna Merli, which recognized the wife's intestate spousal rights and appointed her as personal representative.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	published
PARTIES	Richard Merli v. Donna Merli

TOPICS

- probate
- family law
- summary judgment
- civil procedure

PRACTICE AREAS

- Probate
- Family Law
- Estates and Trusts

QUESTIONS PRESENTED

1. Whether the partial marital settlement agreement was a complete property settlement that constituted a waiver of spousal intestate rights under section 732.702, Florida Statutes.
2. Whether language in the partial marital settlement agreement was equivalent to a waiver of spousal rights.
3. Whether the probate court erred in striking the decedent's divorce attorney's affidavit.

HOLDINGS

1. A partial marital settlement agreement that does not clearly, specifically, and explicitly settle all matters of dispute between the parties is not a 'complete property settlement' within the meaning of section 732.702(1), Florida Statutes, and does not operate as a waiver of intestate spousal rights.
2. General language in a partial marital settlement agreement that does not explicitly waive 'all rights' or equivalent language does not satisfy the waiver requirement of section 732.702(1).
3. Because the partial settlement agreement's unambiguous language does not waive intestate spousal rights, the attorney's affidavit cannot create a waiver; any error in striking the affidavit is harmless.

KEY QUOTATIONS

“The dissolution of marriage action terminated with the death of the husband and the dissolution judge should have dismissed the case upon the wife's motion.”

“[T]he decedent's death left the wife in '[t]he legal position of one whose marriage was terminated by death, and not by a final judgment.’”

“Parol evidence is inadmissible to contradict, vary, or modify terms which are unambiguously contained within a written agreement.”

FACTUAL BACKGROUND

The decedent died intestate while his dissolution of marriage proceeding with the wife was pending. Before his death, the decedent and the wife entered into a partial marital settlement agreement that divided certain marital assets and liabilities but specifically excluded alimony and a portion of the decedent's pension benefits. The agreement provided for the sale of the marital home but did not change the spouses' ownership interest. The family court adopted the partial agreement but had not entered a final dissolution judgment at the time of the husband's death.

PROCEDURAL HISTORY

The decedent died intestate while his dissolution of marriage proceeding with the wife was pending. Before his death, the decedent entered into a partial marital settlement agreement with the wife. The family court entered an order adopting the partial agreement but had not entered a final judgment of dissolution at the time of the husband's death. The brother petitioned the probate court to serve as personal representative; the wife counter-petitioned. The probate court granted summary judgment for the wife, finding no waiver of spousal rights. The brother appealed.

DISPOSITION

affirmed

CASES CITED

- Chipman v. Chipman, 975 So. 2d 603 (Fla. 4th DCA 2008)
- Marlowe v. Brown, 944 So. 2d 1036 (Fla. 4th DCA 2006)
- Snow v. Mathews, 190 So. 2d 50 (Fla. 4th DCA 1966)
- Prime Homes, Inc. v. Pine Lake, LLC, 84 So. 3d 1147 (Fla. 4th DCA 2012)

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