

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Richard Alan Samad v. Stella Pla and Raymond Albert Pla, Jr.

___ So. 3d ___, 2019 WL 1212328 (Fla. 2d DCA 2019) · No. 2D18-709

SUMMARY

The Second District Court of Appeal held that Florida Probate Rule 5.042(b) cannot extend the six-month statutory deadline under section 732.401(2) for a surviving spouse to elect an undivided one-half interest in homestead property, because the rule applies only to deadlines set by probate rules or court orders, not by statute. The statute itself provides the exclusive extension mechanism—a petition by an attorney in fact or guardian filed within the six-month period—and the trial court erred in granting an extension based on excusable neglect after that period had expired.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Rothstein-Youakim; Casanueva; Badalamenti
JURISDICTION	Florida
DOCKET	2D18-709
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from an order granting an extension of time to file a homestead election under section 732.401(2), Florida Statutes.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	binding
PARTIES	Richard Alan Samad v. Stella Pla, Raymond Albert Pla, Jr.

TOPICS

[probate procedure](#) [appellate procedure](#) [probate](#) [homestead](#) [elective share](#)

PRACTICE AREAS

[Probate and Trust](#) [Property Law](#)

QUESTIONS PRESENTED

1. Whether Florida Probate Rule 5.042(b) can be used to extend the six-month deadline imposed by section 732.401(2), Florida Statutes, for a surviving spouse to elect an undivided one-half interest in homestead

property.

HOLDINGS

1. Florida Probate Rule 5.042(b) does not apply to extend the time prescribed in section 732.401(2). The time limit in section 732.401(2)(b) may not be extended except upon a petition by an attorney in fact or guardian of the property, and even that petition must be filed within six months.

KEY QUOTATIONS

“By its own terms, therefore, rule 5.042(b) does not apply to acts required to be done within a specified time by statute, and there is no probate rule relating to a surviving spouse’s right to elect an undivided one-half interest in the decedent spouse’s homestead as a tenant in common.”

“Because Pla failed to satisfy the requirements set forth in section 732.401(2), the trial court erred as a matter of law in granting her an extension of time to file her notice of election under that section and in deeming her election timely.”

FACTUAL BACKGROUND

Raymond Albert Pla died, survived by his spouse Stella Pla. Under section 732.401, Florida Statutes, a surviving spouse takes a life estate in the homestead unless she elects within six months of death to take an undivided one-half interest as a tenant in common. Pla neither made the election nor filed the required petition within the six-month period. Approximately seven-and-a-half months after the decedent’s death, she sought an extension from the probate court under Florida Probate Rule 5.042(b)(2), claiming excusable neglect.

PROCEDURAL HISTORY

In the Circuit Court for Lee County, Stella Pla moved under Florida Probate Rule 5.042(b)(2) for an extension of time to elect an undivided one-half interest in her deceased spouse’s homestead as a tenant in common. The trial court granted the extension, finding excusable neglect. Samad appealed.

DISPOSITION

reversed

CASES CITED

- Hill v. Davis, 70 So. 3d 572 (Fla. 2011)
- In re Estate of Cummins, 979 So. 2d 984 (Fla. 3d DCA 2008)
- May v. Illinois National Insurance Co., 771 So. 2d 1143 (Fla. 2000)
- Dohnal v. Syndicated Offices Systems, 529 So. 2d 267 (Fla. 1988)
- Delgado v. Estate of Garriga, 870 So. 2d 912 (Fla. 3d DCA 2004)
- Dimick v. Estate of Barry, 787 So. 2d 198 (Fla. 4th DCA 2001)

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