

FLORIDA DISTRICT COURT OF APPEAL, FIFTH DISTRICT

Leslie Voyles, as Administratrix of the Estate of Richard C. Baxter v. Grace Anne Glavin and Estate of Bobby J. Kreisberg, deceased

___ So. 3d ___, 2022 WL 634537 (Fla. 5th DCA 2022) · No. 5D20-2739

SUMMARY

The Florida Fifth District Court of Appeal held that a voluntary dismissal of a will contest immediately ends the litigation and divests the trial court of jurisdiction to entertain a subsequently filed motion for attorney's fees as sanctions. The court further held that imposing attorney's fees under the inequitable conduct doctrine without prior notice in the motion and a meaningful opportunity to be heard violates due process. The probate court's \$220,042.82 fee award was quashed.

CASE DETAILS

COURT	Florida District Court of Appeal, Fifth District
WRITING FOR THE COURT	EDWARDS, J.; LAMBERT, C.J.; WALLIS, J.
JURISDICTION	Florida
DOCKET	5D20-2739
DISPOSITION	quashed
PROCEDURAL POSTURE	Appellant Richard C. Baxter (now Leslie Voyles) appealed the final judgment awarding \$220,042.82 in attorney's fees and costs against him after he withdrew objections to probate and terminated a will contest.
STANDARD OF REVIEW	Questions of law—including whether a trial court retained jurisdiction after voluntary dismissal and whether due process was violated—are reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Leslie Voyles, as Administratrix of the Estate of Richard C. Baxter v. Grace Anne Glavin and Estate of Bobby J. Kreisberg, deceased

TOPICS

probate procedure will contests attorney fees sanctions

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the probate court lacked jurisdiction to entertain a motion for attorney's fees filed after Baxter voluntarily withdrew his objections and ended the probate litigation.
2. Whether Baxter was denied due process when attorney's fees were imposed as sanctions under the inequitable conduct doctrine without prior notice in the motion or a meaningful opportunity to be heard.

HOLDINGS

1. A voluntary dismissal immediately ends the litigation and divests the trial court of jurisdiction to entertain a subsequently filed motion for attorney's fees as sanctions.
2. Imposition of attorney's fees as sanctions under the inequitable conduct doctrine without prior notice in the motion and a meaningful opportunity to be heard violates due process.

KEY QUOTATIONS

"A voluntary dismissal divests a trial court of jurisdiction when it immediately ends the litigation." (at 7)

"A trial judge is deprived of jurisdiction, not by the manner in which the proceeding is terminated, but by the sheer finality of the act, whether judgment, decree, order or stipulation, which concludes litigation." (at 7)

"The inequitable conduct doctrine permits the award of attorney's fees where one party has exhibited egregious conduct or acted in bad faith." (at 6)

"[T]his doctrine is rarely applicable. It is reserved for those extreme cases where a party acts 'in bad faith, vexatiously, wantonly, or for oppressive reasons.'" (at 6)

FACTUAL BACKGROUND

Richard Baxter contested his late sister Bobbye Kreisberg's 2014 will, which disinherited him in favor of a charitable trust and named attorney Grace Anne Glavin as personal representative and trustee. Baxter challenged testamentary capacity and alleged undue influence. After some discovery and provisional admission of the will, Baxter voluntarily withdrew all objections, terminating the will contest. Glavin later sought \$220,042.82 in fees and costs, which the probate court awarded solely as sanctions under the inequitable conduct doctrine.

PROCEDURAL HISTORY

Baxter filed objections to probate of decedent Bobbye Kreisberg's 2014 will and the appointment of attorney Grace Anne Glavin as personal representative, alleging lack of testamentary capacity and undue influence. After provisional admission of the will to probate and shortly before trial, Baxter withdrew all objections and ended the litigation. Nearly a month later, Glavin moved for attorney's fees and costs under various statutes and equity principles; the probate court awarded fees solely under the inequitable conduct doctrine as a sanction. Baxter appealed the final judgment, and an administratrix was substituted upon his death during the appeal.

DISPOSITION

quashed

REMAND INSTRUCTIONS

Remand for entry of an order denying Glavin's motion to tax attorneys' fees and costs with prejudice, and for such other proceedings consistent with the opinion as may be appropriate to afford relief to Baxter.

CASES CITED

- Dep't of Rev. o/b/o Venzen v. Ashby, 294 So. 3d 445 (Fla. 5th DCA 2020)
- Miller v. Fortune Ins. Co., 484 So. 2d 1221 (Fla. 1986)
- Almazan v. Est. of Aguilera-Valdez, 273 So. 3d 9 (Fla. 4th DCA 2019)
- Pomeranz & Landsman Corp. v. Mia. Marlins Baseball Club, L.P., 143 So. 3d 1182 (Fla. 4th DCA 2014)
- Bitterman v. Bitterman, 714 So. 2d 356 (Fla. 1998)
- Norvil v. State, 191 So. 3d 406 (Fla. 2016)
- Barbara Moakley v. Sheri Smallwood, Moakley v. Smallwood, 826 So. 2d 221 (Fla. 2002)
- T/F Sys., Inc. v. Malt, 814 So. 2d 511 (Fla. 4th DCA 2002)
- Anderson v. McDonough, 189 So. 3d 266 (Fla. 2d DCA 2016)
- Fla. Patient's Comp. Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985)
- Bishop v. Est. of Rossi, 114 So. 3d 235 (Fla. 5th DCA 2013)
- Simhoni v. Chambliss, 843 So. 2d 1036 (Fla. 4th DCA 2003)