

FLORIDA DISTRICT COURT OF APPEAL, SECOND DISTRICT

Jill Kelly; Jeff Falkenthal; and Judy L. Mors-Kotrba, as successor trustee, v. Donna Lindenau

Jill Kelly; Jeff Falkenthal; and Judy L. Mors-Kotrba, as successor trustee, v. Donna Lindenau, 223 So. 3d 1071 (Fla. 2d DCA 2017) (Fla. 2d DCA 2017) · No. 2D16-2011

SUMMARY

Kelly v. Lindenau holds that a trust amendment not signed by two attesting witnesses as required by Florida law is invalid and cannot be reformed under section 736.0415, Florida Statutes, because reformation is limited to correcting mistakes in the terms of the trust, not errors in its execution. The court also declined to impose a constructive trust to enforce the settlor's clear intent, reasoning that doing so would validate an otherwise invalidly executed amendment. The decision underscores that strict compliance with statutory execution formalities is required for the testamentary aspects of a revocable trust.

CASE DETAILS

COURT	Florida District Court of Appeal, Second District
WRITING FOR THE COURT	MORRIS; LUCAS; BADALAMENTI
JURISDICTION	Florida
DOCKET	2D16-2011
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final judgment of the Circuit Court for Manatee County reforming a trust and ordering transfer of real property to the beneficiary.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	published
PARTIES	Jill Kelly, Jeff Falkenthal, Judy L. Mors-Kotrba, as successor trustee v. Donna Lindenau

TOPICS

[trusts](#) [estate planning](#) [civil procedure](#) [appellate procedure](#) [probate](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an improperly executed trust amendment—signed by only one witness—can be validated through reformation under section 736.0415, Florida Statutes.
2. Whether a constructive trust should be imposed on the Bradenton residence as an alternative remedy.

HOLDINGS

1. Section 736.0415 permits reformation to correct a mistake affecting the terms of the trust, not an error in the execution of the trust document. When a trust amendment is not validly executed under the statutorily required formalities, reformation is unavailable to cure that execution defect.
2. A constructive trust is not appropriate where the testamentary instrument was not validly executed. Imposing a constructive trust on the property would only serve to validate an invalid amendment.

KEY QUOTATIONS

“Section 736.0415 provides in relevant part that the terms of a trust can be reformed ‘to conform . . . to the settlor’s intent if it is proved by clear and convincing evidence that both the accomplishment of the settlor’s intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.’ Aside from the issue of the settlor’s intent, the statute thus focuses on the terms of the trust, not the execution of it.”

“But here, the terms of the second amendment are clear that Ralph intended to leave the Bradenton house to Lindenau. Thus there were no terms of the trust that needed reformation. Rather, Lindenau sought reformation to remedy an error in the execution of the second amendment. But by the statute’s terms, reformation is only available to remedy mistakes that affect ‘both the accomplishment of the settlor’s intent and the terms of the trust.’”

“Read in conjunction, Tolin and Allen make it clear that while the imposition of a constructive trust might be appropriate where a will (and thus a trust) has been validly executed, that remedy is not appropriate where there is an error in the execution of the document. We conclude that that distinction should be extended to cases such as this one where an amendment to a trust was not validly executed. Because there was no valid, enforceable amendment, the imposition of a constructive trust on the Bradenton house ‘would only serve to validate an invalid’ amendment.”

FACTUAL BACKGROUND

Ralph Falkenthal created a revocable trust in Illinois in 2006, providing for distribution to his wife or, if she predeceased him, equally to his three children. After his wife died, he moved to Florida, where he met Donna Lindenau. He purchased a house in Bradenton and lived there with Lindenau. In 2012, he executed a first amendment to the trust, and in 2014, he executed a second amendment that devised specific real property—a Sarasota residence to his son Jeff and the Bradenton residence to Lindenau. Both amendments were prepared by his Illinois attorney and were signed in the presence of two witnesses, but only one witness signed each

document. Ralph died in 2015, rendering the trust irrevocable. All parties agreed that Ralph intended to leave the Bradenton house to Lindenau.

PROCEDURAL HISTORY

Judy L. Mors-Kotrba, as successor trustee, filed a petition for declaratory judgment to determine the validity of two trust amendments. Appellee Donna Lindenau filed a counterclaim seeking reformation of the trust's second amendment and, alternatively, a constructive trust. Following a bench trial, the trial court denied the petition, granted reformation under section 736.0415, Florida Statutes, and ordered transfer of the Bradenton residence to Lindenau. The trial court stayed the transfer pending appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reversal makes it unnecessary to decide the second issue raised by Judy regarding the ten-day transfer requirement. Case remanded for further proceedings consistent with this opinion.

CASES CITED

- Gessa v. Manor Care of Fla., Inc., 86 So. 3d 484 (Fla. 2011)
- Denise L. Megiel-Rollo, Individually and as Trustee of the P.M. Revocable Trust dated July 29, 1997 v. Sharon J. Megiel, Robert Michael Megiel, Daniel Megiel, and Andrea Megiel, Megiel-Rollo v. Megiel, 162 So. 3d 1088 (Fla. 2d DCA 2015)
- Denise L. Megiel-Rollo, Individually and as Trustee of the P.M. Revocable Trust dated July 29, 1997 v. Sharon J. Megiel, Robert Michael Megiel, Daniel Megiel, and Andrea Megiel, Megiel-Rollo v. Megiel, 162 So. 3d 1088 (Fla. 2d DCA 2015)
- Allen v. Dalk, 826 So. 2d 245 (Fla. 2002)
- Crawford v. Watkins, 75 So. 2d 194 (Fla. 1954)
- Aldrich v. Basile, 136 So. 3d 530 (Fla. 2014)
- Morey v. Everbank, Morey v. Everbank, 93 So. 3d 482 (Fla. 1st DCA 2012)
- Tri-Cty. Prod. Dists., Inc. v. Ne. Prod. Credit Ass'n, 160 So. 2d 46 (Fla. 1st DCA 1963)
- In re Estate of Tolin, 622 So. 2d 988 (Fla. 1993)
- Dade Cty. Sch. Bd. v. Radio Station WQBA, 731 So. 2d 638 (Fla. 1999)
- In re Estate of Lum, 699 N.E.2d 1049 (Ill. App. Ct. 1998)