

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Cecilia Reid v. In Re: Estate of Edgar Sonder

Reid v. Estate of Sonder, No. 3D09-3216, 2011 WL 990293 (Fla. 3d DCA Mar. 23, 2011) · No. 3D09-3216

SUMMARY

In this trust reformation case, the Florida Third District Court of Appeal affirmed the denial of reformation, holding that the petitioner failed to prove by clear and convincing evidence that the trust terms did not reflect the settlor's intent, and that the trial court's finding was supported by competent substantial evidence. The court also dismissed the appeal of an order granting entitlement to appellate attorney fees without setting the amount, as such an order is non-final and non-appellable. The decision applies Fla. Stat. § 736.0415 and the clear and convincing evidence standard for reforming a trust based on a scrivener's error, and reiterates the deferential appellate review of such findings.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	SHEPHERD; WELLS; SUAREZ
JURISDICTION	Florida
DOCKET	3D09-3216
DISPOSITION	affirmed_in_part_dismissed_in_part
PROCEDURAL POSTURE	Appeal from an order denying an Amended Petition for Reformation of the Trust after a trial on the merits, and granting appellate attorney fees.
STANDARD OF REVIEW	Whether there exists in the record competent substantial evidence to support the judgment of the trial court; for review of sufficiency under the clear and convincing evidence standard, an appellate court may not overturn a trial court's finding unless unsupported by record evidence or as a matter of law no one could reasonably find such evidence to be clear and convincing.
PRECEDENTIAL VALUE	citable
PARTIES	Cecilia Reid v. In Re: Estate of Edgar Sonder

TOPICS

probate procedure trusts civil procedure appellate procedure attorney fees

PRACTICE AREAS

Probate & Trust Litigation

Appellate Practice

QUESTIONS PRESENTED

1. Whether the trial court erred in denying the petition to reform the trust based on a scrivener's error.
2. Whether the appeal from the order granting entitlement to appellate attorney fees must be dismissed for lack of jurisdiction.

HOLDINGS

1. A party seeking reformation of a trust after the settlor's death must prove by clear and convincing evidence that the trust terms do not reflect the settlor's intent. An appellate court will not reverse a trial court's finding that this burden was not met unless the finding is unsupported by competent substantial evidence or, as a matter of law, no reasonable trier of fact could find the evidence not clear and convincing.
2. An order determining entitlement to appellate attorney fees, without setting the amount, is a non-final, non-appealable order. Absent an amount fixed or reservation of jurisdiction, the appellate court lacks jurisdiction.

KEY QUOTATIONS

"A trust with testamentary aspects may be reformed after the death of the settlor for a unilateral drafting mistake so long as the reformation is not contrary to the interest of the settlor." (at 3-4)

"Upon application of a settlor or any interested person, the court may reform the terms of a trust, even if unambiguous, to conform the terms 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." (at 8-9)

"In civil cases prosecuted under this standard, an appellate court may not overturn a trial court's finding regarding the sufficiency of the evidence unless the finding is unsupported by record evidence, or as a matter of law, no one could reasonably find such evidence to be clear and convincing." (at 5)

"Edgar Sonder clearly wanted his apartment and its contents to be given to Cecilia Reid, not subject to any priority or to any payment of any other gifts provided in his Amended and Restated Trust Agreement." (at 14)

FACTUAL BACKGROUND

Edgar Sonder executed a trust in 2000 naming himself trustee, later amended to name Cecilia Reid as successor trustee. The trust provided for several monetary gifts to charities and individuals, including a \$125,000 endowment to Hebrew Union College. A separate provision gave Reid \$25,000 and the apartment Sonder lived in, with the language making the gift 'after giving effect to' prior gifts. When trust funds proved insufficient to pay all gifts, Reid moved to abate proportionately and claimed the apartment was a specific devise not subject to abatement. After the abatement motion was denied and affirmed on appeal, Reid petitioned to reform the trust,

alleging the trust instrument failed to reflect Sonder's intent that the apartment gift be a specific devise unaffected by the priority scheme.

PROCEDURAL HISTORY

This case has been before us on two prior occasions. Most recently, in *Reid v. Temple Judea*, 994 So. 2d 1146 (Fla. 3d DCA 2008) (*Reid II*), we reversed a trial court ruling that Ms. Reid lacked standing, as trustee of the Edgar Sonder Trust, to bring this reformation action. On remand, the probate court conducted the trial authorized by us in *Reid II*. We now review the decision from that trial.

DISPOSITION

affirmed_in_part_dismissed_in_part

CASES CITED

- *Reid v. Temple Judea*, 994 So. 2d 1146 (Fla. 3d DCA 2008)
- *Reid v. Hebrew Union College-Jewish Institute of Religion*, 947 So. 2d 1178 (Fla. 3d DCA 2007)
- *In re Estate of Robinson*, 720 So. 2d 540 (Fla. 4th DCA 1998)
- *Schroeder v. Gebhart*, 825 So. 2d 442 (Fla. 5th DCA 2002)
- *In re Estate of Huls*, 732 So. 2d 1206 (Fla. 2d DCA 1999)
- *Diegues v. Dep't of Law Enforcement, Crim. Justice Standards & Training Comm'n*, 947 So. 2d 591 (Fla. 3d DCA 2007)
- *McKesson Drug Co. v. Williams*, 706 So. 2d 352 (Fla. 1st DCA 1998)
- *In re Adoption of E.A.W.*, 658 So. 2d 961 (Fla. 1995)
- *Easley, McCaleb & Stallings, Ltd. v. Gibbons*, 667 So. 2d 988 (Fla. 4th DCA 1996)
- *Demaio v. Coco Wood Lakes Ass'n*, 637 So. 2d 369 (Fla. 4th DCA 1994)
- *Brannen v. State*, 114 So. 429 (Fla. 1927)
- *Pepper v. Pepper*, 66 So. 2d 280 (Fla. 1953)
- *Republic Nat'l Bank of Miami, N.A. v. Roca*, 534 So. 2d 736 (Fla. 3d DCA 1988)
- *In re Estate of Hannon*, 447 So. 2d 1027 (Fla. 4th DCA 1984)
- *Ackerly Comm., Inc. v. City of W. Palm Beach*, 427 So. 2d 245 (Fla. 4th DCA 1983)
- *Laragione v. Hagan*, 195 So. 2d 246 (Fla. 2d DCA), rev'd on other grounds, 205 So. 2d 289 (Fla. 1967)
- *Florida East Coast Ry. v. Michini*, 139 So. 2d 452 (Fla. 2d DCA 1962), cert. discharged, 152 So. 2d 171 (Fla. 1963)
- *Bergh v. Bergh*, 160 So. 2d 145 (Fla. 1st DCA 1964)
- *Kinney v. Mosher*, 100 So. 2d 644 (Fla. 1st DCA 1958)
- *Aetna Insurance Company v. Paddock*, 301 F.2d 807 (5th Cir. 1962)
- *Golden Door Jewelry Creations v. Lloyds Underwriters*, 8 F. 3d 760 (11th Cir. 1993), reversed in part on other grounds, 117 F. 3d 1328 (11th Cir. 1997)
- *Universal Underwriters Ins. Co. v. Abe's Wrecker Serv., Inc.*, 564 F. Supp. 2d 1350 (M.D.Fla. 2008)

- N.L. v. Dep't of Children & Family Servs., 843 So. 2d 996 (Fla. 1st DCA 2003)
- R.S. v. Dep't of Children & Family Servs., 831 So. 2d 1275 (Fla. 4th DCA 2002)
- Kingsley v. Kingsley, 623 So. 2d 780 (Fla. 5th DCA 1993)

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