

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Covenant Trust Co. v. Guardianship of Ihrman

45 So. 3d 499 (Fla. 4th DCA 2010) · No. Nos. 4D09-4283, 4D09-4551 · Decided September 15, 2010

SUMMARY

The Florida Fourth District Court of Appeal held that the probate court erred in denying the trustee's motion to dismiss without conducting a limited evidentiary hearing to resolve conflicting affidavits concerning personal jurisdiction and minimum contacts. The court also held that orders prohibiting payment of trust-funded attorney's fees and requiring an additional retainer were improper absent the required finding of breach of trust or legal authority to compel discretionary trust payments. The orders were reversed and the case was remanded.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Michael L. Gates, Associate Judge; Michael L. Gates; Richard L. Polen; Martha C. May
JURISDICTION	Florida
DECIDED	September 15, 2010
DOCKET	Nos. 4D09-4283, 4D09-4551
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated interlocutory appeals from orders denying the trustee's motions to quash service of process and dismiss, prohibiting the trustee from expending trust funds without court approval, and requiring the trustee to pay an additional retainer to the guardian's attorney.
STANDARD OF REVIEW	De novo review applies to personal jurisdiction over a foreign corporation; Florida's long-arm statute is strictly construed.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion
PARTIES	Covenant Trust Company v. The Guardianship of Lillian Ihrman

TOPICS

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QUESTIONS PRESENTED

1. Whether the trial court could exercise personal jurisdiction over Covenant, an Illinois trustee, without conducting a limited evidentiary hearing after the parties submitted conflicting affidavits concerning Covenant's Florida contacts.
2. Whether Florida Statutes section 736.0205 required the trust proceeding to be brought in Illinois if the trust was registered or principally administered there and all interested parties could be bound by litigation in Illinois.
3. Whether the trial court could prohibit Covenant from paying attorney's fees and costs from trust assets without finding a reasonable evidentiary basis to conclude that Covenant breached the trust.
4. Whether the trial court had authority to compel Covenant to pay a \$10,000 retainer to the guardian's attorney from trust assets when the trust vested payment discretion in the trustee and no arbitrary conduct or other legal authority for compulsion was shown.

HOLDINGS

1. When a plaintiff's pleading sufficiently alleges a basis for jurisdiction under Florida's long-arm statute, but the parties submit irreconcilable affidavits concerning the defendant's minimum contacts, the trial court must conduct a limited evidentiary hearing rather than decide personal jurisdiction based only on counsel's arguments.
2. If the trial court finds that it has personal jurisdiction over Covenant, it must determine whether all interested parties could be bound by litigation in Illinois, the trust's principal place of administration, before deciding whether section 736.0205 bars the Florida proceeding.
3. A court may prohibit a trustee from paying attorney's fees and costs from trust assets under section 736.0802(10)(b) only after finding a reasonable basis, supported by evidence in the record or a proffer, to conclude that the trustee breached the trust.
4. When a trust gives the trustee discretion to use trust assets for a beneficiary's health, support, maintenance, or best interests, and there is no evidence that the trustee acted arbitrarily, the court lacks authority to compel the trustee to pay the guardian's attorney from trust assets absent a statutory or trust-based legal mandate.

KEY QUOTATIONS

"To determine jurisdiction over a non-resident defendant, the court must conduct a two-part analysis" (45 So. 3d at 502)

"if they cannot be reconciled, then the court should conduct a limited evidentiary hearing to determine the issue of jurisdiction." (45 So. 3d at 502-503)

"Accordingly, the trial court erred in entering this order without making any such finding of breach of trust."

(45 So. 3d at 505)

“Therefore, the court lacked the authority to order Covenant to remove trust assets.” (45 So. 3d at 506)

FACTUAL BACKGROUND

Lillian Ihrman was adjudicated incapacitated, and Dolores Ihrman served as her plenary guardian. After moving Lillian from Covenant Village of Florida to another retirement home, the guardian petitioned to compel Covenant Trust Company, an Illinois trustee, to pay care expenses, provide a trust accounting, and be removed as trustee. Covenant administered the trust in Illinois and disputed having sufficient Florida contacts, while the guardian submitted an affidavit asserting that Covenant conducted business in Florida. The trust gave Covenant discretion to use trust income and principal for Lillian's health, support, maintenance, and best interests, and the record contained no evidence that Covenant exercised that discretion arbitrarily.

PROCEDURAL HISTORY

The guardian filed a petition seeking payment of the ward's care expenses, an accounting, and removal of Covenant as trustee, serving the petition by U.S. Mail in Illinois. Covenant contested personal jurisdiction and service and submitted affidavits denying sufficient Florida contacts. The trial court denied the motions to dismiss and quash, entered an order restricting payment of trust funds, and ordered Covenant to pay a \$10,000 retainer. The Fourth District reversed and remanded for a limited evidentiary hearing on personal jurisdiction and further proceedings consistent with its opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct an evidentiary hearing on personal jurisdiction over Covenant and proceed consistently with the opinion. If it finds personal jurisdiction, it must determine whether all interested parties could be bound by litigation in Illinois under section 736.0205 and must reconsider the orders restricting or compelling payments in light of the requirements of section 736.0802(10) and the trustee's discretionary authority under the trust.

CASES CITED

- Buckingham, Doolittle & Burroughs, LLP v. Kar Kare Auto. Grp., Inc., 987 So. 2d 818, 821 (Fla. 4th DCA 2008)
- Greystone Tribeca Acquisition, LLC v. Ronstrom, 863 So. 2d 473, 475 (Fla. 2d DCA 2004)
- Venetian Salami Company v. Parthenais, Venetian Salami Co. v. Parthenais, 554 So. 2d 499, 502-03 (Fla. 1989)
- Am. Fin. Trading Corp. v. Bauer, 828 So. 2d 1071, 1074 (Fla. 4th DCA 2002)
- Biloki v. Majestic Greeting Card Co., 33 So. 3d 815, 819 (Fla. 4th DCA 2010)
- Becker v. Hooshmand, 841 So. 2d 561, 562 (Fla. 4th DCA 2003)

- *Ralph v. McLaughlin*, 756 So. 2d 240, 241 (Fla. 2d DCA 2000)
- *Sonson v. Hearn*, 17 So. 3d 745, 747 n. 1 (Fla. 4th DCA 2009)
- *Leon Shaffer Golnick Adver., Inc. v. Cedar*, 423 So. 2d 1015, 1017 (Fla. 4th DCA 1982)
- *Golant v. German Shepherd Dog Club of Am., Inc.*, 26 So. 3d 60, 62-63 (Fla. 4th DCA 2010)
- *Meyer v. Meyer*, 931 So. 2d 268, 269-70 (Fla. 5th DCA 2006)
- *Springbrook Commons, Ltd. v. Brown*, 761 So. 2d 1192, 1194 (Fla. 4th DCA 2000)
- *Cohen v. Friedland*, 450 So. 2d 905, 906 (Fla. 3d DCA 1984)
- *White v. Bacardi*, 446 So. 2d 150, 155 n. 5 (Fla. 3d DCA 1984)
- *Giglio v. Perretta*, 493 So. 2d 470, 470 (Fla. 4th DCA 1986)
- *Johnson v. Guardianship of Singleton*, 743 So. 2d 1152, 1153 (Fla. 3d DCA 1999)