

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH
DISTRICT

Betty Katke v. Linda Bersche, Shanda Baum, and Maria Kardos

Katke v. Bersche, No. 5D14-3210, 2014 WL 6636101 (Fla. 5th DCA Nov. 20, 2014) · No. 5D14-3210

SUMMARY

In Katke v. Bersche, the Florida Fifth District Court of Appeal granted a writ of prohibition, holding that a voluntary dismissal of a petition to determine incapacity, once accepted by the trial court, divests the court of jurisdiction over the entire case. Because the original petitioner withdrew her petition and the court found all related motions moot, the trial court lacked jurisdiction to allow a subsequent petition filed under the same case number. The court reaffirmed that a plaintiff's right to voluntarily dismiss is almost absolute, and prohibition lies when a lower court exceeds its jurisdiction after such dismissal.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fifth District
WRITING FOR THE COURT	Wallis, J.; Palmer, J.; Lawson, J.
JURISDICTION	Florida
DOCKET	5D14-3210
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for writ of prohibition to prevent the trial court from proceeding on a second petition to determine incapacity after the original petitioner voluntarily withdrew the first petition.
STANDARD OF REVIEW	Whether the lower court exceeded its jurisdiction.
PRECEDENTIAL VALUE	published
PARTIES	Betty Katke v. Linda Bersche, Shanda Baum, Maria Kardos

TOPICS

- appellate procedure
- civil procedure
- probate procedure
- guardianship procedure

PRACTICE AREAS

- Appellate Practice
- Guardianship and Conservatorship
- Civil Procedure

QUESTIONS PRESENTED

1. Whether the trial court exceeded its jurisdiction by allowing a subsequent petition to determine incapacity to proceed under the same case number after the original petition was voluntarily withdrawn.

HOLDINGS

1. A voluntary dismissal of the original petition, accepted by the trial court, deprives the court of jurisdiction over the subject matter of the dismissed claim; thus a subsequent petition filed under the same case number is a nullity.

KEY QUOTATIONS

“A party may voluntarily dismiss any claim, and such a dismissal, if accepted by the trial court, deprives the court of jurisdiction over the subject matter of the claim dismissed.” (4)

“The plaintiff’s right to voluntarily dismiss its own lawsuit is almost absolute, with exceptions for fraud on the court and child custody.” (4)

“Prohibition is an extraordinary writ by which a superior court having appellate and supervisory jurisdiction over a lower court may prevent the lower court from exceeding its jurisdiction or usurping authority over matters not within its jurisdiction.” (3)

FACTUAL BACKGROUND

The case involves a guardianship proceeding initiated by Linda Bersche, who filed a petition alleging Betty Katke was incapacitated. Bersche was appointed emergency temporary guardian, then resigned; a professional guardian, Maria Kardos, was appointed as replacement. The appointments were set aside due to lack of notice and service to Katke. Bersche then withdrew all pending pleadings, including the petition to determine incapacity. Kardos filed a second petition under the same case number the day before a hearing on Katke’s motion to dismiss the original petition. The trial court allowed the second petition to proceed, leading to this writ.

PROCEDURAL HISTORY

Linda Bersche filed a petition to determine Betty Katke’s incapacity and was appointed emergency temporary guardian. After Bersche resigned, Maria Kardos was appointed. The trial court later set aside both appointments due to lack of notice. Bersche then withdrew all pending pleadings, including the incapacity petition. The next day, Kardos filed a second petition under the same case number. Katke moved to strike, but the trial court allowed the second petition to proceed. Katke petitioned for writ of prohibition. The District Court of Appeal granted the petition.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

Lift the stay for the trial court to dismiss Kardos' petition to determine incapacity.

CASES CITED

- Citizens Prop. Ins. Corp. v. Garfinkel, 25 So. 3d 62 (Fla. 5th DCA 2009)
- Tobkin v. State, 777 So. 2d 1160 (Fla. 4th DCA 2001)
- English v. McCrary, 348 So. 2d 293 (Fla. 1977)
- Cutler v. Cutler, 84 So. 3d 1172 (Fla. 3d DCA 2012)

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