

FLORIDA SUPREME COURT

Evelyn G. DeWITT and Mabel M. DeWitt, Appellants, v. Estelle R. DUCE, Dallas W. Weaver and Mabel E. Weaver, Appellees.

Evelyn G. DeWITT and Mabel M. DeWitt, Appellants, v. Estelle R. DUCE, Dallas W. Weaver and Mabel E. Weaver, Appellees., 408 So. 2d 216 (Fla. 1981) (Fla. 1981) · No. No. 60594

SUMMARY

The Florida Supreme Court held that a claim for tortious interference with a testamentary expectancy is barred as an impermissible collateral attack on a probated will when the plaintiff had an adequate remedy in the probate proceeding—such as the opportunity to contest the will on grounds of undue influence or lack of capacity—but failed to pursue it. The court interpreted Florida Statutes § 733.103(2), which makes probate conclusive as to the will’s validity and freedom from fraud or undue influence, to codify the common-law rule that a later tort action is precluded unless probate remedies were inadequate. Because the plaintiffs voluntarily dismissed their probate challenge and could have obtained full relief there, they could not relitigate the same issues in a subsequent tort suit.

CASE DETAILS

COURT	Florida Supreme Court
WRITING FOR THE COURT	Sundberg; Adkins; Boyd; Overton; Alderman; McDonald
JURISDICTION	Florida
DOCKET	No. 60594
DISPOSITION	other
PROCEDURAL POSTURE	Certified question from the former United States Court of Appeals for the Fifth Circuit, pursuant to article V, section 3(b)(6), Florida Constitution (1980), and section 25.031, Florida Statutes (1979).
PRECEDENTIAL VALUE	binding
PARTIES	Evelyn G. DeWitt, Mabel M. DeWitt v. Estelle R. Duce, Dallas W. Weaver, Mabel E. Weaver

TOPICS

probate probate procedure torts civil procedure undue influence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Does Florida law, statutory or otherwise, preclude plaintiffs from proving the essential elements of their claim for tortious interference with an inheritance where the alleged wrongfully procured will has been probated in a Florida court and plaintiffs had notice of the probate proceeding and an opportunity to contest the validity of the will therein but chose not to do so?

HOLDINGS

1. Florida law precludes a subsequent tort action for wrongful interference with a testamentary expectancy when the plaintiff had an adequate remedy in probate and a fair opportunity to pursue it but failed to do so.

KEY QUOTATIONS

“In any collateral action or proceeding relating to devised property, the probate of a will in Florida shall be conclusive of its due execution; that it was executed by a competent testator, free of fraud, duress, mistake, and undue influence; and of the fact that the will was unrevoked on the testator's death.” (at 218)

“The rule is that if adequate relief is available in a probate proceeding, then that remedy must be exhausted before a tortious interference claim may be pursued.” (at 218)

“A pattern may be developed from this line of cases which allows the later action for tortious interference only if the circumstances surrounding the tortious conduct effectively preclude adequate relief in the probate court.” (at 219)

“If they had succeeded in this challenge and established this earlier will, the probate court could have given them everything to which they claim entitlement.” (at 220)

“Consideration of public policy requires that all questions of succession to property be authoritatively settled.” (at 221)

FACTUAL BACKGROUND

Arthur Welch died in 1975, and his will was probated in Florida. Appellants, who were beneficiaries under a prior will, alleged that appellee Estelle Duce (decendent's housekeeper) and the Weavers exerted undue influence causing Welch to revoke the earlier will and execute a new one more favorable to appellees. Appellants initially filed a petition to revoke probate but voluntarily dismissed it and elected to take under the probated will. The prior will favorable to appellants was extant and available.

PROCEDURAL HISTORY

Arthur Welch died in 1975, and his will was probated in Florida. Appellants filed a petition for revocation of probate but voluntarily dismissed it before trial, choosing to take under the will. Over two years later, they filed a diversity action in federal court for wrongful interference with an inheritance. The district court dismissed the

action based on section 733.103(2), Florida Statutes. On appeal, the former Fifth Circuit certified the question to the Florida Supreme Court.

DISPOSITION

other

REMAND INSTRUCTIONS

Answered certified question in the affirmative.

CASES CITED

- Davison v. Feuerherd, 391 So. 2d 799 (Fla. 2d DCA 1980)
- Sally Leybourne Allen v. Charlotte Leybourne, Allen v. Leybourne, 190 So. 2d 825 (Fla. 3d DCA 1966)
- Kramer v. Freedman, 272 So. 2d 195 (Fla. 3d DCA 1973)
- Allen v. Lovell's Adm'x, 303 Ky. 238, 197 S.W.2d 424 (1946)
- McGregor v. McGregor, 101 F. Supp. 848 (D. Colo. 1951), aff'd, 201 F.2d 528 (10th Cir. 1953)
- Johnson v. Stevenson, 269 N.C. 200, 152 S.E.2d 214 (1967)
- Brignati v. Medenwald, 315 Mass. 636, 53 N.E.2d 673 (1944)
- Benedict v. Smith, 34 Conn. Supp. 63, 376 A.2d 774 (1977)
- Creek v. Laski, 248 Mich. 425, 227 N.W. 817 (1929)
- Dulin v. Bailey, 172 N.C. 608, 90 S.E. 689 (1916)
- Morton v. Pettitt, 124 Ohio St. 241, 177 N.E. 591 (1931)
- Hegarty v. Hegarty, 52 F. Supp. 296 (D. Mass. 1943)
- Cyr v. Cote, 396 A.2d 1013 (Me. 1979)
- Watts v. Haun, 393 So. 2d 54 (Fla. 2d DCA 1981)
- Hall v. Hall, 91 Conn. 514, 100 A. 441 (1917)
- Axe v. Wilson, 150 Kan. 794, 96 P.2d 880 (1939)
- Holt v. Holt, 232 N.C. 497, 61 S.E.2d 448 (1950)
- Kieley v. McGlynn, 88 U.S. (21 Wall.) 503 (1875) (Broderick's Will)
- Gaines v. Chew, 43 U.S. (2 How.) 619 (1844)
- Seeds v. Seeds, 116 Ohio St. 144, 156 N.E. 193 (1927)
- Harmon v. Harmon, 404 A.2d 1020 (Me. 1979)
- Latham v. Father Divine, 299 N.Y. 22, 85 N.E.2d 168 (1949)
- Cooke v. Cooke, 278 So. 2d 683 (Fla. 3d DCA 1973)
- Peffer v. Bennett, 523 F.2d 1323 (10th Cir. 1975)
- In re Barret's Estate, 40 So. 2d 125 (Fla. 1949)
- Davis v. Gaines, 104 U.S. 386 (1881)
- Lalli v. Lalli, 439 U.S. 259 (1978)

- Bohannon v. Wachovia Bank & Trust Co., 210 N.C. 679, 188 S.E. 390 (1936)

CITED IN

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