

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Reid v. Estate of Sonder

63 So. 3d 7 (Fla. 3d DCA 2011) · Decided March 23, 2011

SUMMARY

The Florida Third District Court of Appeal affirmed the denial of Cecilia Reid's petition to reform the Edgar Sonder Trust. The court held that the record supported the probate court's determination that Reid failed to prove by clear and convincing evidence that the written trust terms did not reflect Sonder's intent. The court dismissed for lack of jurisdiction the appeal from an order determining entitlement to appellate attorney fees because the amount of fees had not been set.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Shepherd, J.; Suarez, J.; Wells, J.
JURISDICTION	Florida
DECIDED	March 23, 2011
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from an order denying a trustee's amended petition to reform a trust after a trial on the merits, together with an appeal from an order determining entitlement to appellate attorney fees.
STANDARD OF REVIEW	For a reformation petition requiring clear and convincing proof, the appellate court does not conduct a de novo review of the evidence; it determines whether competent substantial evidence supports the trial court's judgment and whether the finding is unsupported by record evidence or such that no reasonable factfinder could find the evidence clear and convincing. An order determining entitlement to attorney fees is reviewed for appealability and is non-final and non-appealable until the amount of the fee is set.
PRECEDENTIAL VALUE	Published and precedential Florida Third District Court of Appeal opinion
PARTIES	Cecilia Reid, as trustee of the Edgar Sonder Trust v. Estate of Sonder, Hebrew Union College Jewish Institute of Religion

TOPICS

trust administration

probate procedure

trusts

appellate jurisdiction

standard of review

PRACTICE AREAS

trusts

probate

estate planning

appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence clearly and convincingly established that the trust instrument contained a unilateral drafting mistake and failed to reflect Sonder's intent, warranting reformation after his death.
2. Whether the probate court's order determining entitlement to appellate attorney fees was final and appealable when no fee amount had been set.

HOLDINGS

1. The denial of Reid's petition for reformation was affirmed because the record supported a reasonable finding that the trust terms did not contradict Sonder's intent and Reid failed to prove the alleged mistake by clear and convincing evidence.
2. The appeal from the fee-entitlement order was dismissed for lack of jurisdiction because the order was non-final and non-appealable until the amount of the fee was determined.

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.” (63 So. 3d at 10)

“the party seeking reformation at all times has the burden to prove, by clear and convincing evidence, that the trust, as written, does not reflect the settlor’s intent.” (63 So. 3d at 10)

“Thus, in this case, it is not our function to conduct a de novo review of the evidence, but simply to determine whether there exists in the record competent substantial evidence to support the judgment of the trial court.” (63 So. 3d at 10)

“It is well established that an order granting entitlement to fees is a non-final, non-appealable order until the amount of the fee is set.” (63 So. 3d at 11)

FACTUAL BACKGROUND

Edgar Sonder executed a trust that, after amendments, directed that gifts to ten charities and a \$125,000 Hebrew Union College endowment be made before gifts to individuals, including Cecilia Reid's \$25,000 gift and apartment. Sonder died in 2005, and the trust funds were insufficient to satisfy all gifts. The trust's scrivener testified that Sonder had not instructed him to create a priority among the gifts, but Sonder twice amended the trust and expressly ratified the language making Reid's gift subordinate to the preceding gifts.

PROCEDURAL HISTORY

Edgar Sonder's trust provided gifts to charities, a \$125,000 endowment gift to Hebrew Union College, and gifts to individuals including Cecilia Reid's apartment. After Sonder's death, Reid sought to abate the pecuniary gifts

and argued that the apartment devise was not subject to abatement; the denial of that motion was affirmed. Reid then petitioned to reform the trust, claiming that its language did not reflect Sonder's intent. The Third District previously reversed a ruling that Reid lacked standing and remanded for trial. After trial, the probate court denied reformation and granted entitlement to appellate attorney fees; this appeal followed.

DISPOSITION

other

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, 548 (Fla. 4th DCA 1998)
- Schroeder v. Gebhart, 825 So. 2d 442, 445 (Fla. 5th DCA 2002)
- In re Estate of Huls, 732 So. 2d 1206, 1207 (Fla. 2d DCA 1999)
- Diegues v. Dep't of Law Enforcement, Crim. Justice Standards & Training Comm'n, 947 So. 2d 591, 595 (Fla. 3d DCA 2007)
- McKesson Drug Co. v. Williams, 706 So. 2d 352, 353-54 (Fla. 1st DCA 1998)
- In re Adoption of E.A.W., 658 So. 2d 961, 967 (Fla. 1995)
- Easley, McCaleb & Stallings, Ltd. v. Gibbons, 667 So. 2d 988, 988 (Fla. 4th DCA 1996)
- Demaio v. Coco Wood Lakes Ass'n, 637 So. 2d 369, 369 (Fla. 4th DCA 1994)