

SUPREME COURT OF FLORIDA

In re Estate of Lillian B. Whitehead

287 So. 2d 9 (Fla. 1973) · No. No. 43867 · Decided December 5, 1973

SUMMARY

The Supreme Court of Florida reviewed whether attorneys for proponents of an unsuccessful earlier will were entitled to fees and costs from the estate. The court held that, under Probate and Guardianship Rule 5.090 and *Watts v. Newport*, probate courts have discretion to award such fees when the proponents acted in good faith and their efforts benefited the estate, even if a contingent-fee contingency did not materialize. The court approved the Fourth District Court of Appeal's decision and discharged the writ of certiorari.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Roberts, Justice; Carlton, C.J.; Adkins, J.; Boyd, J.; Ervin, J.
JURISDICTION	Florida
DECIDED	December 5, 1973
DOCKET	No. 43867
DISPOSITION	approved
PROCEDURAL POSTURE	The Supreme Court of Florida granted certiorari to review the Fourth District Court of Appeal's per curiam affirmance of an order awarding attorney's fees to attorneys for unsuccessful proponents of an earlier will.
STANDARD OF REVIEW	A probate court's discretionary order allowing or disallowing costs and attorney's fees is reviewable for abuse of discretion; competent and substantial evidence supported the probate court's findings.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding statewide precedent on the interpretation and application of Rule 5.090(c).
PARTIES	Petitioner v. Respondents

TOPICS

- probate procedure
- estate litigation
- writ of certiorari
- appellate jurisdiction
- will contests

PRACTICE AREAS

Probate

Estate litigation

Appellate procedure

QUESTIONS PRESENTED

1. Whether attorneys' fees may be awarded from an estate to proponents of an unsuccessful will under Rule 5.090(c) of the Probate and Guardianship Rules.
2. Whether materialization of a contingent-fee contingency is a prerequisite to awarding fees to an unsuccessful proponent of a will.
3. Whether the probate court abused its discretion in awarding fees and costs under the circumstances.

HOLDINGS

1. Under Rule 5.090(c), a proponent of a will in due form is prima facie justified in offering it for probate and may receive costs and attorney's fees from the estate even if unsuccessful, subject to the probate court's sound discretion and the requirement of good faith.
2. The materialization of a contingent-fee contingency is not a prerequisite to an award of attorney's fees to an unsuccessful proponent of a will.
3. The probate court did not abuse its discretion in awarding fees and costs, and the Fourth District correctly affirmed the award.

KEY QUOTATIONS

“The proponent of a will in due form, being prima facie justified in offering the same for probate, shall receive his costs and attorneys' fees out of the estate, even though he is unsuccessful.” (at 10)

*“Probate courts * * * are clothed with a sound judicial discretion in allowing or disallowing costs and can or may be reversed on appeal only for an abuse thereof.”* (at 12)

“Accordingly we approve the decision of the District Court of Appeal and the writ of certiorari heretofore issued is discharged.” (at 13)

FACTUAL BACKGROUND

Lillian B. Whitehead executed wills in 1960 and 1966. Bessie Baillie and L.C. Crofton proposed the 1960 will and contested the 1966 will on undue-influence grounds, but the 1966 will was admitted to probate. The proponents had been informed of Whitehead's history of alcoholism, drug habituation, mental-institution confinement, and related emotional disturbances before offering the earlier will. The probate court found that they and their attorneys acted in good faith, without fraud, and in a manner benefiting the estate by resolving which will governed.

PROCEDURAL HISTORY

The decedent's 1960 and 1966 wills were both offered for probate. The trial court admitted the 1966 will and denied probate to the 1960 will; the Fourth District affirmed, and the Supreme Court denied certiorari. In a later proceeding, the trial court awarded attorney's fees and costs to the proponents and their attorneys, and the Fourth

District affirmed without opinion. The Supreme Court granted certiorari because the decision conflicted with In re Estate of MacPhee.

DISPOSITION

approved

CASES CITED

- In re Estate of MacPhee, 216 So. 2d 489 (Fla. App. 1968)
- Watts v. Newport, 150 Fla. 288, 7 So. 2d 104 (1942)
- Watts v. Newport, 151 Fla. 209, 9 So. 2d 417 (1942)
- In re Estate of Whitehead, 248 So. 2d 186 (Fla. App. 1971)
- In re Estate of Whitehead, 252 So. 2d 798 (Fla. 1971)
- Wallace v. Sheldon, 56 Neb. 55, 76 N.W. 418