

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

ADAM GORT and LISA FORMAN, Appellants, v. WILLIAM GORT, Appellee.

ADAM GORT and LISA FORMAN, Appellants, v. WILLIAM GORT, Appellee., 194 So. 3d 540 (Fla. 4th DCA 2016) (Fla. 4th DCA 2016) · No. 4D14-3830, 4D15-398

SUMMARY

In Gort v. Gort, 194 So. 3d 540 (Fla. 4th DCA 2016), the court held that a petitioner may voluntarily dismiss a petition to determine incapacity before an adjudicatory hearing because the governing statutes and rules are silent on the issue. The court also enforced a settlement agreement reached in mediation, finding no duress, no violation of public policy where there was no adjudication of incapacity, and that the agreement’s lack of a termination date did not make it perpetual. The summary judgment and attorney’s fee award were affirmed.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	May; Damoorgian; Warner
JURISDICTION	Florida
DOCKET	4D14-3830, 4D15-398
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from final summary judgment enforcing a settlement agreement and an order awarding attorney's fees in a guardianship proceeding.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	published
PARTIES	Adam Gort, Lisa Forman v. William Gort

TOPICS

- guardianship procedure
- summary judgment
- civil procedure
- contracts
- attorney fees

PRACTICE AREAS

- Probate, Trusts, and Estates
- Contracts
- Civil Procedure

QUESTIONS PRESENTED

1. Whether the trial court erred in enforcing the settlement agreement when the petition to determine incapacity was voluntarily dismissed without a statutorily required adjudicatory hearing.
2. Whether the brother signed the settlement agreement under duress.
3. Whether the settlement agreement is unenforceable because it lacks a termination date.
4. Whether the trial court erred in awarding attorney's fees.

HOLDINGS

1. A petitioner may voluntarily dismiss a petition to determine incapacity prior to an adjudicatory hearing.
2. The settlement agreement was not signed under duress because there was no evidence of improper or coercive conduct by the petitioner; the agreement was reached at mediation with all parties represented by counsel.
3. The agreement is enforceable; the trial court properly determined the parties intended the agreement to terminate upon the brother's death, based on the surrounding circumstances and construction of the agreement as a whole.
4. No merit.
5. No merit.

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.”

“Because our guardianship and probate rules do not prohibit a party from voluntarily dismissing a petition to determine incapacity, and section 744.311 does not mandate an adjudicatory hearing, the trial court did not err in finding the settlement agreement did not violate Florida law or public policy.”

“To establish duress a party must prove two elements: (1) that the act was effected involuntarily and was not an exercise of free choice or will, and (2) that this condition of mind was caused by some improper and coercive conduct by the other side.”

FACTUAL BACKGROUND

William Gort petitioned to have his brother Adam declared incapacitated due to paranoid schizophrenia and auditory hallucinations. The examining committee found Adam incapacitated and lacking capacity to contract. Mediation resulted in a settlement agreement under which William and Lisa would dismiss their petitions, and Adam agreed to provide certain information. The parties voluntarily dismissed the petitions. Adam later stopped complying, and William sought to enforce the agreement. The trial court granted summary judgment in William's favor.

PROCEDURAL HISTORY

William Gort petitioned to have his brother Adam found incapacitated. Adam and cousin Lisa opposed. An examining committee found Adam incapacitated. Mediation resulted in a settlement agreement, and the petitions were voluntarily dismissed. Over a year later, William sought declaratory judgment that the agreement was valid. The trial court granted summary judgment for William and awarded fees. Adam and Lisa appealed.

DISPOSITION

affirmed

CASES CITED

- Pitcher v. Zappitell, 160 So. 3d 145 (Fla. 4th DCA 2015)
- Chhabra v. Morales, 906 So. 2d 1261 (Fla. 4th DCA 2005)
- Bratt v. Laskas, 845 So. 2d 964 (Fla. 4th DCA 2003)
- In re Guardianship of Klatthaar, 129 So. 3d 482 (Fla. 2d DCA 2014)
- Rothman v. Rothman, 93 So. 3d 1052 (Fla. 4th DCA 2012)
- Katke v. Bersche, 161 So. 3d 574 (Fla. 5th DCA 2014)
- Cutler v. Cutler, 84 So. 3d 1172 (Fla. 3d DCA 2012)
- Tobkin v. State, 777 So. 2d 1160 (Fla. 4th DCA 2001)
- Jasser v. Saadeh, 97 So. 3d 241 (Fla. 4th DCA 2012)
- AMS Staff Leasing, Inc. v. Taylor, 158 So. 3d 682 (Fla. 4th DCA 2015)
- City of Homestead v. Beard, 600 So. 2d 450 (Fla. 1992)
- Perri v. Byrd, 436 So. 2d 359 (Fla. 1st DCA 1983)