

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Thomas Grant v. Bessemer Trust Company of Florida, Inc., as
personal representative of the Estate of Milton Grant

No. 4D11-3614, 2013 WL 3334250 (Fla. Dist. Ct. App. July 3, 2013) · No. 4D11-3614

SUMMARY

In Grant v. Bessemer Trust, the Florida Fourth District Court of Appeal held that a codicil provision expressing the testator’s intention that his son “continue to be employed” and directing the personal representative to “ensure such employment” was precatory, not a mandatory lifetime employment guarantee. The court emphasized that testamentary intent is determined from the entire instrument, and that a construction rendering a provision valid (at-will employment) must prevail over one that would conflict with corporate directors’ fiduciary duties. The decision also reiterates that a will cannot coerce a fiduciary relationship.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Warner, J.; Gross, J.; Stone, Barry J., Senior Judge
JURISDICTION	Florida
DOCKET	4D11-3614
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from final declaratory judgment of the probate court
STANDARD OF REVIEW	The findings of a probate court present mixed questions of law and fact, and the appellate court decides whether the factual findings are supported by competent substantial evidence and the findings of law are reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Thomas Grant v. Bessemer Trust Company of Florida, Inc., as personal representative of the Estate of Milton Grant

TOPICS

- probate
- probate procedure
- fiduciary duty
- employment law
- will contests

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the employment provision in the codicil guaranteed Thomas Grant lifetime employment with his father's company.
2. Whether a testator can compel a corporation's officers and directors to employ a designated person through a testamentary directive.

HOLDINGS

1. The provision did not provide lifetime employment; it provided at-will employment.
2. The first sentence was precatory, expressing Milton's desire; the second sentence was a directive to obtain employment but not to guarantee lifetime employment.
3. The provision could not be enforced as a mandatory directive because it would conflict with the fiduciary duties of officers and directors to the corporation.
4. The trial court's interpretation was supported by competent substantial evidence.

KEY QUOTATIONS

“Employment provision for Thomas Jeffrey Grant. It is my intention that [Thomas] continue to be employed in a suitable and reasonable position in connection with the operation and management of my television station group. Accordingly, I hereby direct my Personal Representatives to make the necessary arrangements with my Business Trustee to ensure such employment and to ensure that his annual salary shall be no less than \$125,000 per year, appropriately adjusted for annual cost of living increases.”

“The findings of a probate court present mixed questions of law and fact, and the appellate court decides whether the factual findings are supported by competent substantial evidence and the findings of law are reviewed de novo. See SA-PG Sun City Ctr., LLC v. Kennedy, 79 So. 3d 916, 919 (Fla. 2d DCA 2012). In reviewing a probate order, factual findings of the probate court are entitled to the same deference as any other trier of fact: ‘An order of the probate court arrives in the appellate court clothed with the presumption of its correctness and will be affirmed if it can be supported on any theory. . . . The findings of a probate court are entitled to the same weight as the findings of any other trier of fact. . . . The burden is on the appellant to show that the findings and order of the probate court are clearly erroneous. . . .’ Estate of Conger v. Conger, 414 So. 2d 230, 233 (Fla. 3d DCA 1982) (internal citations omitted) (quoting Beck v. Beck, 383 So. 2d 268, 272 (Fla. 3d DCA 1980)).”

“In construing a will, the polestar for the court is the intent of the testator. See Morgenthaler v. First Atl. Nat'l Bank of Daytona Beach, 80 So. 2d 446, 452 (Fla. 1955). ‘The testator's intent is to be measured by the language he selected and used by looking at the entire instrument, not isolated words, clauses or paragraphs. . . . We give greater weight to the stated chosen words of the testator as opposed to the unstated words or silence on the part of the testator.’ Bourgeois v. Eberhart, 472 So. 2d 1274, 1276 (Fla. 4th DCA 1985) (internal citation omitted). The trial court appropriately cited to In re Pratt's Estate, 88 So. 2d 499, 504 (Fla. 1956), for the proposition that ‘[t]he law of wills is calculated to avoid speculation as to the testator's intent and to concentrate upon what he said rather than what he might, or should, have wanted to say.’”

“(1) The Employment Provision of the First Codicil of Milton Grant, dated April 17, 2007, does not legally provide for an employment contract, or assurance of lifetime employment for Thomas. (1A) Employment is not a real/personal property interest as that term is defined in section 731.201, Florida Statutes. . . . Employment is incapable of being devised or bequeathed in a will. (1B) The right to employ Thomas, or the determination of the length of such employment, was not a right that Milton owned upon his death, but rather [was] a decision that belonged to Grant Communications. While Milton was alive, and as an officer, director and/or owner of a hundred percent of the stock, he could have, on behalf of Grant Communications, entered into an employment contract for a determinate or indeterminate period of time with Thomas. For whatever reason, whatever reason that may be, he chose not to do so. (2) The employment provision is not in its entirety, precatory. The first sentence of said clause expressing Milton's intentions as worded, is precatory. The second and final sentence thereof is a directive, similar to a multiplicity of directives that are oftentimes contained in testamentary documents. Such directive does not provide for guaranteed lifetime employment, or a contract ensuring such. An interpretation of this second sentence in the manner suggested by Thomas is simply a stretch, that is without factual and legal support. The second sentence as written merely directs the personal representative to see to it that upon Milton's death, Thomas is employed with Grant Communications at a salary of \$125,000 per year, to be annually adjusted for cost of living increases. Implicit, however, with such direction, is that such employment is at-will, and that Thomas is subject to dismissal upon reasonable grounds.”

FACTUAL BACKGROUND

Milton Grant, sole owner of Grant Communications, executed a will and trusts that poured his stock into trusts managed by a personal representative and a business trustee. He wanted his son Thomas to continue working for the company. A codicil directed the personal representative to 'make the necessary arrangements' to ensure Thomas's employment in a suitable position with an annual salary no less than \$125,000. After Milton's death, Thomas was employed as a national sales manager in Huntsville, Alabama, but was terminated after sixteen months. Thomas claimed the codicil guaranteed lifetime employment; the personal representative contended it provided only at-will employment.

PROCEDURAL HISTORY

Thomas Grant filed a petition for construction of will and declaratory relief against the personal representative, claiming a right to lifetime employment under a codicil. The personal representative counterclaimed for declaratory judgment. The trial court found the will provision ambiguous and held an evidentiary hearing, then entered a final declaratory judgment interpreting the codicil as providing only at-will employment and finding no lifetime employment guarantee. Thomas appealed.

DISPOSITION

affirmed

CASES CITED

- SA-PG Sun City Ctr., LLC v. Kennedy, 79 So. 3d 916 (Fla. 2d DCA 2012)
- Estate of Conger v. Conger, 414 So. 2d 230 (Fla. 3d DCA 1982)

- Beck v. Beck, Beck v. Beck, 383 So. 2d 268 (Fla. 3d DCA 1980)
- Morgenthaler v. First Atl. Nat'l Bank of Daytona Beach, 80 So. 2d 446 (Fla. 1955)
- Bourgeois v. Eberhart, 472 So. 2d 1274 (Fla. 4th DCA 1985)
- In re Pratt's Estate, 88 So. 2d 499 (Fla. 1956)
- In re Estate of Marks, 83 So. 2d 853 (Fla. 1955)
- In re Estate of Fresia, 390 So. 2d 176 (Fla. 5th DCA 1980)
- In re Hand's Estate, 315 Pa. 238, 172 A. 666 (1934)
- In re Ingles' Estate, 76 Pa. 430 (1874)
- Hughes v. Hiscox, 174 N.Y.S. 564 (N.Y. Sup. Ct. 1919)
- In re Pittock's Will, 102 Or. 159, 199 P. 633 (1921)
- Howell v. Sykes, 526 S.E.2d 183 (N.C. Ct. App. 2000)
- Poindexter v. Wachovia Bank & Trust Co., 128 S.E.2d 867 (N.C. 1963)
- In re Aqua Clear Techs., Inc., 361 B.R. 567 (Bankr. S.D. Fla. 2007)

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