

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Alan B. Bookman, as Successor Personal Representative of the Estate of Deborah E. Irby, Deceased, Appellant, v. Dale Davidson, Appellee.

Alan B. Bookman, as Successor Personal Representative of the Estate of Deborah E. Irby, Deceased, Appellant, v. Dale Davidson, Appellee., 139 So. 3d 332 (Fla. 1st DCA 2014) (Fla. 1st DCA 2014) · No. 1D13-3086

SUMMARY

A successor personal representative has the same powers as the original representative under Florida Statute § 733.614, and thus has standing to sue the prior representative’s attorney for legal malpractice on behalf of the estate without establishing privity. The court also held that a claim for disgorgement of excessive attorney’s fees is part of estate administration, but the circuit court has subject matter jurisdiction to hear it and may, in its discretion, consolidate it with the malpractice claim on remand.

CASE DETAILS

|                       |                                                                                                                   |
|-----------------------|-------------------------------------------------------------------------------------------------------------------|
| COURT                 | District Court of Appeal of Florida, First District                                                               |
| WRITING FOR THE COURT | Swanson; Benton; Osterhaus                                                                                        |
| JURISDICTION          | Florida                                                                                                           |
| DOCKET                | 1D13-3086                                                                                                         |
| DISPOSITION           | reversed_and_remanded                                                                                             |
| PROCEDURAL POSTURE    | Interlocutory appeal from summary judgment in part and dismissal in part.                                         |
| STANDARD OF REVIEW    | De novo for summary judgment and statutory interpretation.                                                        |
| PRECEDENTIAL VALUE    | published                                                                                                         |
| PARTIES               | Alan B. Bookman, as Successor Personal Representative of the Estate of Deborah E. Irby, Deceased v. Dale Davidson |

TOPICS

- probate procedure
- civil procedure
- attorney fees
- professional negligence
- standing

PRACTICE AREAS

- Estate Planning and Probate
- Professional Malpractice
- Civil Procedure

QUESTIONS PRESENTED

1. Whether a successor personal representative has standing to bring a legal malpractice action against the attorney hired by the prior personal representative.
2. Whether the trial court properly dismissed the claim for disgorgement of attorney's fees when the estate proceedings were still pending.

## HOLDINGS

1. A successor personal representative has the same power and duty as the original personal representative, including the right to bring a malpractice suit against the prior representative's attorney, by operation of section 733.614, Florida Statutes.
2. The trial court did not abuse its discretion in finding it more appropriate for the disgorgement claim to be heard in the probate proceedings, but it has subject matter jurisdiction to hear the claim in the civil case on remand.

## KEY QUOTATIONS

*“A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but shall not exercise any power made personal to the personal representative named in the will without court approval.” (at 334–35)*

*“In essence, appellant stepped into the shoes of Dana Ford when he became the successor personal representative. Consequently, the trial court erred when it entered summary judgment in favor of appellee, claiming appellant lacked standing.” (at 335)*

*“All circuit court judges have the same jurisdiction within their respective circuits. . . . The internal operation of the court system and the assignment of judges to various divisions does not limit a particular judge's jurisdiction.” (at 336)*

## FACTUAL BACKGROUND

Dana Ford was appointed personal representative of the estate of Deborah Irby and hired attorney Dale Davidson to advise her in estate administration, paying him \$195,000 from estate funds. After Ford resigned in 2010, Alan Bookman was appointed successor personal representative. He then sued Ford and Davidson, alleging Davidson improperly advised Ford to disclaim or transfer estate assets needed to pay creditors.

## PROCEDURAL HISTORY

Appellant, successor personal representative of an estate, filed a legal malpractice and disgorgement action against the attorney hired by the prior personal representative. The trial court granted summary judgment for the attorney on the malpractice claim for lack of standing and dismissed the disgorgement claim as better heard in probate court.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion; the trial court may, in its discretion, hold a joint trial of all claims if no prejudice results.

## CASES CITED

- Petty v. Fla. Ins. Guar. Ass'n, 80 So. 3d 313 (Fla. 2012)
- Srygley v. Capital Plaza, Inc., 82 So. 3d 1211 (Fla. 1st DCA 2012)
- In re A.G., 40 So. 3d 908 (Fla. 3d DCA 2010)
- Sessions v. Willard, 172 So. 242 (Fla. 1937)
- Onofrio v. Johnston & Sasser, P.A., 782 So. 2d 1019 (Fla. 5th DCA 2001)
- In re Winston, 610 So. 2d 1323 (Fla. 4th DCA 1992)
- Maugeri v. Plourde, 396 So. 2d 1215 (Fla. 3d DCA 1981)
- Fort v. Fort, 951 So. 2d 1020 (Fla. 1st DCA 2007)
- In the Interest of Peterson, 364 So. 2d 98 (Fla. 4th DCA 1978)
- Weaver v. Hotchkiss, 972 So. 2d 1060 (Fla. 2d DCA 2008)
- Yost v. Am. Nat'l Bank, 570 So. 2d 350 (Fla. 1st DCA 1990)