

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Edward A. Schilling v. Maria Herrera

952 So. 2d 1231 (Fla. 3d DCA 2007) · No. 3D06-1220

SUMMARY

The Florida Third District Court of Appeal held that a claim for intentional interference with an expectancy of inheritance does not require a breach of duty to the beneficiary, and the complaint sufficiently alleged the elements of expectancy, tortious interference (e.g., undue influence), causation, and damages. The court further held that the plaintiff was not barred for failing to exhaust probate remedies because the alleged extrinsic fraud—concealing the testator’s death until after probate—fell within the exception for circumstances that effectively preclude adequate relief in probate court. The dismissal was reversed and remanded.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Rothenberg; FLETCHER; SHEPHERD; ROTHENBERG
JURISDICTION	Florida
DOCKET	3D06-1220
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order granting defendant's motion to dismiss the amended complaint with prejudice.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	published
PARTIES	Edward A. Schilling v. Maria Herrera

TOPICS

- probate
- torts
- will contests
- probate procedure
- civil procedure

PRACTICE AREAS

- Wills, Trusts, & Estates
- Torts

QUESTIONS PRESENTED

1. Whether the amended complaint states a cause of action for intentional interference with an expectancy of inheritance.
2. Whether the plaintiff is barred from bringing the action for failure to exhaust probate remedies.

HOLDINGS

1. The amended complaint states a cause of action. The elements are (1) existence of an expectancy; (2) intentional interference through tortious conduct; (3) causation; and (4) damages. Breach of a legal duty owed to the beneficiary is not an element. The complaint's allegations that the plaintiff was the prior sole beneficiary, that the defendant unduly influenced the decedent to execute a new will, and that the plaintiff lost his expected inheritance sufficiently plead the claim.
2. The plaintiff is not barred. The complaint alleges extrinsic fraud—that the defendant concealed the death until after probate concluded—preventing a will contest. This falls within an exception to the exhaustion rule recognized in *DeWitt v. Duce* and applied in *Ebeling v. Voltz*.

KEY QUOTATIONS

“Interference with an expectancy is an unusual tort because the beneficiary is authorized to sue to recover damages primarily to protect the testator's interest rather than the disappointed beneficiary's expectations. The fraud, duress, undue influence, or other independent tortious conduct required for this tort is directed at the testator. The beneficiary is not directly defrauded or unduly influenced; the testator is. Thus, the common law court has created this cause of action not primarily to protect the beneficiary's inchoate rights, but to protect the deceased testator's former right to dispose of property freely and without improper interference. In a sense, the beneficiary's action is derivative of the testator's rights.” (1235)

“The rule is that if adequate relief is available in a probate proceeding, then that remedy must be exhausted before a tortious interference claim may be pursued.” (1236)

“If the defendant's fraud is not discovered until after probate, plaintiff is allowed to bring a later action for damages since relief in probate was impossible.” (1236)

“Extrinsic fraud, or in other words, fraud alleged in the prevention of the will contest, as opposed to in the making of the will, would appear to be the type of circumstance that would preclude relief in the probate court.” (1237)

FACTUAL BACKGROUND

The decedent, Mignonne Helen Schilling, executed a will in 1996 naming her brother, Edward A. Schilling, as personal representative and sole beneficiary. In 2001, Maria Herrera became involved in the decedent's care, and in 2003 the decedent moved into a converted garage at Herrera's home, becoming completely dependent on Herrera. In September 2003, without Mr. Schilling's knowledge, Herrera allegedly convinced the decedent to execute a new power of attorney naming Herrera as attorney-in-fact and a new will naming Herrera as sole beneficiary. The decedent died on August 6, 2004. Herrera filed for administration, petitioned for discharge after the creditor's period expired, and then, on December 6, 2004, notified Mr. Schilling for the first time of his sister's death. A final order of discharge was entered in late December 2004. Mr. Schilling alleged Herrera intentionally failed to inform him of the death to prevent him from contesting probate.

PROCEDURAL HISTORY

Plaintiff filed a complaint for intentional interference with an expectancy of inheritance. The trial court granted a motion to dismiss without prejudice. Plaintiff filed an amended complaint asserting the same cause of action. The trial court granted a renewed motion to dismiss with prejudice, finding failure to state a cause of action and failure to exhaust probate remedies.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reversed and remanded for further proceedings.

CASES CITED

- Roos v. Morrison, 913 So. 2d 59 (Fla. 1st DCA 2005)
- Susan Fixel, Inc. v. Rosenthal & Rosenthal, Inc., 842 So. 2d 204 (Fla. 3d DCA 2003)
- Warren ex rel. Brassell v. K-Mart Corp., 765 So. 2d 235 (Fla. 1st DCA 2000)
- Marshall v. Amerisys, Inc., 943 So. 2d 276 (Fla. 3d DCA 2006)
- Christine Claveloux v. Joseph Bacotti, Claveloux v. Bacotti, 778 So. 2d 399 (Fla. 2d DCA 2001)
- Whalen v. Prosser, 719 So. 2d 2 (Fla. 2d DCA 1998)
- Evelyn G. DeWITT and Mabel M. DeWitt, Appellants, v. Estelle R. DUCE, Dallas W. Weaver and Mabel E. Weaver, Appellees., DeWitt v. Duce, 408 So. 2d 216 (Fla. 1981)
- Ebeling v. Voltz, 454 So. 2d 783 (Fla. 4th DCA 1984)

CITED IN

- Edward A. Schilling v. Maria Herrera, Schilling v. Herrera, 952 So. 2d 1231 (Fla. 3d DCA 2007)
- Edward A. Schilling v. Maria Herrera, Schilling v. Herrera, 952 So. 2d 1231 (Fla. 3d DCA 2007)
- Edward A. Schilling v. Maria Herrera, Schilling v. Herrera, 952 So. 2d 1231, 1236 (Fla. 3d DCA 2007)