

FLORIDA COURT OF APPEALS, SECOND DISTRICT

Llamira Nieves, as personal representative of the Estate of Ivette
Rivera, v. Senior Health TNF, LLC d/b/a Whispering Oaks

Nieves v. Senior Health TNF, LLC, No. 2D22-423, 2023 WL 5298459 (Fla. Dist. Ct. App. Aug. 18, 2023) · No.
2D22-423

SUMMARY

The Florida appellate court affirmed dismissal of a nursing home negligence suit because the plaintiff lacked standing as she had not been appointed personal representative of the estate before the trial court’s final order, and the relation-back doctrine under Fla. Stat. § 733.601 only applies to an appointed representative. The trial court did not abuse its discretion in denying leave to amend, and any procedural error in considering matters outside the complaint was waived.

CASE DETAILS

COURT	Florida Court of Appeals, Second District
WRITING FOR THE COURT	La ROSE, Judge; La ROSE; ROTHSTEIN-YOUAKIM; ATKINSON
JURISDICTION	Florida
DOCKET	2D22-423
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final order dismissing, without prejudice, a negligence lawsuit against a nursing home under chapter 400.
STANDARD OF REVIEW	Order granting motion to dismiss reviewed de novo; denial of leave to amend reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published
PARTIES	Llamira Nieves, as personal representative of the Estate of Ivette Rivera v. Senior Health TNF, LLC d/b/a Whispering Oaks

TOPICS

- probate procedure
- standing
- motions to dismiss
- health law
- civil procedure

PRACTICE AREAS

- Civil Procedure
- Estate and Probate

QUESTIONS PRESENTED

1. Whether a prospective personal representative has standing to sue and whether her later appointment relates back to validate the lawsuit.
2. Whether the trial court abused its discretion by dismissing without leave to amend.
3. Whether the trial court committed procedural error by considering matters outside the complaint without holding an evidentiary hearing.

HOLDINGS

1. Because plaintiff was not the personal representative when the trial court dismissed the lawsuit or denied rehearing, the trial court correctly dismissed the lawsuit.
2. The trial court did not abuse its discretion in dismissing without prejudice and without leave to amend.
3. Plaintiff waived this argument by failing to raise it below; moreover, she never disputed the facts relevant to standing, making an evidentiary hearing unnecessary.

KEY QUOTATIONS

“[Ms. Nieves] had actual notice of the issues and an opportunity to be heard. [Ms. Nieves] came to the hearing aware of the factual issue underlying Defendant's standing argument, and was aware that the defense sought dismissal of the complaint. The relief granted--dismissal--did not exceed that which was requested in the motion that was noticed for hearing.”

“Here, [Whispering Oaks] has shown how it would be prejudiced if the Complaint were to relate back. It bears acknowledgment that [Ms. Nieves'] explanation for when she filed the complaint ties directly to the argument [Whispering Oaks] raises about prejudice: she filed early so that [Whispering Oaks] would be deprived of statutory protections that would otherwise apply if she waited until she had complied with all of the statutory requirements.”

FACTUAL BACKGROUND

Ivette Rivera died in September 2020. Her daughter, Llamira Nieves, served the nursing home Whispering Oaks with a presuit notice in March 2021 and filed a negligence lawsuit on March 24, 2021, under chapter 400, purporting to act as personal representative. At the time of filing and throughout the proceedings, no estate had been opened and Ms. Nieves had not been appointed personal representative.

PROCEDURAL HISTORY

Plaintiff sued on March 24, 2021. Defendant moved to dismiss. At a November 10, 2021 hearing, defendant raised lack of standing. The trial court dismissed without prejudice on December 6, 2021. Plaintiff moved for rehearing, which was denied. Plaintiff then petitioned for appointment as personal representative after dismissal. She appeals.

DISPOSITION

affirmed

CASES CITED

- Friedel v. Edwards, 327 So.3d 1242 (Fla. 2d DCA 2021)
- Progressive Express Insurance Co. v. McGrath Community Chiropractic, 913 So.2d 1281 (Fla. 2d DCA 2005)
- Griffin v. Workman, 73 So.2d 844 (Fla. 1954)
- Lindor v. Florida East Coast Railway, LLC, 255 So.3d 490 (Fla. 3d DCA 2018)
- Talan v. Murphy, 443 So.2d 207 (Fla. 3d DCA 1983)
- Bivins v. Douglas, 335 So.3d 1214 (Fla. 3d DCA 2021)
- Edwards v. Landsman, 51 So.3d 1208 (Fla. 4th DCA 2011)
- Palm Beach Cnty. Sch. Bd. v. Doe, 210 So.3d 41 (Fla. 2017)
- Est. of McKenzie v. Hi Rise Crane, Inc., 326 So.3d 1161 (Fla. 1st DCA 2021)
- Graca v. Rosebank Mar., Inc., No. 04-14302, 2005 WL 6458603 (11th Cir. Mar. 8, 2005)
- Armiger v. Associated Outdoor Clubs, Inc., 48 So.3d 864 (Fla. 2d DCA 2010)
- Colandrea v. King, 661 So.2d 1250 (Fla. 2d DCA 1995)
- Bueno v. Workman, 20 So.3d 993 (Fla. 4th DCA 2009)
- Dade Cnty. Sch. Bd. v. Radio Station WQBA, 731 So.2d 638 (Fla. 1999)
- All Risk Corp. of Fla. v. State, Dep't of Lab. & Emp. Sec., Div. of Workers' Comp., 413 So.2d 1200 (Fla. 1st DCA 1982)
- Metro. Cas. Ins. Co. v. Tepper, 969 So.2d 403 (Fla. 5th DCA 2007)
- Winter v. Miami Beach Healthcare Grp., Ltd., 917 So.2d 973 (Fla. 3d DCA 2005)
- Ground Improvement Techs., Inc. v. Merchs. Bonding Co., 707 So.2d 1138 (Fla. 5th DCA 1998)
- Kennedy v. Carnival Corp., 385 F.Supp.3d 1302 (S.D. Fla. 2019)
- Glickstein v. Sun Bank/Miami N.A., 922 F.2d 666 (11th Cir. 1991)
- Thomas v. Suwannee County, 734 So.2d 492 (Fla. 1st DCA 1999)