

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

**Claudia Passamondi v. Steve Dominic Passamondi, Individually and
as Personal Representative of the Estate of Anthony Passamondi,
deceased, Edward Frank Passamondi, and Stephanie Cuebas**

Passamondi v. Passamondi, No. 2D12-768, 2014 WL 233455 (Fla. 2d DCA Jan. 22, 2014) · No. 2D12-768

SUMMARY

When a trial court bifurcates a dissolution proceeding by entering a final judgment dissolving the marriage but retains jurisdiction to determine property issues, the subsequent death of a party does not deprive the court of jurisdiction to resolve those reserved issues. The appellate court reversed the dismissal of the former wife's claims, holding that the trial court retained jurisdiction despite the former husband's death and the opening of a probate estate.

OPINION

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED,
DETERMINED IN THE DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT
CLAUDIA PASSAMONDI,)) Appellant,)) v.) Case No. 2D12-768) STEVE DOMINIC
PASSAMONDI,) Individually and as Personal) Representative of the Estate of ANTHONY)
PASSAMONDI, deceased, EDWARD) FRANK PASSAMONDI, and STEPHANIE) CUEBAS,)
) Appellees.)) Opinion filed January 22, 2014.

Appeal from the Circuit Court for Collier County; Lauren L. Brodie, Judge. Herman H. Tarnow of Tarnow Law Firm, PL, Naples, for Appellant. No appearance for Appellees. WALLACE, Judge. Claudia Passamondi (the Former Wife) challenges the trial court's order dismissing her claims for the determination of property issues in a bifurcated dissolution of marriage proceeding.

The dismissal followed the death of Anthony Passamondi (the - 2 - Former Husband). Because the trial court erred in determining that it lacked jurisdiction because of the death of the Former Husband, we reverse and remand for further proceedings.

I. THE FACTS AND PROCEDURAL BACKGROUND The Former Husband and the Former Wife were married in 1988. In January 2006, the Former Husband filed a petition seeking the dissolution of the parties' marriage. The Former Wife answered the petition and counter-petitioned for dissolution of the marriage and for other relief. When the Former Husband filed his petition, he was suffering from a terminal illness.

For this reason, he filed a motion requesting a bifurcation of the proceedings. The trial court granted the motion. On May 24, 2006, the trial court entered a final judgment dissolving the

parties' marriage. In the final judgment, the trial court specifically "reserve[d] jurisdiction over this cause and each of the parties to enter such further Orders, Judgments, and Decrees as may be necessary at any time in the future to resolve all equitable distribution issues and any other issues which have been pled."

The Former Husband died on July 26, 2006. One of the Former Husband's three children, Steve Dominic Passamondi, filed a petition for the administration of the Former Husband's estate in the Collier County Circuit Court.

The probate court granted the petition and appointed Steve Dominic Passamondi as the personal representative of his father's estate. The Former Wife filed a claim in the probate estate on October 24, 2006. The Former Wife described the basis for her claim as her "undetermined marital interest in all of the real, personal and intangible property - 3 - of decedent preceding his death as so determined in" the pending dissolution of marriage proceeding.

The Former Wife also filed a supplemental petition for relief in the dissolution of marriage proceeding against the Former Husband's estate and his three children, Steve Dominic Passamondi, Edward Frank Passamondi, and Stephanie Cuebas. These additional parties filed answers to the Former Wife's supplemental petition.

After the passage of approximately four years, the circuit court set all pending matters in the dissolution of marriage proceeding for a final hearing on October 17, 2011. In the meantime, on May 17, 2011, the probate court entered an order terminating the probate proceeding. 1 When the parties appeared for the final hearing, the trial court declined to hear and to determine the remaining issues.

In a written order, the trial court memorialized its ruling, in pertinent part, as follows: H. That by virtue of the death of the Former Husband and the opening of a Probate Estate for him, the Probate Court was vested with exclusive control over the Former Husband's assets and the Probate Court had exclusive jurisdiction to determine the proper manner of distribution of the Former Husband's assets after payment of all creditors of the Estate of which the Former Wife was one....

Based on this ruling, the trial court concluded that it did not have jurisdiction to hear and to determine the claims of the Former Wife. Accordingly, the trial court dismissed the 1 The probate proceedings are not included in our record.

Thus we are unable to determine with certainty why the probate court closed the proceedings for the administration of the Former Husband's estate. However, the Former Wife stated in a pleading filed in the proceeding for dissolution of marriage that "the Probate matter was terminated without any action taken with respect to the claim of Claudia Passamondi. It appears that the termination of the action was done because of the failure of the Administrator to take any further action." - 4 - Former Wife's claims.

The Former Wife filed a motion for rehearing and cited case law in support of her position that the trial court did have jurisdiction to hear and to determine her claims. The trial court denied the motion without explanation. This appeal followed. II. DISCUSSION We begin our discussion by noting that the appellees have not seen fit to favor this court with a brief.

As this court has previously observed concerning the failure of an appellee to file a brief in support of the trial court's order or judgment: Failure to file a brief places an undue burden on the appellate court and reflects an omission of appellee's responsibility to support the trial court. If the ruling of the trial court is not worthy of support, then appellee ought to confess error and join with the appellant in seeking reversal.

Geisler v. Geisler, 397 So. 2d 1216, 1217 n.1 (Fla. 2d DCA 1981). We turn now to the merits. If a trial court bifurcates a proceeding for dissolution of marriage by entering a judgment dissolving the marriage but retaining jurisdiction to determine property issues, the subsequent death of a party does not deprive the trial court of jurisdiction to determine the issues reserved.

See *Fernandez v. Fernandez*, 648 So. 2d 712, 714 (Fla. 1995). In this case, the trial court had entered a final judgment dissolving the parties' marriage and retaining jurisdiction to determine all other issues before the death of the Former Husband.

Therefore, the trial court incorrectly concluded that it did not have jurisdiction to hear and to determine the Former Wife's claims. It follows that the trial court's dismissal of the Former Wife's remaining claims constituted error.

For - 5 - this reason, we reverse the trial court's order and remand this case to the trial court for further proceedings. Reversed and remanded. BLACK, J., Concur. ALTENBERND, J. Concur with opinion. I agree that the death of the Former Husband after the entry of the final judgment of dissolution in this bifurcated proceeding did not divest the circuit court of jurisdiction.

That said, this case is procedurally quite different from *Fernandez v. Fernandez*, 648 So. 2d 712 (Fla. 1995). The Former Wife filed a timely claim in the probate proceeding for her marital interest in the Former Husband's estate. It is unclear from our limited record what occurred in the probate proceeding, but the probate proceeding has been closed for more than two years.

I do not understand what marital assets may remain under the jurisdiction of the circuit court in the dissolution proceeding or what claims might exist against third parties in that case. Thus, I agree that the court continues to have jurisdiction in this dissolution proceeding at least as to claims against Edward Frank Passamondi, Stephanie Cuebas, and Steve Dominic Passamondi, individually, but I express no opinion on the court's ability to distribute marital assets or to enter orders against the personal representative of a closed probate estate.

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