

DISTRICT COURT OF APPEAL OF FLORIDA

Gilson v. Foltz

431 So. 2d 647 (Fla. Dist. Ct. App. 1983) · Decided April 22, 1983

SUMMARY

The court held that negligence occurring before the decedent's death could not be attributed to the plaintiff in his capacity as personal representative of the estate. Any duty arising from the plaintiff's knowledge of will preparation and estate planning was an individual duty, requiring reversal and a new trial because the jury had been instructed only on comparative negligence in the representative capacity.

CASE DETAILS

COURT	District Court of Appeal of Florida
WRITING FOR THE COURT	Ott, Chief Judge; Boardman; Lehan; Ott
JURISDICTION	Florida
DECIDED	April 22, 1983
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a jury verdict in a negligence action alleging that negligent drafting of a will caused unnecessary estate-tax liability.
STANDARD OF REVIEW	The appellate court reviewed the propriety of the jury instructions and the submission of comparative negligence under the circumstances presented.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Glen W. Gilson, II, as personal representative of his father's estate v. Foltz

TOPICS

- professional negligence
- estate planning
- probate
- comparative fault
- appellate procedure

PRACTICE AREAS

- professional negligence
- probate
- estate planning
- tax
- appellate procedure

QUESTIONS PRESENTED

1. Whether negligence occurring before the decedent's death could be attributed to Gilson in his capacity as personal representative.
2. Whether Gilson had a duty, as an appointed personal representative, to examine the will before the decedent's death.
3. Whether the case could be resolved on the basis of Gilson's individual negligence when he was not individually a party and the issue was not submitted to the jury in that capacity.

HOLDINGS

1. Negligence occurring before the decedent's death cannot be charged against Gilson in his capacity as personal representative.
2. Gilson had no duty, in his capacity as appointed personal representative, to examine the will before the decedent's death; any duty under the circumstances was owed by Gilson individually.
3. A new trial was required because the jury was instructed on Gilson's negligence only in his representative capacity, while any applicable duty was individual, and Gilson individually was not a party.

KEY QUOTATIONS

“Any duty appellant may have had under the circumstances was a duty of appellant individually.” (648)

“We deem the errors here to warrant a new trial. We refuse to speculate on what the jury would have done had the issue of appellant’s individual negligence been properly presented.” (648)

FACTUAL BACKGROUND

Gilson, acting as personal representative of his father's estate, alleged that Foltz negligently drafted the decedent's will, resulting in unnecessary estate-tax liability. Before the decedent's death, Gilson had drafted prior wills, advised his father about tax considerations, and received a copy of the challenged will but failed to read or object to the relevant clause. Gilson was never individually a party to the action, but the jury was instructed on his comparative negligence as personal representative and found him 95 percent negligent and Foltz 5 percent negligent.

PROCEDURAL HISTORY

The estate's personal representative sued Foltz for alleged negligence in drafting the decedent's will. The trial court permitted the jury to consider the comparative negligence of Gilson in his representative capacity, and the jury found Gilson 95 percent negligent and Foltz 5 percent negligent. The appellate court reversed and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for a new trial. The opinion does not preclude adding appropriate parties or issues on remand.

CASES CITED

- Griffin v. Workman, 73 So. 2d 844 (Fla. 1954)

OPINION

OTT, J.

OTT, Chief Judge. Appellant, Glen W. Gilson, II, as personal representative of his father's estate, sued appellee, alleging that appellee's negligence in drafting the decedent's will caused the estate to incur unnecessary estate tax liability.

As an affirmative defense, appellee raised appellant's comparative negligence. Testimony in support of this defense revealed that appellant possessed expertise in the area of will preparation, estate planning, and taxation. He had drafted previous wills of the decedent, had advised his father on tax considerations, and was furnished a copy of the will in question some months prior to decedent's death.

Appellant failed to read the clause now questioned or raise any objection or tax considerations. Appellant individually was never a party to this action. The jury was instructed on the comparative negligence of appellant as personal representative, and the special verdict form referred to appellant in his representative capacity.

The jury rendered a special verdict finding appellant as personal representative ninety-five percent negligent and appellee five percent negligent. We reverse. The alleged negligence of appellant occurred prior to the decedent's death; therefore, the negligence cannot be charged against appellant in his capacity as personal representative. Letters of administration appointing a personal representative may, for certain purposes, relate back to a decedent's date of death, Griffin v. Workman, 73 So.2d 844 (Fla.1954).

However, we find no merit in the contention of appellee that appellant had a duty as appointed personal representative to examine the will before decedent's death. Any duty appellant may have had under the circumstances was a duty of appellant individually.

We deem the errors here to warrant a new trial. We refuse to speculate on what the jury would have done had the issue of appellant's individual negligence been properly presented. Contrary to appellee's argument, we fail to find that the issue of decedent's negligence was raised below or submitted to the jury on appropriate instructions.

We therefore refuse to deal with it on this appeal. Nothing herein should be construed as precluding the adding of appropriate parties or issues on remand. REVERSED and REMANDED for a new trial. BOARDMAN and LEHAN, JJ., concur.

