

THIRD DISTRICT COURT OF APPEAL, STATE OF FLORIDA

Dr. Marc Bivins, et al. v. Charles W. Douglas, etc., et al.

___ So. 3d ___, 2021 WL 4894270 (Fla. 3d DCA 2021) · No. 3D20-0965

SUMMARY

The Third District held that a putative son lacked standing to contest a trust as an intestate heir because he failed to obtain a judicial declaration of paternity within the four-year statute of limitations under section 95.11(3)(b), Florida Statutes, and the delayed discovery doctrine and equitable estoppel did not apply. His children also lacked standing because he was alive and in a superior class of descendants, and none of the appellants qualified as “interested persons” under section 731.201(23) since they were not named beneficiaries and could not inherit through intestacy.

CASE DETAILS

COURT	Third District Court of Appeal, State of Florida
WRITING FOR THE COURT	Hendon; Emas; Scales
JURISDICTION	Florida
DOCKET	3D20-0965
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal of a final order dismissing Appellants' second amended complaint with prejudice.
STANDARD OF REVIEW	De novo review of order granting motion to dismiss.
PRECEDENTIAL VALUE	published
PARTIES	Dr. Marc Bivins, Anabelle Bivins, Lorelei Bivins, Dr. Marc Bivins and Dr. Balkys Bivins, as Biological Parents and Natural Guardians of P.B., a Minor Child v. Charles W. Douglas, as Trustee of the M. Lee Pearce Living Trust, as amended, The Dr. M. Lee Pearce Foundation, Inc., Phyllis Johns, Sally Knowles, Emily Moynihan

TOPICS

- standing
- statute of limitations
- paternity
- intestacy
- trusts

PRACTICE AREAS

- Trusts and Estates
- Civil Procedure
- Family Law

QUESTIONS PRESENTED

1. Whether the trial court erred in considering exhibits attached to the second amended complaint when ruling on the motion to dismiss.
2. Whether Appellants established standing to contest the trust instruments as intestate heirs or interested persons.
3. Whether the statute of limitations barred Bivins's paternity claim, and whether the delayed discovery doctrine or equitable estoppel applied.

HOLDINGS

1. A trial court may consider an exhibit attached to or incorporated by reference into a complaint without converting the motion to dismiss into one for summary judgment; the exhibit controls when its language is inconsistent with the complaint's allegations.
2. To establish standing as an intestate heir based on paternity, a party must obtain a judicial declaration of paternity within the four-year statute of limitations under section 95.11(3)(b); a mere allegation of paternity is insufficient.
3. Section 732.108(2)(a)'s provision allowing a person born out of wedlock to be considered a descendant if the parents participated in a marriage ceremony requires proof that the marriage was between the natural parents, which in turn requires a legal determination of paternity subject to the statute of limitations.
4. The delayed discovery doctrine under section 95.031, Florida Statutes, applies only to the causes of action specified in that statute; paternity actions are not among them, so the doctrine does not toll the limitations period for paternity.
5. Equitable estoppel does not bar the statute of limitations where the plaintiff was not aware of the facts giving rise to the claim during the limitations period; it presupposes the plaintiff knew of the facts but was induced to delay filing suit by the defendant's conduct.
6. Children of a living alleged descendant have no standing as intestate heirs where the descendant has not established paternity and would be in a superior class of descendants; further, they cannot challenge a trust when they are not named as beneficiaries and their interest has not vested.
7. To be an 'interested person' under section 731.201(23), one must have a reasonable expectation of being affected by the outcome; an individual whose interest is contingent upon invalidating a trust and inheriting through intestacy, but whose paternity claim is time-barred, does not have a vested interest and is not an interested person.
8. Dismissal with prejudice is appropriate when further amendments would be futile given prior opportunities to amend and repeated failure to cure deficiencies.

KEY QUOTATIONS

“Standing is a threshold inquiry that must be addressed before considering the merits of a cause of action. To have standing, a would-be litigant must show 'a direct and articulable interest in the controversy, which will be affected by the outcome of the litigation.'”

“Section 95.11(3)(b) of the Florida Statutes imposes a four-year statute of limitations on an 'action relating to the determination of paternity, with the time running from the date the child reaches the age of majority.'”

“The delayed discovery doctrine 'generally provides that a cause of action does not accrue until the plaintiff either knows or reasonably should have known of the tortious act giving rise to the cause of action.'”

“The doctrine of equitable estoppel bars the application of the statute of limitations defense where an injured party recognized a basis for filing suit, but was induced to forbear filing suit during the limitations period by the party who caused the injury.”

FACTUAL BACKGROUND

Dr. Marc Bivins alleged that he is the biological son of Dr. Milton Lee Pearce and that he and his three daughters are Pearce's intestate heirs. Pearce executed several trust instruments from 2000 until his death in 2017, none of which named the Appellants as beneficiaries. Appellants sought to invalidate the trust instruments, including the 2017 Trust Restatement, claiming standing as intestate heirs and interested persons.

PROCEDURAL HISTORY

Appellants filed a declaratory action seeking to invalidate trust instruments executed by decedent Pearce. The trial court dismissed the initial complaint and the amended complaint for pleading deficiencies, including lack of standing. Appellants filed a second amended complaint, which the trial court dismissed with prejudice, finding further amendments would be futile. Appellants appealed.

DISPOSITION

affirmed

CASES CITED

- Edwards v. Landsman, 51 So. 3d 1208 (Fla. 4th DCA 2011)
- One Call Prop. Servs. Inc. v. Sec. First Ins. Co., 165 So. 3d 749 (Fla. 4th DCA 2015)
- K.R. Exchange Servs., Inc. v. Fuerst, Humphrey, Ittleman, PL, 48 So. 3d 889 (Fla. 3d DCA 2010)
- Gordon v. Kleinman, 120 So. 3d 120 (Fla. 4th DCA 2013)
- Cruz v. Cmty. Bank & Tr. of Fla., 277 So. 3d 1095 (Fla. 5th DCA 2019)
- Centerstate Bank Cent. Fla., N.A. v. Krause, 87 So. 3d 25 (Fla. 5th DCA 2012)
- Robinson v. Robinson, 298 So. 3d 1202 (Fla. 3d DCA 2020)
- Gen. Motors Acceptance Corp. v. Thornberry, 629 So. 2d 292 (Fla. 3d DCA 1993)
- Thurston v. Thurston, 777 So. 2d 1001 (Fla. 1st DCA 2000)
- In re Estate of Charles W. Smith, Deceased. Dale S. Wilson, et al., Petitioners/Appellants, v. Shirley I. Scruggs, Respondent/Appellee., In re Estate of Smith, 685 So. 2d 1206 (Fla. 1996)
- Hearndon v. Graham, 767 So. 2d 1179 (Fla. 2000)
- Strack v. Fred Rawn Constr., Inc., 908 So. 2d 563 (Fla. 4th DCA 2005)
- Davis v. Monahan, 832 So. 2d 708 (Fla. 2002)

- W.D. v. Archdiocese of Miami, Inc., 197 So. 3d 584 (Fla. 4th DCA 2016)
- Black Diamond Props., Inc. v. Haines, 69 So. 3d 1090 (Fla. 5th DCA 2011)
- Estate of Tim, 180 So. 2d 161 (Fla. 1965)
- Richardson v. Richardson, 524 So. 2d 1126 (Fla. 5th DCA 1988)

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