

Florida Update

By David Pratt and Jonathan A. Galler



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DECISIONS OF INTEREST

Trust's Long-Arm Statute

Section 736.0202, Florida Statutes, is entitled "Jurisdiction over trustee and beneficiary" and sets forth specific instances in which Florida courts will have jurisdiction over an out-of-state trustee or beneficiary. In this case, the Southern District of Florida addressed whether that statute

gave the court jurisdiction over Philip Abromats, a non-Florida resident. The case was brought by Clifford Abromats, also a non-resident, but as trustee of the revocable trust of his mother who was a Florida resident. Clifford alleged that Philip, who was the recipient of certain trust distributions during his mother's lifetime, had unduly influenced their mother to make certain trust amendments. After ten months before three separate courts, the court found that it did have long-arm jurisdiction over Philip—both *in rem* and *in personam*. The court found that it had *in rem* jurisdiction over Philip because the trust's principal place of administration was in Florida. And the court found that it had *in personam* jurisdiction over Philip because he had accepted a distribution from the trust during his mother's lifetime. In adjudicating the separate question of Philip's due process rights, the court found that the complaint arose out of his contacts with the forum state, that he purposely availed himself of the privilege of activities within the forum state, and that the interstate judicial system had an interest in resolving the matter with this forum.

Abromats v. Abromats, 2016 WL 4366480 (S.D. Fla. Aug. 16, 2016).

Fiduciary Lawyer-Client Privilege

Florida's rules of evidence are part-procedural and part-substantive. As a result, it is unclear whether they are subject to the approval of the Supreme Court (procedural) or subject to passage by the legislature (substantive). The result is somewhat unusual: rules of evidence go to the legislature to pass into law, and they go to the Supreme Court for approval. Most of the time, the Supreme Court adopts the amendment or new evidence provision "to the extent that it is procedural." But in 2014, the Florida Supreme Court *declined* to follow the evidence committee's recommendation to adopt new section 90.5021, Florida Statutes, intended to codify the fiduciary lawyer-client privilege, "because we question the need for the privilege to the extent that it is procedural." The problem is that in 2011,



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Florida's legislature passed the new section. Moreover, the Florida Supreme Court, at the time, adopted a probate rule change requiring that fiduciaries make clear to beneficiaries that communications with lawyers are privileged pursuant to the new evidence provision. In this case, the Southern District of Florida came out with the first published opinion to address the issue. Plaintiff was

attempting to sue a guardian of a ward who had died, on behalf of the ward's estate, and was seeking the attorneys' communications with the guardian during the ward's lifetime. Among other things, plaintiff argued that lawyer-client privilege had been rejected by the Supreme Court. The court, however, held that the Supreme Court's decision "did not vitiate or overturn the statute." It merely declined to adopt the rule as procedural, and it left the legislative change.

Bivens v. Rogers, 2016 WL 4702682 (S.D. Fla. Sep. 7, 2016).

Fiduciary Relation-Back Statute

Samuel Rosario discovered that he suffered from legal blindness after moving into the third-floor apartment of the Orlando Housing Authority (OHA). His request to move into a first-floor unit with live-in help was denied. In March 2014, Mr. Rosario fell in his apartment causing injury to his head and bruising to his eyes. He was in the hospital for nine days, and following his release, was found dead one day later in his apartment from a seizure or fainting. His daughter, Stephanie Fernandez, sued the OHA and others for a variety of causes of action. Defendants moved to dismiss on grounds that Fernandez was not the proper personal representative of the estate at the time that she filed the complaint. The Middle District of Florida denied the motion. Among other reasons, the court found that the relation-back rule applied and governed the personal representative's conduct. The relation-back rule provides that the "powers of a personal representative relate back in time to give acts by the person appointed, occurring before appointment and beneficial to the estate, the same effect as those occurring after appointment" (Section 733.601, Florida Statutes). Because Fernandez had ratified the act of commencing a lawsuit against defendants after she became the personal representative, the relation-back rule kept the lawsuit alive.

Fernandez v. Orlando Housing Authority, 2016 WL 4382656 (M.D. Fla. Aug. 17, 2016).

Granting of Attorney's Fees for Benefiting the Estate

Mary Lou Jordan sued the Estate of Clifford L. Allen seeking specific performance of a real estate contract pending at the time of his death. Wanda Hampton, who was the specific devisee of the real estate under Clifford's will, filed a motion to defend against the action. The motion was granted, and the motion to seek attorney's fees was reserved pending Hampton's showing that she provided a benefit to the estate. Hampton prevailed in defending the estate but lost her motion in the trial court seeking fees. Section 733.106(3), Florida Statutes, provides fees for an attorney who renders services to an estate, but the trial court denied the motion for fees because Hampton's attorney did not enhance the assets of the estate. The Fifth District Court of Appeal reversed, however, because Hampton's attorney had provided services that successfully gave effect to the intention of the testator as set forth in the will. That, said the appellate court, is a service equally compensable by the estate.

Hampton v. Allen, 2016 WL 4158716 (Fla. 5th DCA Aug. 5, 2016) (not yet final).

Denial of Attorney's Fees for Not Benefiting the Estate

When Yolinda Doss was arrested and charged with the murder of Alphonso Doss, USAA Life Insurance Company deposited his life insurance proceeds into the court registry and filed an interpleader action. Under Florida's slayer statute, section 732.802, Florida

Statutes, Ms. Doss would not take the proceeds, and she renounced her interest. The court appointed Michael Fackler as the guardian for the Doss' daughter and granted the personal representative of the estate, Shirley Hunter, the right to intervene in the proceeding. After determining that the insurance proceeds were properly distributed to Mr. Fackler, Ms. Hunter moved for an award of fees for the personal representative under section 733.6171, Florida Statutes. Even though Ms. Hunter was compelled to do work, the Middle District of Florida held that fees were not to be awarded because she had provided no benefit to the estate since the insurance proceeds were not traveling through the estate. For the same reason, it would be unfair to compensate Ms. Hunter from assets of the insurance proceeds.

USAA Life Ins. Co. v. Doss, 2016 WL 4400657 (M.D. Fla. Aug. 18, 2016).

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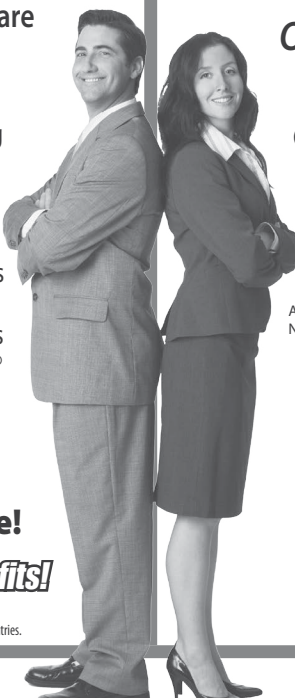
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