

0A 8-21-88

IN THE SUPREME COURT OF FLORIDA

FILED

Case No. 71,717 JUL 25 1988

By: [Signature] Deputy Clerk

JAMES MICHAEL WATSON, as
Personal Representative
of the Estate of Michael
Corso, Deceased,

District Court of Appeal
Third District -
Number 86-1751
86-2492

Petitioner,

vs.

FIRST FLORIDA LEASING, INC.,

Respondent.

_____ /

PETITIONER'S REPLY BRIEF ON THE MERITS

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ARGUMENT

I. CLAIMANT'S FAILURE TO FILE THE NOTICE OF ACTION REQUIRED BY SECTION 733.705(3), FLORIDA STATUTES BARRED CLAIMANT'S INDEPENDENT ACTION TO ENFORCE ITS CLAIM

Florida Statute §733.705(3) (1985) is a constitutional statute which governs the prosecution of claims against the estates of deceased persons. It is a valid special non-claim statute of limitations. Further, it is not superseded by Rule 5.1065 of the Probate and Guardianship Rules. That rule is procedural and only supplements the Statute.

Furthermore, Respondent did not timely and properly raise or preserve the issue of the constitutionality of Fla. Stat. §733.705(3)(1985); therefore, the issue should not be addressed.

A. Notice Requirement Of Section 733.705(3), Florida Statutes, Is Constitutional And The Third District Court Of Appeal Improperly Reversed The Trial Court's Entry Of Final Summary Judgment Against Claimant For Failing To Timely File The Notice Of Action

Respondent's brief is limited to the Third District Court of Appeal cases which improperly found the notice

requirements of Fla. Stat. §733.705(3) to be unconstitutional. Respondent's limited discussion ignores the cases cited by Petitioner which support the constitutionality of the statute in question. It is evident that the notice requirement of Fla. Stat. §733.705(3) constitutes a substantive limitation which is constitutional. See Golden v. Atlantic National Bank of Jacksonville, 481 So.2d 16 (Fla. 1st DCA 1985), rev. denied, 492 So.2d 1332 (Fla. 1986).

Statutory notice provisions with specific time requirements related to the prosecution of claims in probate have been found valid and constitutional in Florida for many years. See Barnett Bank of Palm Beach County v. Estate of Read, 493 So.2d 447 (Fla. 1986); In Re: Estate of Woods, 133 Fla. 730, 183 So. 10 (1938). The enactment of this type of statute is within the ambit of the Legislature's power. See Legislative history on Fla. Stat. §733.705(3) (Appendix to Petitioner's Initial Brief on the Merits).

Rule 5.1065(a) of the Probate and Guardianship Rules, did not supersede Fla. Stat. §733.705(3) when it was adopted by the Supreme Court. Rule 5.1065(a) is a procedural rule that requires a personal representative or guardian to file a notice in the probate court whenever an

action is brought in the civil division against the probate or guardianship estate. The Rule does not require the notice to be filed within any prescribed period of time. In comparison, Florida Statute §733.705(3) is substantive and is far more narrow than the rule. The statute limits the prosecution of independent civil actions by requiring full compliance with the time and notice provisions of the statute. Failure to timely act as required by the statute results in the disallowance of the claim. The First District Court of Appeal in Golden, 481 So.2d at 18, found the statute's notice provision to be self-executing, enforceable and valid. See also, Twoemy v. Clausohm, 234 So.2d 338 (Fla. 1970); Jones v. Allen, 134 Fla. 751, 184 So. 651 (1938).

Compliance with Florida Statute §733.705(3) assures timely notice in the probate court file of the existence of an independent action. It also advises all interested parties of the claim within a short period of time. It is apparent that both the rule and the statute serve separate and valid purposes. Accordingly, the general jurisdiction trial court's Final Summary Judgment should be reinstated, and the Third District Court of Appeal's opinion quashed.

B. Claimant Failed To Timely And Properly Raise Or Preserve The Issue Of The Constitutionality Of Florida Statute §733.705(3)(1985); Therefore, The Entry Of Final Summary Judgment Against Claimant Was Proper And Should Be Reinstated

Contrary to Respondent's representations, the stipulation entered into by the parties in this matter did not correct the Respondent's error in failing to timely and properly raise or preserve the issue of the constitutionality of Florida Statute §733.705(3). The stipulation merely allowed the matter to be decided by the Florida Supreme Court if the Court deemed the matter to be properly raised and preserved. See paragraph 5 of said stipulation attached to Respondent's Appendix to Brief on the Merits.

In the case at bar, the only appellate opinion interpreting Fla. Stat. §733.705(3)(1985) at the time that the controversy arose, was Golden v. Atlantic National Bank of Jacksonville, 481 So.2d 16 (Fla. 1st DCA 1985), rev. denied, 492 So.2d 1332 (Fla. 1986). That case found the statute's notice provision to be valid and enforceable. Despite Respondent's knowledge of the statute and the Golden case, Respondent failed to comply with the requirements of the law. Furthermore, Respondent never

attacked the statute's constitutionality until after his motion for extension had been denied and Plaintiff's Motion to Strike had been granted.

Even though Claimant was not requesting declaratory relief under Chapter 86, Florida Statutes (1985), the Attorney General or the State Attorney in the relevant area should have been made aware of Claimant's constitutional attack on the statute in question so that the State's position could be heard. Claimant's failure to put the State on notice should prevent Claimant from being allowed to challenge the statute on constitutional grounds.

Claimant's untimeliness and continued disregard for the requirements of the law should prevent it from being allowed to challenge the subject statute's constitutionality. Public policy favors requiring claimants to promptly and diligently protect their rights in order to provide for the efficient and timely disposition of a deceased's estate. Accordingly, Petitioner requests that the Court uphold the civil trial courts' Final Summary Judgment, and that the Court quash the Third District Court of Appeal's opinion since a contrary decision would promote delay, and would work contrary to the principles of judicial economy.

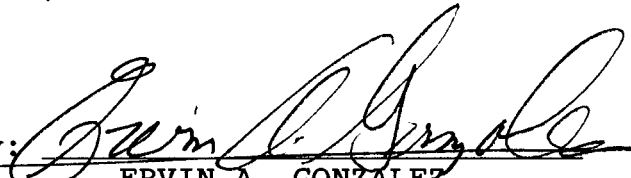
CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court quash the decision of the Third District Court of Appeal, reinstate the Final Summary Judgment entered against Claimant by the general jurisdiction trial court, and uphold the probate court's Order denying Claimant's Motion for Extension of Time, which also granted Petitioner's Motion to Strike.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of
the foregoing was mailed this 27th day of July, 1988 to:
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