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JUL 25 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

IN RE: Estate of)
LETTIE V. COMBEE,)
Deceased.)

LINDA RAE FARMER and)
RAYMOND GROOVER COMBEE, JR., a)
minor by and through his mother)
and next friend, LINDA COMBEE)
MIRANDA,)

Petitioners,)

vs.)

IRMA A. WALKER and)
DOROTHY I. COLLINS,)

Respondents.)

Case No.

PETITIONERS' JURISDICTIONAL BRIEF

On Review from the District Court
of Appeal, Second District
State of Florida

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Cases

In re Alma S. Gainer, 16 F.L.W. D838 (Fla. 1st DCA,
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In re Estate of Lettie V. Combee. Walker vs. Farmer,
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Constitutional Provisions and Statutes

Art. V, §3(b)(3) Fla. Const. (1980)
Fla. Stat. §658.56

Court Rules

Fla.R.App.P. 9.030(a)(2)(A)(iv)

STATEMENT OF THE CASE AND FACTS

The Petitioners are two minor sole beneficiaries of a testamentary trust established under the will of Lettie Combee, deceased. The Petitioners were the prevailing parties in an action to determine estate assets and require the personal representatives to return to the estate monies which the personal representatives claim belonged to them because the accounts were jointly held with the decedent. The decedent established three accounts which are the subject matter of this action. The three accounts are a money market account, a checking account, and a savings account. On December 5, 1984, decedent executed a last will and testament. Soon thereafter, decedent added signatories on the three accounts. The Original Signatories to the accounts were also named as personal representatives in the decedent's will.

On January 20, 1987, the Respondents were substituted as Signatories on several of the decedent's accounts due to the Original Signatories' inability to continue to serve. Subsequently, the decedent on February 22, 1987, executed a new will wherein the Respondents were named as personal representatives.

On August 21, 1988, the decedent died leaving assets to the Petitioners consisting mainly of real property. On the initial estate inventory, filed January 11, 1989, none of the decedent's

bank accounts were listed as estate assets. Several months later, on August 22, 1989, the Respondents added the checking account which contained an insignificant amount of money to the estate accounting previously filed.

On July 4, 1990, the Petitioners filed a petition to determine estate assets. After a non-jury trial, the trial court rendered its order determining that the money market, checking, and savings accounts were assets of the estate.

The Respondents filed an appeal to the Second District Court of Appeal on December 20, 1990. The Second District Court of Appeal reversed the order of the trial court. The district court held that the Petitioners did not prove by clear and convincing evidence that the decedent did not intend for the bank accounts to vest in the Respondents. In making this decision, the Second District Court of Appeal expressly recognized that its decision directly conflicts with In re Alma S. Gainer, 16 F.L.W. D838 (Fla. 1st DCA, Mar. 29, 1991).

The Petitioners' notice to invoke the discretionary jurisdiction of this court was timely filed on July 23, 1991.

SUMMARY OF ARGUMENT

In this case, the Second District Court of Appeal held that the joint accounts were not a part of the estate assets. The court further states that the evidence presented to the trial court below was insufficient under the clear and convincing standard to prove that the decedent had an intent contrary to that demonstrated by the unambiguous language contained in the signature cards. On identical facts, however, the First District Court of Appeal ruled exactly the opposite. The decision of the Second District Court of Appeal cannot be reconciled with the decision of the First District Court of Appeal in In re Alma S. Gainer, 16 F.L.W. D838 (Fla. 1st DCA, Mar. 29, 1991). The First District held the testimony presented was inconsistent and cannot be reconciled with a completed inter vivos gift in the joint accounts and, therefore, not a present intent to make a gift. The Second District Court of Appeal is fully aware that its holding is contrary to the First District Court of Appeal and makes note of the conflict in its decision. The Petitioners' contend that the decision of the Second District Court of Appeal expressly and directly conflicts with the previous decision rendered by the First District Court of Appeal and that as a result this Court has the right to review the two decisions to decide which district court of appeal correctly stated the law.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal on the same point of law.

Art. V, §3(b)(3) Fla. Const. (1980); Fla.R.App.P.

9.030(a)(2)(A)(iv).

ARGUMENT

The Decision of the District Court of Appeal in this case Expressly and Directly Conflicts with the Decision of the First District Court of Appeal in In re Alma S. Gainer, 16 F.L.W. D838 (Fla. 1st DCA, Mar. 29, 1991).

In the instant case, the Second District Court of Appeal interpreted §658.56, Florida Statutes (1987), to allow the monies placed in joint accounts to pass directly to the surviving joint holders even though competent, substantial, clear and convincing evidence was presented of a contrary intent. In contrast, the First District Court of Appeal held, on similar facts, that the presumption of §658.56 may be overcome by clear and convincing proof of a contrary intent and that the common law elements necessary to create a joint account with right of survivorship remain relevant in rebutting that presumption. The Second District Court of Appeal recognizes that its decision directly and expressly conflicts with the decision rendered by the First District Court of Appeal and makes specific reference to the conflict in its decision. Because of the conflict, the Petitioners respectfully submit that this Court should grant discretionary review and resolve the conflict by reversing the decision of the Second District Court of Appeal.

The Second District Court of Appeal decision, reported as In re Estate of Lettie V. COMBEE. WALKER, Appellants, v. Farmer, Appellees, No. 90-02971 (D. Fla. filed June 28. 1991), 1991 WL 115609 (Fla. App. 2 Dist.), reversed the trial judge's decision. The Second District Court of Appeal remanded the case for lack of

"evidence sufficient under the clear and convincing standard to prove that the decedent had an intent contrary to that demonstrated by the unambiguous language contained in the written contract".

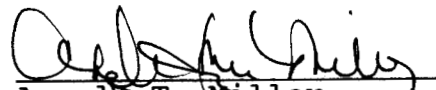
The district court stated that it recognized the conflict between its decision and In re Alma S. Gainer. Thus, the district court has expressly held contrary to a decision rendered by another district court of appeal and therefore, the Florida Supreme Court has discretionary jurisdiction to review the case.

The Florida Supreme Court discusses the concept of discretionary jurisdiction granted to it in Art. V, §3(b)(3), Fla. Stat. (1980) in The Florida Star vs. B.J.F., 530 So. 2d 286 (Fla. 1988) and Hardee vs. State, 534 So. 2d 706 (Fla. 1988). There the Court stated that it was given jurisdiction when a conflict existed among the District Courts of Appeal and that its constitutional authority to review any appellate decision establishing a point of law only required that there be some statement or citation in the opinion that hypothetically could create a conflict if there were another opinion reaching a contrary result. This case falls within the parameter as set forth by the Court in these decisions because a conflict does exist between the First and Second Courts of Appeal since these courts reached contrary results from similar facts and evidence.

The First District Court of Appeal in In re Alma S. Gainer correctly interpreted §658.56 and applied the correct standard concerning the evidence presented. The Court should now reaffirm the decision of the First District Court of Appeal by accepting discretionary review and reversing the contrary decision of the Second District Court of Appeal below.

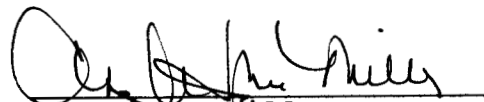
CONCLUSION

This Court has discretionary jurisdiction to review the decision below, and the Court should exercise that jurisdiction to consider the merit's of the Petitioners' argument.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing jurisdictional brief has been furnished to Jerry A. DeVane, Post Office Box 1028, Lakeland, FL 33802, by United States Mail, this 24th day of July, 1991.


Angela T. Miller