

IN THE SUPREME COURT OF FLORIDA

Case No. 65,296

FILED

SID J. WHITE

JUN 7 1984

CLERK, SUPREME COURT

By _____
Chief Deputy, Clerk

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IN RE: Estate of :
RALPH JAMES EDELL, JR., :
Deceased. :
:
LISA EVERED and JOHN E. EDELL, :
as Co-Personal Representatives, :
Petitioners, :
vs. :
MARY JUNE EDELL, :
Respondents. :
_____ :

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE
AND FACTS INVOLVED

Respondent is the surviving widow of Ralph James Edsell, Jr., who died testate on the 16th day of April, 1982. The decedent's Will dated the 22nd day of September, 1967, was admitted to probate on the petition of the Petitioners here.

Your Respondent filed a Petition to Set Aside and Assign a Share of the Estate to the Pretermitted Spouse, alleging that the decedent, Ralph James Edsell, Jr., died testate, leaving surviving him his spouse (Respondent here); that no provision had been made in the Will for the surviving spouse; that nothing in the Will disclosed an intention not to make a provision for the surviving spouse; and no provision was made for the surviving spouse by marriage contract.

The Personal Representatives of the estate (Petitioners here) admitted the factual allegations and averred by affirmative defenses that the decedent and his wife (Respondent here) prior to their marriage had entered into a Pre-Marital Agreement, by which Agreement the Respondent had waived any and all rights to her elective share as a pretermitted spouse.

Your Respondent replied to the affirmative defenses raised by the Personal Representatives of the decedent's estate by admitting that she signed the Pre-Marital Agreement, but demanded strict proof that the Agreement was fair and not the product of overreaching. She further replied by way of avoidance to the affirmative defenses

by saying that the Agreement arose out of a confidential relationship between the decedent and herself, and that the decedent possessed superior knowledge and was the disproportionate beneficiary of the transaction.

At the trial of the issues raised by the pleadings, the Trial Judge dismissed the Respondent's Petition to Set Aside and Assign a Share of the Estate to the Pretermitted Spouse with prejudice. The Respondent appealed from the Final Judgment to the District Court of Appeal, Third District of Florida, which reversed the Final Judgment. Petitioners now seek to invoke the jurisdiction of this Court on a perceived conflict.

When used herein, the abbreviation "APP" will refer to the Appendix in Petitioners' Brief.

ISSUE INVOLVED

WHETHER THE OPINION AND DECISION OF THE DISTRICT COURT OF APPEAL IN THE CASE AT BAR EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF ANOTHER DISTRICT COURT OF APPEAL AND OF THIS COURT ON THE SAME QUESTION OF LAW

ARGUMENT

There is no conflict in the opinion and decision of the District Court of Appeal in the case at bar and the opinion and decision of this Court in Estate of Roberts, 388 So.2d 216 (Fla. 1980).

Petitioners argue that the District Court applied a presumption and placed on the husband the burden of coming forth with evidence that the wife's execution of the agreement was voluntary, but that Roberts allows a wife to attack an antenuptial agreement only if she is able to show that her signature on such an agreement had been coerced or otherwise improperly obtained or that she was incompetent at the time she signed. See Page 5 of Petitioners' Brief. This argument completely ignores the language in the opinion of the District Court of Appeal, which states:

"Even in the absence of a communication that there would be no wedding without the agreement, the circumstances here suggest strongly that petitioner was under some compulsion to sign the agreement.

Petitioner carried her burden of showing that the husband's benefit from the premarital agreement was grossly disproportionate to hers and that the circumstances surrounding the execution of the agreement were coercive."
(Emphasis added)

8 FLW, at Page 2674; APP B-4.

The District Court's conclusion was:

"An involuntary dismissal at the end of the petitioner's case was erroneous where the burden, having been carried by the petitioner, then shifted to the appellees to come forward with evidence on the issue of voluntariness."

8 FLW, at Page 2674; APP B-4.

This Court in Roberts said:

"The legislature has not abolished the wife's right to sue; it has only altered one of the elements that the court may consider in determining the validity of the antenuptial agreement.

The right to have an antenuptial agreement set aside still exists. For example, if a wife were able to show that her signature on such an agreement had been coerced or otherwise improperly obtained or that she was incompetent at the time she signed, section 732.702(2) would not bar her challenge to the validity of the agreement."

(Emphasis added)

388 So. 216, citation omitted.

There is no conflict therefore with Roberts because all the District Court found was that the widow (Respondent here) had carried her burden of showing that the execution of the agreement was coercive.

The case at bar does not conflict with the opinion and decision of the District Court of Appeal, Second District of Florida, in Ellis First National Bank of West Pasco v. Downing, 443 So.2d 337 (Fla. DCA 1983). It is true that in Downing, the District Court said that the Trial Court erred in relying on Lutgert v. Lutgert, 338 So.2d 1111 (Fla. DCA 1976). However, Petitioners fail to point out to the Court that in that very same paragraph in Downing, the Court quoted from Roberts as follows:

"Notwithstanding the statutory provision, an antenuptial agreement may still be challenged. For example, an agreement may be set aside if one of the signatures was coerced or improperly obtained, or if one of the parties was incompetent at the

time the agreement was signed."
(Emphasis added)

443 So.2d, at Page 338.

The basis of the Downing opinion is to be found in the concluding paragraph thereof, where the Court said:

"The evidence does not indicate that Mrs. Downing was either coerced or incompetent to sign the agreement, or that she entered into the agreement involuntarily."
(Emphasis added)

443 So.2d, at Page 338.

Such is not the case here. As already pointed out, the District Court found that your Respondent was under some compulsion to sign the agreement and that she carried the burden to show that the circumstances surrounding the execution of the agreement were coercive.

CONCLUSION

The District Court of Appeal, Third District of Florida, properly applied the correct rule of law, and its decision and opinion are not in conflict with the decision of this Court or the Second District Court of Appeal.

Respectfully submitted,

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By: 

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction was mailed to STEEL HECTOR & DAVIS, 1400 Southeast Bank Building, 100 South Biscayne Boulevard, Miami, FL 33131, and ANDREW M. TOBIN, ESQ., P. O. Box 419, Tavernier, FL 33070, Attorneys for Petitioners, this 5th day of June, 1984.

KIMBRELL, HAMANN, JENNINGS,
WOMACK, CARLSON & KNISKERN, P.A.

By: 

Joseph F. Jennings