IN THE SUPREME COURT OF FLORIDA

Tallahassee, Florida

CASE NO. 67,186

FILED
JUN 24 1985
CLERK, SUPREME COURT
By Chief Deputy Clerk

REED A. BRYAN, III, et al.,

Petitioner,

vs.

CENTURY NATIONAL BANK OF BROWARD, as Personal Representative of the Estate of CAMILLE PERRY BRYAN, Deceased,

Respondents.
_______________________________/

REED A. BRYAN, III, et al.,

Petitioners,

vs.

JAMES H. BRYAN, SR., STUART BRYAN and LUCY GARDNER OWENS,

Respondents.
_______________________________/

PETITIONER'S BRIEF ON CONFLICT JURISDICTION

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STATEMENT OF THE CASE AND FACTS

This brief is solely on the issue of jurisdiction pursuant to Rule 9.120(d). Petitioner, REED A. BRYAN, III, filed his notice to invoke jurisdiction in the Fourth District Court of Appeal on June 11, 1985. The decision sought to be reviewed was issued by the Fourth District court on January 30, 1985, and rehearing was denied by order of May 30, 1985. This brief is accompanied by the appendix containing the District Court's opinion, the motions for rehearing and the orders relating thereto.

SUMMARY OF ARGUMENT

The decision of the Fourth District Court in this case is in express and direct conflict with the decision of the First District Court in Fleming v. Fleming, 352 So.2d 895 (Fla. 1st DCA 1977), and this Court should accept jurisdiction.

JURISDICTIONAL ISSUE

WHETHER THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IS DIRECTLY AND EXPRESSLY IN CONFLICT WITH FLEMING V. FLEMING, 352 SO.2D 895 (FLA. 1st DCA 1977).

ARGUMENT

The Fourth District Court held that a person who has become a voluntary ward under Section 744.341, Florida Statutes (1979) lacks the "capacity" to convey real and personal property without court approval. According to the opinion the only court which can give such approval is the court having jurisdiction over the guardianship proceeding. The opinion states:

> We hold the deed from Camille Bryan to appellee, Reed Bryan, III, was ineffective to convey title to Bryan because the court that had jurisdiction over the guardianship never authorized or approved that conveyance.
>
> * * *
>
> ...we reverse the order appealed from because Camille Bryan did not have the capacity to make the conveyance in question without court approval.

Camille Bryan was physically infirm due to advanced age but not mentally incapacitated. She became a voluntary ward under Section 744.341, Florida Statutes (1979), for physical reasons in 1977 and died in 1981. She had been very active in the establishment and development of Broward County and the City of Fort Lauderdale. She was a strong-willed lady and there is no question but that she was mentally competent although physically infirm in her later years. The District Court opinion so states. She wished to convey her home and personal property to Reed A. Bryan, III, a son of her

nephew. She was extremely close to Reed A. Bryan, III, and the trial court specifically held she was not the victim of undue influence or duress. The District Court affirmed this particular finding. Camille Bryan signed a deed conveying her real estate and personal property but unfortunately she died while approval of this conveyance was pending before the Probate Division where the guardianship matter was filed. Thereafter the guardianship was dismissed and a quiet title action was filed in the Civil Division and all interested parties and heirs litigated the validity of the deed. The trial court held the deed to be effective but the District Court reversed concluding that the deed was void because court approval had not occurred prior to her death. The District Court chose not to recognize the approval of the deed which occurred subsequent to her death in the quiet title action. The holding was that only the Guardianship Judge could approve the deed and that "Camille Bryan did not have the capacity to make the conveyance in question without court approval."

This case is in direct conflict with Fleming v. Fleming, 352 So.2d 895 (Fla. 1st DCA 1977). The Fleming case was cited in the briefs before the District Court of Appeal and holds that a deed by a physically but not mentally incompetent person is merely voidable and that such

a deed can be effective to convey property. In Fleming the deed was approved after the death of the ward. At page 898 the First District Court of Appeal stated as follows:

> An adjudication of either physical or mental incompetency as defined by Section 744.31, Florida Statutes (1973) carried a presumption that the incompetent is not capable of managing his property. But the presumption is not conclusive; it may be overcome by proof that the person is in fact capable at the time of any transaction. * * * Here, the trial court found the evidence showed Mrs. DeVaughn was competent at all material times to manage her property despite the adjudication of physical incompetency. We cannot disturb this finding unless the evidence shows it is clearly erroneous. Waterman v. Higgins, 28 Fla. 660, 10 So. 97 (1891).

The Bryan decision and the Fleming decision are in direct conflict. Fleming holds that a physically incapacitated mentally competent person has capacity to convey property and that such a conveyance can be approved after the death of that person. The Bryan opinion by the Fourth District Court of Appeal holds expressly and directly to the contrary.

This Court should exercise its discretion and entertain the case on the merits. The elderly are one of the larger segments of the Florida population. Voluntary guardianships should be one solution to the problems of aging with dignity and the stigma of involuntary mental incompetency. The

voluntary ward should not be placed in a worse position than the mentally incompetent ward. Gifts by a voluntary ward are at most voidable and not void. Legal "capacity" to act should not be taken away.

CONCLUSION

Based upon the conflict between the decisions of the Fourth District and the First District this Court has jurisdiction and should accept the matter for review on the merits. The case is of importance because it relates to the rights of the elderly.

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By
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing has been furnished, by mail, this 20th day of June, 1985, to:

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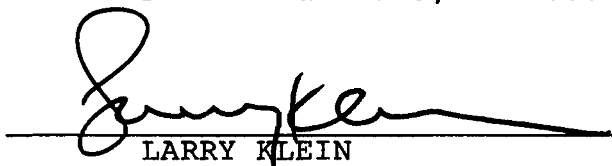

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