O/A 3-6-86

IN THE SUPREME COURT OF FLORIDA

REED A. BRYAN, III, et al.,

Petitioners,

vs.

CENTURY NATIONAL BANK OF BROWARD, et al.,

Respondents.
_____/

CASE NO. 67,186

REED A. BRYAN, III, et al.,

Petitioners,

vs.

JAMES H. BRYAN, SR., et al.,

Respondents.
_____/

RESPONDENT CENTURY NATIONAL BANK OF BROWARD'S BRIEF ON THE MERITS

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PREFACE

These proceedings involve review of Century National Bank of Broward v. Bryan, 468 So.2d 243 (Fla. 4th DCA 1985).

This Court has, by Order of October 28, 1985, accepted jurisdiction in this cause based upon asserted conflict with a single case, that being Fleming v. Fleming, 352 So.2d 895 (Fla. 1st DCA 1977). It is respectfully urged that the more extensive treatment of the merits in this case demonstrates that the issues in this case were never

raised, considered or decided in Fleming, supra. It is, therefore, urged that no direct conflict on the same point of law is presented, and jurisdiction for review, having been improvidently granted, should be withdrawn.

Respondent generally agrees with the Preface set forth in Petitioner's Brief on the Merits, except for the statement that "the district court reversed and held the deed void." The district court held the deed ineffective (RA 20).

Respondent submits herewith its separate appendix. Respondent will use the same symbols in this brief designated by petitioner in his, except that references to respondent's appendix will be referred to as "RA." All emphasis is supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondent generally accepts the Statement of the Case and Facts contained in Petitioner's Brief on the Merits, except for the following omissions and corrections, to which the Court's attention is invited.

At the time the deed was executed, August 22, 1980, petitioner had the ward execute a Petition for Order Confirming Sale (RA 4-6; R 394-397). Petitioner read the contents of the deed and the petition to the ward (RA 14). The petition contains the following language:

> The Petitioner and the Ward further desire to lessen the estate tax consequences to the Ward's family and Estate by transferring the subject property as part of an estate planning procedure, as contemplated in [Section] 744.441, Florida Statutes.

Petitioner also explained this tax advantage to the ward (T 74-75).

At all times material hereto, petitioner and his law partner, William Meeks, were representing the guardian, respondent Bank (RA 17). Even though Mr. Meeks and petitioner were representing the guardian, the guardian was not present at the execution of the Petition for an Order Confirming Sale or at the execution of the deed, nor was the guardian informed that such a petition or deed was to be executed. At the time the Petition for Order Confirming Sale was received

by the guardian, the guardian still did not know that the deed had been executed and was under the impression that a court order would be obtained prior to obtaining the deed (T 324-325).

The district court of appeal held that the guardianship court was in a position to determine the real intent of the ward and whether the proposed estate planning would likely be beneficial to the estate (RA 18). The district court further held that the subject transfer as structured was of questionable validity as an estate planning tool (RA 20).

The record below establishes that the subject transfer did not benefit the estate. The Internal Revenue Service did include the ward's home in the probatable gross estate at a value of $382,000 (Defendant's Exhibit 2 received in evidence at T 282).

Finally, except for his post-appellate motions in the district court below (A 14-24), petitioner for the first time raises in his Brief on the Merits his contention that the quiet title action in the circuit court should be considered either a continuation of the initial approval proceedings which he instigated in the guardianship court, or that the subject quiet title action was, in fact, one for specific approval of the subject deed.

Petitioner never opposed Respondent's Petition to Terminate the Guardianship and for Discharge. Petitioner made no motion prior to the termination of the guardianship to continue same for purposes of concluding the approval proceeding. Petitioner never took any appeal from the Order Terminating the Guardianship and Discharging Respondent as Guardian. Only recently, and after this Court accepted jurisdiction of this cause, has petitioner sought approval in the estate proceedings of the subject deed, which proceedings are presently stayed.

SUMMARY OF ARGUMENT

The ward, in 1977, submitted herself to the supervision of the guardianship court under Section 744.341, Florida Statutes (1979) (RA 1-2). As that statute requires, the ward's petition contained a certificate of a licensed physician that certified the competency of the ward to understand the nature of the guardianship and her delegation of authority.

Administration of the guardianship proceeded with all of the ward's assets in the hands of the guardian (RA 21). With the exception of certain minor instances during the guardianship where the ward was permitted to deal on a very limited basis with her personal property (checking account, charge cards), which had prior approval from the guardianship court, the ward continued to acknowledge the guardianship status of her assets.

A number of years later, without specific knowledge by the guardian or other family members, the ward executed, at the urgings of petitioner, a deed to her home (RA 3) and a petition for approval thereof to be filed in the guardianship encompassing personal property as well (RA 4-6), based upon the misrepresentation made by petitioner that execution of the deed in the transaction structured by petitioner would lessen her estate tax consequences. During the pendency of approval proceedings before the

guardianship court, the ward died. The guardianship was subsequently terminated (RA 7-8).

Petitioner never objected to termination of the guardianship, sought its continuance or appealed its termination. Because the deed was never approved, as is required by Sections 744.441(12) and (17), Florida Statutes, respondent considered the home and personal property assets of the ward/decedent's estate and demanded cancellation of the deed, which, in March, 1981, petitioner had recorded.

In response, petitioner sought quiet title in the civil division of the circuit court and respondent Bank counterclaimed on the theory that the deed was ineffective for lack of approval in the guardianship court. The ward's heirs, defendants below and respondents herein, asserted petitioner's undue influence in procuring the deed and lack of competency at the time of its execution.

After trial, the circuit court determined the deed valid (RA 9-12; RA 13-15). Respondents appealed and, although finding no error on the issue of undue influence brought by the heirs, the district court reversed holding that jurisdiction to approve the ineffective deed ended when the guardianship was terminated. The district court recognized and held that the guardianship court was best suited to determine "the real intent of the ward and whether

the proposed estate planning would likely be beneficial to the estate," and that the theories and considerations attendant to approval of the deed by the guardianship court were different from issues presented in a quiet title action (RA 16-20).

The district court was correct in holding that the circuit court, in subsequent proceedings, had no jurisdiction to approve the deed under the Florida statutory guardianship law. To allow such after-the-fact approval would render meaningless the specific approval requirements and provisions of the guardianship law. Petitioner, having failed to attempt to preserve the jurisdiction of the guardianship court, cannot now obtain approval by his subsequent action to quiet title where the considerations attendant to approval are materially different.

The decision of the district court is entirely correct under Florida law. Any decision to the contrary will effectively destroy the protections intended to be afforded to the aged and infirm by voluntary guardianship. There are ample means under existing guardianship law whereby an inter vivos transfer may be approved, or the voluntary guardianship terminated. The legislative scheme of voluntary guardianship is complete and neither needs nor authorizes judicial circumvention as urged by petitioner.

In order to effectuate clear Florida law and provide to the aged and infirm the protections intended for them the decision of the district court must be affirmed.

ISSUES ON REVIEW

ISSUE I

WHETHER A DEED EXECUTED BY A COMPETENT WARD IN A VOLUNTARY GUARDIANSHIP IS EFFECTIVE WITHOUT COURT APPROVAL.

ISSUE II

WHETHER, IF COURT APPROVAL IS REQUIRED, THE DISTRICT COURT ERRED IN HOLDING THAT ONLY THE JUDGE IN THE GUARDIANSHIP PROCEEDING COULD APPROVE THE DEED.

ARGUMENT

ISSUE I

WHETHER A DEED EXECUTED BY A COMPETENT WARD IN A VOLUNTARY GUARDIANSHIP IS EFFECTIVE WITHOUT COURT APPROVAL.

The issue treated in this point is not complicated. As the District Court of Appeal, Fourth District, properly held, the deed of a ward made during voluntary guardianship is ineffective without court approval of the conveyance.

In the instant case the ward, Mrs. Bryan, clearly executed the subject deed to petitioner after the voluntary guardianship commenced and while she was a ward (RA 3). During proceedings in the guardianship seeking approval of the deed, Mrs. Bryan passed away. The deed, or attempted conveyance, was never approved by the guardianship court, and the guardianship was terminated (RA 7-8).

Petitioner did not seek to have the guardianship proceedings continued for purposes of approval of the deed, as permitted by Section 744.521, Florida Statutes, and Rule 5.680(a), Florida Rules of Probate and Guardianship, and did not seek appellate review of the termination of guardianship. Instead, he commenced these separate, new proceedings seeking to quiet title to the property purportedly conveyed to him by the ward's unapproved deed.

Petitioner's first contention is that the district court erred in holding the deed to be ineffective and invalid because, petitioner urges, a competent ward of a voluntary guardianship possesses an unfettered power and capacity to effectively deed away her property without need of guardianship court approval.

It is clear that petitioner's contention, if approved, would effectively destroy the device of voluntary guardianship by removing the critical protection of requisite court approval before significant assets are dissipated. It is equally clear that petitioner's contention is contrary to both law and legislative intent regarding voluntary guardianship of those who, though mentally competent, are rendered incapable by age or physical infirmity of the care and management of their estates. See §744.341, Fla. Stat. (RA 21).

Petitioner's statutory contention is based on a strained and wholly inapplicable transposition of the terms of Section 744.331, Florida Statutes, dealing with involuntary guardianship of persons found to be mentally or physically incompetent. Specifically, petitioner argues that under Subsection (8) of Section 744.331, Florida Statutes, a presumption of incapacity to manage or convey property arises only upon entry of a judgment of mental or physical incompetence, and that since no adjudication of incompetence

is entered in a voluntary guardianship under Section 744.341, Florida Statutes, no incapacity of the ward to independently convey property without court approval arises in voluntary guardianship.

Petitioner's argument overlooks that in proceedings for involuntary guardianship, unless there is an adjudication of incompetency, there is no guardianship! Absent the requisite adjudication, the proceedings are dismissed under Section 744.331(7), Florida Statutes, and the person retains all rights.

Petitioner's attempt to analogize an adjudicated competent person in involuntary proceedings to a ward in voluntary guardianship proceedings is clearly without merit. The attempt overlooks the very nature of voluntary guardianship under Section 744.341, Florida Statutes.

Section 744.341, Florida Statutes, authorizes guardianship of the estate of a person without adjudication of incompetency, but only where the person:

> is incapable of the care, custody, and management of his estate by reason of age or physical infirmity and who has voluntarily petitioned for the appointment.

In order for the guardianship to proceed, Section 744.341, Florida Statutes, requires that the petition be accompanied by a licensed physician's certificate that:

> the petitioner is competent to understand the nature of the guardianship and his delegation of authority. (Emphasis supplied.)

Thus, voluntary guardianship is predicated on the incapability of the petitioning ward to manage his or her estate and a voluntary, understood delegation of authority to a guardian under supervision of the guardianship court.

Section 744.341, Florida Statutes (1983), makes absolutely clear that the voluntary guardianship, once approved, is a full and complete one, by providing that:

> (2) Any guardian appointed under this section shall have the same duties and responsibilities as are provided by law as to guardians of property generally.

Thus, the guardian of the ward in voluntary guardianship proceedings has the same duties and responsibilities as would a guardian of the property of a ward who had been adjudicated incompetent under Section 744.331. The guardianship predicate (incapability by age or physical infirmity and voluntary court-approved submission) is different, but the guardianship, once commenced, is the same.

It is equally clear that the full protections of the law come into operation upon commencement of such a guardianship. The first and foremost of those protections is set forth in Section 744.377, which commands in pertinent part:

744.377 **Duties of guardian of the property.** ---

(1) It is the duty of the guardian of the property of the ward:

(a) To protect and preserve the property . . .

* * *

(3) The guardian shall take possession of all the ward's property . . . and of the proceedings arising from the sale, lease or mortgage of the property or of any part. All of the property . . . shall be assets in the hands of the guardian . . . (Emphasis supplied.)

The District Court of Appeal, Fourth District, accurately and correctly recognized the law of Florida, as summarized above, by holding in pertinent part that:

> As a result of our research on the subject, we believe the statutory scheme adopted in Florida renders a voluntary ward legally unable to convey his property, whether by gift or otherwise, without approval of the court. Section 744.341, provides that the voluntary guardian shall have the same duties and responsibilities as other guardians of property generally. Thus, the provisions of section 744.377 apply to a voluntary guardian, who, just as an involuntary guardian, is mandated to take possession of all the ward's property, which shall be assets in the guardian's hands for the payment of the ward's debts, taxes and expenses, as approved by the court.

(A 9)

Once such guardianship is commenced, it is clear that the ward must be incapable of conveying the property independently and without court approval. Absent such legal incapability, the protections of guardianship would be virtually

eliminated and the legal declaration that such properties are "assets in the hands of the guardian" would be rendered completely ineffective and meaningless.

Petitioner has cited no applicable authority calling for reversal of the district court's decision that during her guardianship the ward was incapable of deeding away her property without court approval. Petitioner has cited Guardianship of Williams, 313 So.2d 411 (Fla. 1st DCA 1975), as authority that title remains in the ward, but this case does not turn on the location of legal title; it turns, rather, on the statutory system of guardianship protection whereby the ward is rendered legally incapable of transferring that title without approval of the guardianship court.

Petitioner has also asserted a distinction between "void" or "voidable" instruments, citing Hassey v. Williams, 174 So. 9 (Fla. 1937), and Herminghaus v. Crofton, 187 So.2d 347 (Fla. 4th DCA 1966), for the proposition that deeds by persons adjudicated mentally incompetent are merely "voidable."

Neither the above-cited cases, nor the "void" or "voidable" terminology, has any application in the instant case where the statutory system of guardianship places the ward's property in the hands of the guardian and then provides a specific procedure for required court approval of intended

conveyances of the ward's property prior to sale or conveyance. See §§744.441, 744.447, Fla. Stat.

Petitioner has placed heavy reliance on Fleming v. Fleming, 352 So.2d 895 (Fla. 1st DCA 1977), which was also the sole case cited by petitioner as giving rise to this Court's jurisdiction for review. On close reading, however, it is clear that all of the deeds in question were executed by the grantor, Mrs. Fleming, before a guardian was appointed. Thus, at the time she executed the deeds, her property was not "assets in the hands of the guardian." The case clearly provides neither support for petitioner nor basis for exercise of conflict jurisdiction. Since Mrs. Fleming was mentally competent at all times, and the deeds were executed prior to appointment of any guardian, the issues presented in this case were neither considered nor decided in Fleming v. Fleming, supra.

Petitioner has cited various cases where a deed is attacked on the basis of avoidance upon a showing of fraud, duress or undue influence. Hassey v. Williams, supra; Herminghaus v. Crofton, supra; Baroudi v. Hales, 98 So.2d 515 (Fla. 3d DCA 1957); Gruber v. Cobey, 12 So.2d 461 (Fla. 1943). Petitioner's reliance is misplaced for several reasons.

The first is that the cited cases clearly do not stand for the proposition that an incompetent's deed is

effective without court approval. At most, they stand for the proposition that upon proper proofs, such deeds may be approved. Equally important is the fact that these authorities are inapplicable where, as here, this respondent's challenge and the district court's decision of validity are not based upon any allegation or finding of fraud, duress or undue influence, but upon the legal ineffectiveness of an aged and infirm ward's unapproved deed to property in the hands of the court-appointed guardian.

The decision of the district court was based upon its holding that, absent approval of the guardianship court, Mrs. Bryan's attempted deed was ineffective to convey title. Stated alternatively, as a voluntary ward, Mrs. Bryan was legally incapable of deeding her property away without approval of the guardianship court. The district court clearly distinguished this recognition of legal incapability, or ineffectiveness, from issues, tests and authorities regarding mental "capacity" and undue influence (RA 19).

Thus, respondent bank submits and the district court properly held, for lack of the requisite approval by the guardianship court, the deed of the ward was ineffective to convey the property. This respondent will not further treat the issue of challenge based upon fraud, duress or undue influence, as that is a point asserted by respondent

heirs, who are believed to be submitting their separate brief.

As additional support for his contentions, petitioner has cited the 1984 amendment to Section 744.341, Florida Statutes, which added the following:

> (2) If requested in the petition for appointment brought under this section, the court may direct the guardian to take possession of less than all of the ward's property and of the rents, income, issues and profits from it. . . .

This amendment provides no support whatsoever for petitioner. It clearly was not applicable to this pre-1984 guardianship and it is clear that the home in question was an asset of the ward, which was in the hands of the guardian at the time of purported conveyance.

More importantly, the statutory amendment represents clear legislative recognition that under existing law a voluntary guardianship extended to <u>all</u> assets of the ward. Thus, if the 1984 amendment has any pertinence, its import would be that under prior, applicable law the ward's deed to <u>any</u> property would be ineffective in the absence of court approval.

At page 26 of his brief petitioner has noted that in the guardianship proceedings petitions were filed and orders entered allowing the ward, Mrs. Bryan, to exercise certain control of her affairs by maintaining a checking

account of $400 per month and incurring expenses of up to $600 per month.

These accounts and expenses were, however, only allowed by virtue of a petition for approval by the guardianship court and entry of an authorizing order. Far from supporting petitioner's contention, these earlier guardianship proceedings reflect the recognized legal necessity of guardianship court approval.

Respondent respectfully submits that there is applicable and compelling authority for upholding the decision of the District Court of Appeal, Fourth District. In the recent case of Webster & Moorefield, P.A. v. City National Bank, 453 So.2d 441 (Fla. 3d DCA 1984), it was contended that a voluntary ward was competent to make a gift of cash to her guardian without approval of the court. In that case the contention was rejected with an express holding at page 443 that the ward was "without the capacity to convey her property" absent court approval.

Petitioner has made no effort to distinguish Webster & Moorefield, P.A., v. City National Bank, supra. He simply asserts that decision is "incorrect and unnecessary." As in Webster, supra, the district court in the instant case recognized and held that a retained power in a ward to convey

property without court approval would defy the entire statutory guardianship scheme. This Court should hold likewise.

It is clear from the foregoing that a deed from a ward in a voluntary guardianship must be held ineffective without court approval. Only by the requirement of court approval can the ward's estate be properly managed and the ward be protected. Petitioner's contention that a requirement of court approval disadvantages the aged and infirm is clearly without merit. In fact, the removal of the requirement of court approval would effectively strip away the power of the guardian and the guardianship court to provide the protection intended to be afforded by guardianship.

The ultimate effect of removal of the requirement of court approval would be to expose the elderly and infirm who have sought protection and assistance through guardianship to unsupervised victimization by persons who would prey on their suggestibility, susceptibility and vulnerability.

ISSUE II

WHETHER, IF COURT APPROVAL IS REQUIRED, THE DISTRICT COURT ERRED IN HOLDING THAT ONLY THE JUDGE IN THE GUARDIANSHIP PROCEEDING COULD APPROVE THE DEED.

Initially, it should be pointed out to this Court that the first time petitioner suggested anywhere during these entire proceedings that requisite court approval was accomplished by virtue of the entry of the final judgment in this quiet title suit was in his post-trial motions before the Fourth District Court of Appeal. These motions, of course, were denied for obvious reasons. Respondent submits that petitioner's eleventh-hour assertion simply comes too late.

Aside from the fact that petitioner has waived his right to assert this position at this time because of his untimeliness, there remain other reasons why the circuit court proceedings could not serve to fulfill the approval requirement necessary under law to the validity and effectiveness of the subject deed.

As recognized by the Fourth District in its opinion below, the guardianship judge was empowered by law and was best suited to determine the real intent of the ward and whether the proposed estate planning would likely be beneficial to the estate.

Section 744.441(17), Florida Statutes (1979), requires approval by the guardianship court of any gifts of the ward's property to members of the ward's family in estate and income tax planning procedures (RA 22). A major statutory consideration, therefore, in determining whether to approve a gift is whether the proposed gift would, in fact, benefit the estate of the ward, as well as further the intent of the ward in initially making the gift.

As to this important issue, the facts presented at trial before the circuit judge in the quiet title proceeding, although considered and litigated between the parties, were disregarded in the final judgment.

In paragraph 9 of the final judgment (RA 14; R 607) the trial court alluded to the question of estate tax saving and letters which petitioner wrote to the respondent heirs to purportedly obtain their consent. Although the court found that the affirmative statement made by petitioner that there would be a "substantial estate saving for all of us" had been "misguided" when made, the court dismissed the misrepresentation and characterized it as a statement of future condition.

The court went on to conclude that the statement, although misguided, "does not add to or subtract from evidence which rebuts the presumption of undue influence at the time

of the execution of the deed" (RA 14). It is clear, therefore, that the circuit judge did not give due and proper consideration to whether the deed transaction, structured as part sale and part gift, met the statutory test for approval of a voluntary ward's deed as mandated in Section 744.441, Florida Statutes (RA 22).

In fact, the evidence presented before the trial court demonstrated that, although it may not have mattered to petitioner because of the benefits resulting to him from the transaction, the deed and guardianship criteria certainly did matter to the other heirs of the estate since the property which was the subject of the deed was included in the ward's gross estate, but unavailable to defray the additional estate tax impact which resulted. To say that the transaction would result in a benefit to the estate as an estate planning procedure is patently ridiculous. The trial court obviously recognized this, but disregarded the guardianship standards for approval or rejection of such deeds made during guardianship.

It is submitted, therefore, that the Fourth District Court in its opinion was entirely correct in concluding that the guardianship judge would have been best able to determine whether the proposed estate planning procedure would be beneficial to the estate. The record below demonstrates

that the trial judge in this quiet title action apparently regarded this issue as immaterial, though it would have been the controlling issue in guardianship proceedings for approval of the deed.

There is no dispute that the petitioner neither objected to termination of the guardianship nor appealed the Order Terminating Guardianship. Petitioner did not seek to offer proof to the guardianship court for the need of the continuance of the guardianship as is permitted in Rule 5.680(a), Florida Rules of Probate and Guardianship and Section 744.521, Florida Statutes (1979). Had petitioner sought to continue approval proceedings before the guardianship court, the considerations attendant to the approval decision would have certainly followed those provided by Section 744.441(17), Florida Statutes (1979), as the district court below has noted.

Instead, petitioner sought to quiet title to the subject property, including the personal property, in this separate proceeding. At petitioner's urging, but erroneously, the trial court undertook review and approval of the deed upon the factual issues of undue influence, fraud and duress, which in equity constitute the classical grounds to avoid an otherwise valid deed. The decision of the district court properly reversed this unauthorized review and approval.

Acceptance of petitioner's arguments that the circuit court in the civil division in the quiet title suit had either continuing or concurrent jurisdiction to approve the subject deed would require that overruling prior decisions, which have long been the law of the state. In re: Estate of Pearson, 192 So.2d 89 (Fla. 2d DCA 1966); Amerada Hess Corp. v. Morgan, 426 So.2d 1122 (Fla. 1st DCA 1983).

These cases stand for the proposition that once a ward dies and the guardianship proceeding is terminated, no further proceedings relating to approval of actions that should have been accomplished in the guardianship proceeding may be had.

Most instructive is Amerada Hess Corp. v. Morgan, 426 So.2d 1122 (Fla. 1st DCA 1983), where in a quiet title suit an attempt was made after death of the ward and termination of the guardianship to confirm a deed made by the guardian but never approved by the guardianship court. The district court of appeal properly held that jurisdiction to belatedly approve the deed had terminated with the guardianship proceedings and that the lower court was without jurisdiction to approve the deed in the subsequent quiet title action.

With the above points in mind, respondent submits that the arguments and authority cited by petitioner on pages 28-31 of his brief simply do not support his proposition

that approval of the deed in this case could have as properly been accomplished by Judge Ferris (civil division) as by Judge Tyson (probate division).

In re: Guardianship of Bentley, 342 So.2d 1045 (Fla. 4th DCA 1977), cited by petitioner, is simply inapplicable. That case involved a challenge to the jurisdiction of the probate division to resolve the particular issues involved. The court, although holding that the circuit court per se had jurisdiction to accomplish resolution of both pending petitions (one for custody and one for appointment of a guardian) simply acknowledged the various internal methods of consolidation or transfer to have resolved the problem.

In the instant case petitioner sought neither to consolidate the pending approval proceedings with the probate of the ward's estate after her death nor to transfer the proceedings to the probate court having jurisdiction over the ward's estate.

Instead, petitioner chose to file a separate lawsuit, a quiet title action involving clearly different principles and issues of law from the considerations required by Section 744.441(17), i.e., the real intent of the ward, and particularly whether the estate planning procedure would be beneficial to the estate. It is suggested that petitioner was well

aware that if the part gift/part sale deed transaction was tried under the governing principle of whether or not it was, in fact, beneficial to the estate, he clearly could not succeed.

Under these circumstances, petitioner's contention that his decision to institute quiet title proceedings was either a continuance of the guardianship court's original jurisdiction, or that it did not matter where the deed was approved, is absurd, to say the least. Petitioner, on page 31 of his brief, rhetorically asks: "What conceivable reason can there be why Judge Ferris could not approve it in the civil division?" Judge Ferris' final judgment contains one answer - Judge Ferris did not feel it material that the deed transaction did not benefit the estate, despite the commands of Section 744.441, Florida Statutes.

Amerada Hess Corp. v. Morgan, 426 So.2d 1122 (Fla. 1st DCA 1983), provides yet another answer. Availability of a court, "ease" of review, and co-existence in the same circuit are no substitute for jurisdiction which has been vested by the legislature in the guardianship proceedings and guardianship court. Any decision otherwise will lead to endless second guessing of finalized guardianships as long as the second suit is commenced in the same circuit as the prior guardianship.

Respondent's final comments regarding the alternative procedures open to the ward, i.e., termination of the guardianship and power of attorney, since they are policy arguments, merit comment.

The fact is that the ward in this case was clearly and unequivocally under disability. She was under the supervision of the guardianship court, to which she had voluntarily submitted herself. In submitting to the guardianship and seeking its protection, she had recognized the incapabilities she suffered through age and infirmity.

If, as petitioner contends, the ward retained the absolute right to convey her property without the guardianship court's approval, why then have the guardianship in the first instance? The Court should consider that the ward's home and income from a trust which respondent was administering on behalf of prior family members for her were the primary assets of the guardianship. Under these circumstances, guardianship court approval for the conveyance of that asset, especially when the conveyance affected materially the remainder interests of the ward's other heirs, was clearly highly critical.

To all of these concerns, petitioner's response is that the ward must have been competent enough to act independently and without guardianship court approval, since

it was a voluntary guardianship. The court in Webster & Moorefield, P.A. v. City National Bank, 453 So.2d 441 (Fla. 3d DCA 1984), responded to and rejected such a contention at page 443:

> The statutory requirement that the petitioner for a voluntary guardianship understand the nature of the relationship and the delegation of power over her estate does not mean that the petitioner ward has the capacity to resist improper influence and otherwise act intelligently in caring for her property.

Petitioner's contentions ignore this and proceed as though submission to voluntary guardianship has no implication as to mental acumen or ability. In final analysis, petitioner would have this Court treat such a disabled ward's deed just as there had never been any guardianship; hold it valid without need of court approval or, alternatively, leave it open for post-death, post-guardianship approval without regard to standards and criteria for approval under clear guardianship law.

Petitioner's contentions, if approved, are nothing less than a prescription for victimization of the elderly and their families. The litigation invited after conclusion of supposedly finalized guardianship proceedings is unfathomable. Family members seeking real guardianship protection for their aging relatives will have no choice

but to subject them to the indignities and expense of involuntary proceedings and adjudication of mental incompetence.

The decision of the District Court of Appeal, Fourth District, should clearly be affirmed.

CONCLUSION

The decision of the district court is clearly correct. That decision is that the deed of a ward during a voluntary guardianship is ineffective unless and until approved by the guardianship court. The decision is required under the statutory plan of voluntary guardianship implemented by Chapter 744, Florida Statutes.

The trial court erroneously held that in this subsequent quiet title action it possessed authority and jurisdiction to approve a ward's deed which had not been approved in a prior, finalized guardianship. Having so held, the trial court further disregarded the test of such deeds set forth in Chapter 744, Florida Statutes, and applied review only on principles of undue influence. The district court properly reversed and set aside the trial court's unauthorized action.

The deed in question was legally ineffective when made and, lacking approval in the now-finalized guardianship proceedings, cannot be rendered effective and valid by subsequent, separate proceedings to quiet title. Any holding to the contrary will not only contravene the commands of

Chapter 744, Florida Statutes, but will also leave every finalized guardianship open to potential litigational second guessing and strip from the aged and infirm the protections promised, and intended, by voluntary guardianship.

The decision of the district court is not in conflict with either statutory or decisional law of Florida. It expresses and reflects both the law and sound public policy of Florida. If jurisdiction for review is to be exercised in these proceedings, then that exercise should be in the form of affirmance of the District Court of Appeal, Fourth District of Florida.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of RESPONDENT CENTURY NATIONAL BANK OF BROWARD'S BRIEF ON THE MERITS and separately bound APPENDIX TO RESPONDENT CENTURY NATIONAL BANK OF BROWARD'S BRIEF ON THE MERITS has been furnished by U.S. mail this 27th day of January, 1986, to the following counsel of record:

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