IN THE SUPREME COURT OF FLORIDA

Tallahassee, Florida

CASE NO. 67,186

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 REPLY BRIEF ON THE MERITS

REED A. BRYAN, III,
In proper person,
c/o McCUNE, HIAASEN, CRUM
FERRIS & GARDNER
P. O. Box 14636
Fort Lauderdale, FL 33302
(305) 462-2000

JOHN BERANEK, of
KLEIN & BERANEK, P.A.
Suite 503 - Flagler Center
501 South Flagler Drive
West Palm Beach, FL 33401
(305) 659-5455

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PREFACE

This reply brief is directed to the brief filed by the respondent Century National Bank referred to here as (CNB Br.). A separate brief by the respondent heirs will be dealt with in a separate reply brief. All emphasis is supplied

STATEMENT OF THE FACTS

Throughout the entire brief by Century National Bank accusations are repeatedly made regarding alleged undue influence and lack of competence of the elderly ward. The bank argues the deed was signed at "urgings from petitioner" and that the deed was based on "misrepresentation" by petitioner. These unfounded accusations were thoroughly tried and the bank and the heirs have lost on them repeatedly. All conceivable issues regarding inequitable conduct, undue influence and lack of competence on the part of Camille Bryan were tried and the Circuit Court ruled the ward was competent and there was no undue influence. The District Court of Appeal expressly affirmed this and ruled that "the trial judge was justified in concluding that the presumption of undue influence was overcome by clear and convincing evidence". It apparently bears repeating that this competent, elderly, strong-willed lady chose to give her house and furniture to her grandnephew. He was the

closest relative to her at the time and in addition this lady wanted her house, which she had always owned, to remain in her family. She obviously did not want the house to pass under the residuary clause of her will to numerous residuary legatees. Even the heirs and the bank do not contend that this was the intent of Camille Bryan. The veiled accusations regarding undue influence are not facts and should not be argued to this court. Further the Respondent presents only pieces of the picture and neglects that the Deadman's Statute was asserted against Reed Bryan III preventing full disclosure of all the facts. (R 141, 143-147, 170-175, 182).

ARGUMENT

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?

The opposing brief makes five different legal arguments which may be summarized as follows:

1. Jurisdictional Issues and Walls.

2. The Viewpoint of the Guardian.

3. Deed Not a Good Tax Device.

4. Error in Termination of Guardianship.

5. Civil Division Approval Never Raised.

The above five arguments occur throughout the bank's brief from start to finish. Each is repeated several different times. For ease of organization they will be dealt with in the same order set out above. Each bank position is initially summarized and then answered.

1. Jurisdictional Issues and Walls.

The guardianship judge was "better suited" to determine "the real intent of the ward" and the estate tax consequences of the deed. The issues of the ward's competence and undue influence in the civil division/quiet title action were the wrong issues and were wrongly decided. A reversal of the Fourth District Court of Appeal decision would "lead to endless second guessing of finalized guardianships". (See CNB Br. p. 7, 23, 24, 25, 27, 28).

Century National Bank argues repeatedly that a jurisdictional wall truly exists between the judge in the guardianship proceeding and the judge in the civil division. Absolutely no rationale is given for why such a wall should exist and the bank does not even argue that the walls exist by virtue of constitutional considerations. No constitutional or statutory provision is even cited for the jurisdictional argument. It is argued at page 25, 27 and 28 that the petitioner erroneously urged the judge in the civil

division to consider the wrong issues and that this judge should not have been considering the factual issues of undue influence, fraud and duress. Throughout the bank's brief it is repeatedly argued that the issues in the civil division were somehow different from the issues which should have been presented in the guardianship proceeding. The bank avoids recognizing that the issues in any proceeding are the issues which the parties choose to present to the court for decision. The bank and the heirs were the counterclaimants in the civil division and the bank and the heirs are the ones who raised the issues and presented them to the judge. The heirs raised competence and undue influence. Certainly, Reed Bryan III did not accuse himself of such conduct. The case was thoroughly litigated on all issues.

On page 28 of the bank's brief petitioner's rhetorical question was repeated with an answer as follows:

> 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.

The answer to the rhetorical question is wrong for two reasons. First, Judge Ferris did consider §744.441. Substantial evidence on tax consequences to the estate was presented and the issue was ruled upon. (R 276-277). The

ward was to remain in the house till death and petitioner was to pay $100,000 plus 10% interest. Two experts (William Meeks and Jim Wilson) testified and agreed that an estate tax savings could have been effected. (R 276-277). The theoretical savings in the testimony of Mr. Meeks was $41,000.00. (Plaintiff's Exh. No. 9, transcript of Mr. Meeks of April 1, 1981, pp. 12-23). In addition, even if Judge Ferris was wrong in his ruling on §744.441, this is merely error. If Judge Ferris misapplied the statute, the case should have been reversed and remanded for further proceedings. An erroneous ruling by a judge has nothing whatsoever to do with whether that judge has jurisdiction. Judge Ferris had jurisdiction and if he ruled correctly he should have been affirmed. If he erred and misapplied §744.441 he should have been reversed. The DCA did not rule, as respondent suggests, that Judge Ferris had no jurisdiction <u>because</u> he made an erroneous legal ruling.

The statements in the bank's brief at page 28 that a reversal "will lead to enless second guessing of finalized guardianships" is wrong. Judge Tyson's order terminating the guardianship specifically stated "this order is signed knowing that the petition for order confirming sale of Reed A. Bryan, III was never ruled upon, not having been fully heard and the issue raised by said petition is moot as far

as this guardianship is concerned". For the bank to say that this case constitutes second guessing of a "finalized guardianship" disregards Judge Tyson's order. This was no "finalized guardianship".

2. Viewpoint of the Guardian.

The approval of a ward's deed is controlled by the law governing a guardian's deed. The duties and powers of the guardian are paramount.

The brief by Century National Bank is written entirely from the point of view of a guardian and not once from the point of view of a ward. The entire brief argues over and over that § 744.441(17) is the only law applicable and that this statute was controlling. The bank fails to recognize that this statute is entitled "Powers of Guardian Upon Court Approval". The statute provides in subsection (17) that the guardian can make gifts of the ward's property to members of the ward's family in estate and income tax planning procedures. The entire opposing brief is written as though this were a guardian's deed rather than a ward's deed. Apparently the bank assumes there is no such thing as a ward's deed. A voluntary ward or even an incompetent can make a valid will. A voluntary ward can sign the documents necessary to terminate his or her own voluntary guardianship. The bank steadfastly refuses to even discuss the effect of the ward's deed and simply pretends that this was

a guardian's deed. Similarly, all of the bank's arguments go to protection of the guardian in the administration of the ward's property. It is noteworthy that this bank was previously the guardian of this ward and at that point should have had the ward's personal interests and her intent uppermost in mind. Indeed, when the bank changed hats and became the personal representative and sought to quiet title in the names of the residuary legatees the bank certainly stopped any pretense of seeking to further the interests or intent of the ward.

3. Deed Not a Good Tax Device

The transfer, part gift and part sale, was not beneficial to the estate as a tax device and this was the "controlling issue" for approval of the deed under §744.441(17). The deed could only be approved in guardianship because the judge in the civil division could not or did not correctly apply §744.441(17). (See CNB Br. p. 3, 4, 23, 25, 27).

In the misconception that this is a guardian's deed instead of a ward's deed the bank argues that the only basis for approval of the transaction was under §744.441(17) which allows a guardian to make gifts to family members of the ward for tax planning purposes. Several paragraphs at pages 23 through 25 of the petitioner's previous brief dealt with the necessary distinctions between deeds by a ward and deeds of the ward's property by a guardian. Quite obviously the "true intent of the ward" is crucial when approving a ward's

deed but it is certainly not the case when approving a deed by a guardian. The bank continually says that the only issues of importance to the guardianship court were (1) the true intent of the ward and (2) the tax consequences. Despite this argument this is not what the statute says. Section 744.441(17) relates solely to a deed by a guardian and makes no mention of the true intent of the ward. Here the ward made a partial gift and a partial sale. Quite obviously the disappointed heirs believe this is not beneficial to "the estate". Both the heirs and the bank are talking about a different estate. The bank and the heirs are concerned about the estate left after death which they hoped to inherit. The guardianship law speaks in terms of estate as the property possessed by the ward during her life. If this ward had chosen to give away all of her property then her disgruntled heirs might unhappily argue that it was of no benefit to their estate but this should be totally irrelevant to the true intent of the ward.

Century National Bank is simply confused. We are dealing here with a conveyance and gift by a mentally competent elderly ward who had the power and capacity to give away her property. Even if this conveyance was not of benefit to the disgruntled heirs it was not a basis for invalidating it. The bank is wrong in contending that the

sole and singular consideration had to be tax advantage to the heirs. This might well be an appropriate and crucial consideration in approving a deed by a guardian but not in approving a deed by a ward. The judge in the civil division was easily as qualified to decide the issues which the parties choose to present. Obviously Judge Ferris is capable of applying §744.441(17) just as well as Judge Tyson. Judge Ferris clearly had jurisdiction and if he did something wrong the remedy was reversal for error and not a determination of no jurisdiction.

4. Error in Termination of Guardianship.

Petitioner never opposed or "objected" to the bank's motion to terminate the guardianship and never appealed the ruling. Rule 5.680(a) and §744.521 would have allowed the guardianship to continue after the ward's death. (See CNB Br. p. 5, 7, 11).

The bank wrongly argues that Reed Bryan III did not object to the bank's motion to terminate guardianship proceedings. The November 9, 1981 order terminating guardianship specifically stated that the issue of approval of the deed had not been ruled upon. The order further overruled an objection by Reed Bryan III and denied his motions to substitute a party and to declare the proceedings adversary in nature. In addition, the bank again argues in a totally inconsistent fashion. The bank moved to terminate the guardianship and it is totally improper for it to now

argue that its own motion was legally wrong and that the guardianship had to be continued for approval of the deed.

With due respect, Reed Bryan III has now litigated this same issue in the county court, the circuit court and the district court of appeal and the time for gameplaying is over. The guardianship was terminated because the ward died and most of the issues became moot. It mattered not whether the ward had sufficient assets to give away her house. The ward was dead and questions of guardianship were simply irrelevant. The bank argues that §744.521 and Rule 5.680(a) allowed the guardianship to continue after the ward's death. The rule and the statute both require termination of guardianship on death and provide: "The court may require proof of the removal of incompetency or of the need of continuance of the guardianship". Continuance of the guardianship relates to incompetency. The bank can point to no authority authorizing the continuance of a guardianship after the ward dies. The bank asked the court to terminate the guardianship over the objection of Reed Bryan III and the present argument of the bank is an absolute mockery. The bank has continually taken inconsistent positions throughout this proceeding. In the guardianship court the bank maintained a position of "neutrality" regarding approval of the deed. As soon as the ward died the bank

changed hats and sued to invalidate the deed. In the guardianship court the bank demanded that the proceedings be terminated when the ward died and now before this court seeks to fault petitioner for not having appealed the ruling which the bank is responsible for.

5. Civil Division Approval Never Raised.

The validity of approval of the deed in the civil division has been waived by petitioner because it was not argued below. The validity of civil division approval is argued for the first time at the "11th hour". (See CNB BR. p.4, 22).

Century National Bank argues that the validity of the approval of the deed in the civil division is somehow being raised only at the "11th hour". This argument is difficult to understand. Reed Bryan III was the appellee before the District Court of Appeal and it was the bank who was attacking the civil division order approving the deed. Petitioner Bryan has always asserted the validity of the deed approval in the civil division. The district court's opinion for the first time announced the totally erroneous view on jurisdictional walls and was the final development which now requires petitioner to assert that approval has already occurred. To argue that petitioner has never asserted the validity of approval of the deed in the civil division is almost absurd. That approval is what this case has been about since the appeal started.

Reversal of the Fourth District's Decision is Necessary.

(Petitioner's Position)

The deed by a mentally competent voluntary ward has legal validity unless challenged and disapproved. Even if approval of such a deed is an absolute necessity then the deed here already stands approved after searching judicial inquiry. As petitioner pointed out in its initial brief on the merits, there were no issues left unlitigated in the civil division. Both the bank and the heirs, as counter-claimants raised every conceivable issue. Now, before this court the only actual legal argument made is that the tax consequences of the deed are the only thing that should have been considered and that such tax consequences could only be considered and correctly decided in the guardianship division. This is wrong and contrary to all of the cases cited in the initial brief on general circuit court jurisdiction. All of the judges in the circuit court have all of the jurisdiction of that court and the divisions are not jurisdictional walls. The Fourth DCA held directly to the contrary to its own decision in In Re Guardianship of Bentley, 342 So.2d 1045 (Fla. 4th DCA 1977). The Fourth District's decision is further in direct conflict with Fleming v. Fleming, 352 So.2d 895 (Fla. 1st DCA 1977). The deed by a mentally competent voluntary ward is not void. In

accordance with Fleming a deed by an incompetent is not void and a voluntary ward in the State of Florida should not be the stepchild of the law. Competent voluntary wards should have more legal capacity than an adjudicated incompetent. There are no jurisdictional walls which prevent approval of the deed in question in the civil division of the circuit court. None of the bank's arguments are valid and indeed almost all of these arguments do not even support the jurisdictional ruling of the District Court. Even if the bank is right, most of its arguments would have resulted in a finding of error rather than lack of jurisdiction. There is no error and jurisdiction certainly existed.

The law simply should not be that the death of the ward terminates the ability of any court to approve the ward's inter-vivos transactions. Similarly, the jurisprudence of this state has progressed beyond the antique and technical arguments advanced by Century National Bank in protection of its own guardianship rights and duties. The District Court erroneously held that Reed Bryan III won the case validly but was, unfortunately, in the wrong court. Mr. Bryan was litigating in Broward County which his great aunt help build into one of our most populous counties. If he had litigated in a much smaller North Florida county where only one judge handled both the probate and civil divisions the result

would have been completely different. The divisions are not jurisdictional walls and the District Court erred in so ruling.

CONCLUSION

The decision of the District Court of Appeal should be reversed and the decision of the Circuit Court, Civil Division, should be reinstated. Even if approval of the deed is necessary, approval has occurred in a court with jurisdiction.

REED A. BRYAN, III
In proper person,
c/o McCUNE, HIAASEN, CRUM
FERRIS & GARDNER
P. O. Box 14636
Ft. Lauderdale, FL 33302
(305) 462-2000

JOHN BERANEK, of
KLEIN & BERANEK, P.A.
Suite 503-Flagler Center
501 South Flagler Drive
West Palm Beach, FL 33401
(305) 659-5455

By John Beranek
JOHN BERANEK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, by mail, this 25th day of February, 1986, to:

H. T. MALONEY
PATTERSON & MALONEY
P. O. Box 030520
Ft. Lauderdale, FL 33303

KENNETH R. MIKOS
FRIEDRICH, BLACKWELL, MIKOS
& RIDLEY, P.A.
2900 East Oakland Park Blvd.
Ft. Lauderdale, FL 33306

THOMAS M. ERVIN, JR.
ERVIN, VARN, JACOBS, ODOM
& KITCHEN
P. O. Drawer 1170
Tallahassee, FL 32302

By John Beranek
JOHN BERANEK