

IN THE SUPREME COURT OF FLORIDA

Tallahassee, Florida

FILED
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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

BARNETT BANK OF PALM)
BEACH COUNTY,)

Petitioner,)

vs.)

THE ESTATE OF LEON HENRY)
READ, JR., Deceased,)

Respondent.)

CASE NO. 67,643

RESPONDENT'S BRIEF ON JURISDICTION

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SUMMARY OF ARGUMENT

The decision of the Fourth District Court of Appeal, the subject of the instant petition for certiorari, is in accord with prior decisions of this Court that Florida Statute §733.702 is a nonclaim statute not subject to estoppel or waiver, and voids late claims by operation of law which the Probate Court lacks jurisdiction to entertain.

The instant decision of the Fourth District Court of Appeal, being in accord with the prior decisions of this Court, no conflict is presented here by other District Courts of Appeal overlooking or failing to follow the prior decisions of this Court.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL IS NOT IN EXPRESS AND DIRECT CONFLICT WITH DECISIONS OF THIS COURT OR WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL BECAUSE IN ACCORD WITH CONTROLLING DECISIONS OF THIS COURT.

The instant decision, **In Re Estate of Leon Henry Read, Jr.**, 472 So2d 1271 (Fla. 4th DCA 1985) [Adv. No. 4, Sept. 5, 1985], sought to be reviewed is in accord with and controlled by this Court's decisions of **Twomey v. Clausohm**, 234 So2d 338 (Fla, 1970); and **Miller v. Nolte**, 453 So2d 397, 401 (Fla, 1985).

The legislative amendment added by Fla. Laws 1961, chapter 61-394 was dealt with in **Twomey v. Clausohm** and

is carried forward and remains in Fla. Stat. §733.702 (1983).

Thus, as held in **Twomey v. Clausohm**, 234 So2d 338, 340 (Fla, 1970), Fla. Stat. §733.702 (1983) is a nonclaim statute rendering an unfiled claim void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise.

As Fla. Stat. §733.702 is a statute of nonclaim, there can be no estoppel or waiver on the part of the personal representative as the statute expressly provides, and the Court has no jurisdiction to entertain a claim, or petition for payment of a claim, which is void by operation of law, **Miller v. Nolte**, 453 So2d 397, 399, 401 (Fla, 1984); **Twomey v. Clausohm, supra**.


That another District Court of Appeal has on differing facts followed cases whose rationale have been disapproved by this Court, as well as the legislature, does not require the granting of a petition for certiorari from a District Court of Appeal whose decision, as it is bound to do, **Hoffman v. Jones**, 280 So2d 431, 434 (Fla, 1973), is in accord with the controlling decisions of this Court, e.g., **The City of Opa-Locka v. Jaworski**, 172 So2d 441 (Fla, 1965).

CONCLUSION

The instant petition for certiorari from a decision of the District Court of Appeal, in accord with prior controlling decisions of this Court, should be denied.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed to Freeman W. Barner, Esq., CROMWELL & REMSEN, 2001, Broadway, Sixth Floor, Riviera Beach, Florida 33404; and to John R. Beranek, Esq., KLEIN & BERANEK, P.A., Suite 503, Flagler Center, 501 South Flagler Drive, West Palm Beach, Florida 33401, this 10th day of October, 1985.

