

0A 8-31-88

IN THE SUPREME COURT OF FLORIDA

Case No. 71,717

JAMES MICHAEL WATSON, as
Personal Representative
of the Estate of Michael
Corso, Deceased,

Petitioner,

vs.

FIRST FLORIDA LEASING, INC.,

Respondent.

District Court of Appeal
Third District -
Number 86-1751
86-2492

FILED

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PETITIONER'S BRIEF ON THE MERITS

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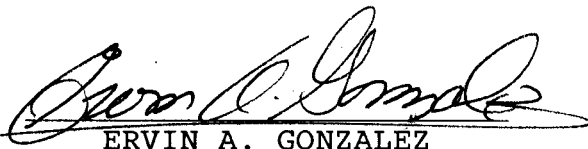

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INTRODUCTION

Petitioner, JAMES MICHAEL WATSON, as Personal Representative of the Estate of Michael Corso, Deceased, will be referred to as "WATSON". Respondent, FIRST FLORIDA LEASING, INC., will be referred to as "FIRST FLORIDA" or "Claimant".

"R" refers to the Record on Appeal. "A" refers to the Appendix attached to this Brief. Emphasis is supplied by counsel unless otherwise indicated.

ISSUES PRESENTED

- I. WHETHER CLAIMANT'S FAILURE TO FILE THE NOTICE OF ACTION REQUIRED BY SECTION 733.705(3), FLORIDA STATUTES BARRED CLAIMANT'S INDEPENDENT ACTION TO ENFORCE ITS CLAIM
- A. Notice Requirements Of Section 733.705(3), Florida Statutes, Is Constitutional And The Third District Court Of Appeal Improperly Reversed The Trial Court's Entry Of Final Summary Judgment Against Claimant For Failing To Timely File The Notice Of Action
1. Even If The Notice Requirement Of Section 733.705(3) Is Procedural, It Remains Constitutional Since The Supreme Court Adopted It As A Judicial Rule And It Has Never Been Invalidated
- B. Claimant Failed To Timely And Properly Raise Or Preserve The Issue Of The Constitutionality Of Florida Statute Section 733.705(3) (1985); Therefore, The Entry Of Final Summary Judgment Against Claimant Was Proper And Should Be Reinstated

STATEMENT OF THE CASE AND FACTS

On February 22, 1985, Claimant filed a caveat with respect to Michael Corso, deceased. On January 8, 1986, a petition for administration was filed in Dade County Circuit Court, Probate Division, Case Number 86-126. On January 29, 1986, Claimant filed its statement of claim. (R.1). On February 27, 1986, Petitioner filed an objection to the claim. (R.2).

On March 27, 1986, Claimant filed its claim against the Corso Estate in the Dade County Circuit Court, General Jurisdiction Division, Case Number 86-12648. (R.1). Service was effected on April 9, 1986 on the Estate. (R.22). Claimant failed to file a Notice of Independent Action with the probate division of the circuit court within the time prescribed by Florida Statute §733.705(3) (1985). (R.4). On May 6th, 1986, Claimant served a Motion for Extension of Time to file the Notice of Independent Action in the probate division, after the requisite time had expired for filing the notice. (R.4). On May 7, 1986, Petitioner served its Motion to Strike the claim of Claimant for failing to timely file the required notice. (R.5).

On June 12, 1986, the probate division trial court entered an Order denying Claimant's Motion for Extension of Time and granting Petitioner's Motion to Strike Claimant's claim. (R.6). Claimant then filed a Motion for Rehearing (R.7), which was denied on June 25, 1986 (R.10). In its Motion for Rehearing, Claimant first raised its position that Florida Statute §733.705(3), was unconstitutional. (R.7). The probate trial court denied Claimant's Motion for Rehearing. From the foregoing, Claimant filed a Notice of Appeal on July 10, 1986. (R.8).

Petitioner filed a Motion for Summary Judgment against Claimant in the independent action pending in the circuit court. (R.23). The basis of Petitioner's Motion for Summary Judgment was Claimant's failure to timely file a Notice in the probate jurisdiction as required by Florida Statute §733.705(3). On July 13, 1986, Final Summary Judgment was entered in favor of Petitioner and against Claimant by the general jurisdiction trial court. (R.34). Claimant filed a Motion for Rehearing (R.30), which was denied on September 11, 1986. (R.35). Claimant filed a Notice of Appeal from the Summary Final Judgment, which was filed on October 8, 1986. (R.31).

The Third District Court of Appeal consolidated the appeals in the two cases and found Florida Statute

§733.705(3) unconstitutional and reversed the Summary Final Judgment entered by the general jurisdiction trial court. (A.1). The Third District did not find it necessary to reverse the Order denying the motion to extend the time for the filing of a claim in the probate division. (A.2).

Petitioner petitioned this Honorable Court to review the decision of the Third District Court of Appeal since it found Florida Statute §733.705(3) unconstitutional, and since that decision conflicted with the decision of the First District in the case of Golden v. Atlantic National Bank of Jacksonville, 481 So.2d 16 (Fla. 1st DCA 1985), rev. denied, 492 So.2d 1332 (Fla. 1986). On May 18, 1988, this Court issued Its Order accepting jurisdiction. (A.20).

SUMMARY OF ARGUMENT

Florida Statute §733.705(3)(1985) limits a claimant to thirty days from service of an objection within which to: (1) bring an independent enforcement action, and (2) file written notice of the action in the estate proceedings. The statute governs the prosecution of claims against the estates of deceased persons and constitutes a valid special nonclaim statute of limitations. The statute is constitutional.

The Third District Court of Appeal improperly reversed the general jurisdiction trial court's entry of summary judgment based on its erroneous conclusion that Florida Statute §733.705(3) was unconstitutional. The statute is substantiative in nature or, in the alternative, has been accepted by the Florida Supreme Court as a judicial rule which has not been invalidated and is constitutional.

Furthermore, Claimant failed to timely and properly raise or preserve the issue of the constitutionality of Florida Statute §733.705(3). Accordingly, the constitutionality of the statute should not be addressed by the Court.

This Court should quash the decision of the Third District Court of Appeal and reinstate the Summary Final Judgment entered against Claimant by the general jurisdiction trial court for failing to properly file its notice.

ARGUMENT

I. CLAIMANT'S FAILURE TO FILE THE
NOTICE OF ACTION REQUIRED BY
SECTION 733.705(3), FLORIDA STATUTES
BARRED CLAIMANT'S INDEPENDENT
ACTION TO ENFORCE ITS CLAIM

The relevant portion of Florida Statute §733.705(3)
(1985) states the following:

The claimant is limited to a period
of 30 days from the date of service of
an objection within which to bring an
independent action upon the claim and
within which to file written notice of
such action in the estate proceeding.

The Legislative intent in enacting that section was to
provide proper notice to all interested parties in a
deceased's estate of the existence of an independent
action against the estate, and to promote a prompt
disposition of a deceased's estate assets. (See pertinent
legislative history relating to Fla. Stat. §733.705(3) and
transcript of Committee hearings (A.3-19); and, Golden v.
Atlantic National Bank of Jacksonville, 481 So.2d 16 (Fla.
1st DCA 1985), rev. denied, 492 So.2d 1332 (Fla. 1986)).
The Legislature properly exercised its powers in
establishing Florida Statute §733.705(3) as a condition

precedent for creditors to comply with in attempting to perfect their claims against Florida decedents. (A.3-19).

As more fully discussed below, the notice provision of Florida Statute §733.705(3) is constitutional and should be upheld by this Court.

- A. Notice Requirement Of Section 733.705(3), Florida Statutes, Is Constitutional And The Third District Court Of Appeal Improperly Reversed The Trial Court's Entry Of Final Summary Judgment Against Claimant For Failing To Timely File The Notice Of Action

In its opinion reversing the general jurisdiction trial court's Final Summary Judgment against Claimant, the Third District Court of Appeal states that Florida Statute §733.705(3)'s notice provision is unconstitutional and therefore, unenforceable. (A.1). First Florida Leasing, Inc. v. James Michael Watson, 12 F.L.W. 2862 (Fla. 3d DCA 1987). The Third District based its decision on the case of Z & O Realty Associates, Inc. v. Lakow, 12 F.L.W. 1542 (Fla. 3d DCA 1987), clarified, 12 F.L.W. 1208 (Fla. 3d DCA 1987). In that case, as in the case at bar, the Third District improperly found the relevant notice requirement to be a procedural requirement as opposed to a substantive limitation restricting the Claimant's prosecution of its

claim against Petitioner. Based on that, the Third District found the rule to be violative of Article V, §2(a), Florida Constitution, which vests the power to promulgate rules of practice and procedure exclusively with the Florida Supreme Court.

Contrary to the Third District Court of Appeal's opinion, the power to enact statutes limiting the time under which claims against estates of deceased persons must be presented or prosecuted falls specifically within the prerogative of the Legislature. In Re: Estate of Woods, 133 Fla. 730, 183 So. 10 (1938). This type of time limitation on a deceased's estate has been found constitutionally valid and recognized as a special type of statute of limitations. See Barnett Bank of Palm Beach County v. Estate of Read, 493 So.2d 447 (Fla. 1986). In that case, the Supreme Court held that Florida Statute §733.702 (1985), establishing a three month limitation for the initiation of claims against the decedent's estate, was a valid and enforceable statute of limitations and not a statute of non-claim pursuant to which untimely claims would automatically be barred. Id. The Supreme Court's

construction of Florida Statute §733.702 (1985) in Barnett should be used to analogize the statute in question.

Statutory time requirements relating to the filing of actions and claims on deceased's estates have historically been treated by Florida courts as special statutes of limitation which permit aggrieved claimants to establish estoppel, fraud or other "good cause" to justify non-compliance and extend the time for compliance. See, North v. Culmer, 193 So.2d 701 (Fla. 4th DCA 1983); Harbour House Properties, Inc. v. Estate of Stone, 443 So.2d 136 (Fla. 3d DCA 1967). Those cases have tended to use the terms "nonclaim" and "statute of limitations" interchangeably, but none have found their respective statutes to be unconstitutional. Special statutes of limitations relating to the time of commencement of prosecution against a decedent's estate are within the proper exercise of legislative authority. In Re: Estate of Woods, 133 Fla. 730, 183 So. 10 (1938).

The purpose of the special statute of limitations is to expeditiously settle estates so that beneficiaries are not unreasonably kept from enjoying their possessions or from being deprived of the benefits which are secured to them by law. In Re: Brown's Estate, 117 So.2d 478 (Fla. 1960). The substantive nature of statutes such as Fla.

Stat. §733.705(3) and the Florida Legislature's authority to enact them, cannot be successfully challenged. As stated by the Florida Supreme Court in Jones v. Allen, 134 Fla. 751, 184 So. 651 (1938), regarding a similar statute to the one in question found in the Probate Act of 1933, "Statutes of nonclaims have been in effect in this State for more than one hundred years and have been frequently recognized and upheld by the courts. Such statutes are within the legislative prerogative and are essential to the disposition of stale demands and the expeditious handling of estates." Id. at 652.

The First District Court of Appeal in Golden, 481 So.2d at 18, found Fla. Stat. §733.705(3) to be valid and enforceable. The First District determined that the statute's notice requirement made it "self-executing", barring further action should the time limitation run without extension. This construction indicates the substantive nature of the statute. See also In Re: Estate of Goldman, 79 So.2d 846 (Fla. 1955), and Greer v. Estate of Smith, 342 So.2d 1007 (Fla. 4th DCA 1977) (construing former Fla. Stat. §733.18(2) and finding the statute to be substantive and a valid provision of law).

Since the subject statute is constitutional, the Third District Court of Appeal erred in reversing the general jurisdiction trial court's Final Summary Judgment against Claimant. The Supreme Court should; therefore, quash the Third District's opinion and reinstate the Final Summary Judgment against Claimant.

1. Even if the notice requirement of Fla. Stat. §733.705(3) is procedural, it remains constitutional since the Supreme Court adopted it as a judicial rule and it has never been invalidated

Even if the notice requirement of Florida Statute §733.705(3) is deemed procedural rather than substantive, the statute is still constitutionally sound inasmuch as statutes providing for special proceedings are valid under the Florida Rules of Civil Procedure. See Fla.R.Civ.Pro. 1.010 and Gonzalez v. Babcock Home Furnishing Center, 343 So.2d 7 (Fla. 1977).

Furthermore, the Florida Supreme Court adopted the subject statute as a temporary judicial rule after the Probate and Guardianship Rules Committee filed an emergency petition requesting that Florida Statute §733.705(3), along with other laws, be adopted by the

Court. The Florida Bar Re: Emergency Amendments to Florida Rules of Probate and Guardianship Procedure, 460 So.2d 906 (Fla. 1984). The statute has never been repealed, invalidated or rejected; therefore, it is still valid, enforceable and constitutionally sound.

Rule 5.065(a) of the Probate and Guardianship Rules was adopted by the Florida Supreme Court after the enactment and adoption of Fla. Stat. §733.705(3); however, one does not conflict with or supersede the other. Rule 5.065(a) merely supplements the subject statute by specifying how a personal representative or guardian should manage the deceased's estate when a civil action has been instituted by or against the personal representative or guardian.¹ On the other hand, Fla. Stat.

1 Florida Rule of Probate and Guardianship Procedure 5.065(a) provides:

Notice of Civil Action or Ancillary Administration

(a) Civil action. A personal representative and a guardian shall file a notice when a civil action has been instituted by or against the personal representative or the guardian. The notice shall contain:

- (1) the names of the parties;
- (2) the style of the court and the case number;
- (3) the county and state where the proceeding is pending;
- (4) the date of commencement of the proceeding; and
- (5) a brief statement of the nature of the proceeding.

§733.705(3) governs the conduct of a claimant filing an action against a deceased's estate by requiring the claimant to file a notice of action within thirty days in the probate division. This assures timely notice in the probate court file of the independent action, and advises all interested parties of the claim within a short period of time.

Contrary to the Third District Court of Appeal's opinion in Z & O Realty Associates, Inc., 12 F.L.W. at 1547, both the rule and statute are necessary and constitutional. Accordingly, the general jurisdiction trial court's Final Summary Judgment should be reinstated and the Third District Court of Appeal's opinion quashed since Florida Statute §733.705(3) (1985), is constitutional and a valid provision of Florida law.

- B. Claimant Failed To Timely And Properly Raise Or Preserve The Issue Of The Constitutionality Of Florida Statute §733.705(3)(1985); Therefore, The Entry Of Final Summary Judgment Against Claimant Was Proper And Should Be Reinstated

At the time this matter was at the trial court level, there was no reason whatsoever to support Claimant's failure to comply with the statutory notice

requirements of Florida Statute §733.705(3) (1985). The only decision interpreting the notice provision at that time was the First District Court of Appeal's opinion in Golden, which upheld the statute's notice requirement. Claimant's failure to follow the existing law gave the civil trial court no choice but to enter Final Summary Judgment against Claimant, since the law in effect at the time of a decision must be followed. See Florida Patient's Compensation Fund v. Von Stetina, 474 So.2d 783 (Fla. 1985); Hendeles v. Sanford Auto Auction, Inc., 364 So.2d 467 (Fla. 1978); Seaboard System Rail Road, Inc. v. Clemento, 467 So.2d 348 (Fla. 3d DCA 1985).

At the time of the summary judgment hearing, Claimant never questioned the constitutionality of Florida Statute §733.705(3). Claimant's failure to raise this issue should prevent it from being relieved of the consequences brought about by its noncompliance with the law.

Similarly, in the probate case, Claimant did not raise the issue of the statute's constitutionality until after its Motion for Extension had been denied, and after the Motion to Strike had been granted. At that time, Claimant's sole argument was that the Court should exercise its discretion in favor of Claimant and relieve

it from its failure to comply with the specific requirements of the law. The probate court, relying on the Golden decision, properly denied Claimant's tardy Motion for Extension, and properly granted Petitioner's Motion to Strike. Claimant's untimeliness should prevent it from being allowed to challenge the subject statute's constitutionality.

Furthermore, Claimant also failed to abide by the statutory mandate found in Florida Statute §86.091 (1985). Chapter 86 required Claimant to serve the Attorney General or the State Attorney of the Judicial Circuit in which the action is pending with a copy of the motion asserting the constitutional challenge on the statute. This would have allowed the State's position to be heard. Claimant's failure to formally put the State on notice should prevent Claimant from being allowed to challenge the statute on constitutional grounds.

Claimant's disregard of the law has led it to its present posture. The Court should not rescue First Florida from its own deficiencies. Public policy favors requiring claimants to promptly and diligently protect their rights by complying with the law and by timely raising issues for consideration at the trial level.

Although Claimant's failure to timely raise the constitutionality of the subject statute is not necessarily dispositive of the case, Petitioner requests that the Court uphold the trial court's summary judgment in the general jurisdiction division and quash the Third District Court of Appeal's opinion since a contrary decision would promote dilatory action and ineffective procedure.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court quash the decision of the Third District Court of Appeal, reinstate the Summary Final Judgment entered against Claimant by the general jurisdiction trial court, and uphold the probate court's Order denying Claimant's Motion for Extension of Time, which also granted Petitioner's Motion to Strike.

Respectfully submitted,

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APPENDIX

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of
the foregoing was mailed this 13th day of June, 1988 to:
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