
IN THE SUPREME COURT OF FLORIDA

CASE NO. 1999-92

William G. Bell, et al.,

Petitioner,

vs.

Janet Snyder,

Respondent.

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ON REVIEW FROM THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT OF FLORIDA
Case Nos. 98-00191 and 98-00853

BRIEF ON JURISDICTION

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CERTIFICATE OF TYPE, SIZE AND STYLE

Counsel for Petitioner, William G. Bell, certifies that this Brief on
Jurisdiction is typed in 14 point (proportionately spaced) Times New Roman.

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Rule 9.120, Fla. R. App. P. 1

BRIEF ON JURISDICTION

Pursuant to Appellate Rule 9.120, Petitioner William G. Bell, as Personal Representative of the Estate of Malvern Hill Bell and as Trustee of the Malvern Hill Bell Revocable Trust (collectively “the Estate”), requests that this Court review the opinion of the Second District Court of Appeal below because it expressly and directly conflicts with decisions of this Court and other District Courts of Appeal. In a split decision, the Court below reversed the trial court’s decision to the contrary and held that civil theft treble damages can be imposed against an estate. The decision conflicts with *Lohr v. Byrd*, 522 So. 2d 845 (Fla. 1988), in which this Court ruled that punitive damages cannot be imposed against an estate because it serves no purpose other than to punish innocent beneficiaries. The decision’s characterization of treble damages as “remedial” also conflicts with decisions of the Third, Fourth, and Fifth Districts characterizing civil theft treble damages as punitive. The Estate respectfully suggests that these conflicts should be resolved by this Court.

STATEMENT OF THE CASE AND FACTS

The case below arises out of a nearly 20 year marriage between Malvern and Francis Bell. The nature of the marriage and the respective financial positions of the parties have been the subject of sharp and extensive dispute. However, for the purposes of this jurisdictional brief, the facts can be very briefly summarized:

Frances and Malvern's twenty year marriage was the second marriage for each. Before the marriage they signed a prenuptial agreement in which they agreed to hold certain assets separate. Shortly before Malvern's death nearly twenty years later, Frances became incapacitated by stroke. Soon after Malvern's passing, Janet Snyder, as conservator for her mother, Frances Bell, brought a series of claims against the Estate alleging that Malvern Bell had stolen from her mother's individually held assets. Because Malvern and Frances were unavailable to testify, the case was largely tried on the basis of circumstantial evidence. Complicating the case were claims that Snyder had spoliated financial records and other evidence needed by the Estate to defend against Snyder's allegations.

After a two-week trial, the jury decided that a deposit made by Malvern shortly before his death of a \$122,634.59 check made out to Frances into one of the parties' accounts constituted civil theft.¹ Adhering to a pre-trial ruling,

¹ In addition, the jury found that Malvern was guilty of constructive fraud but also found that Snyder was guilty of conversion and spoliation of evidence. The jury awarded \$250,000 in punitive damages to the Estate based on the conversion claim against Snyder. In post-trial rulings, the trial court set aside the \$40,000

the trial court refused to treble the civil theft damages, concluding as a matter of law that civil theft treble damages were not available against an estate.

After extensive appeals filed by both sides, the Second District addressed only one issue on the merits--the trial court's failure to permit Snyder to recover treble damages for the alleged civil theft. As noted above, the trial court, following this Court's decision in *Lohr v. Byrd*, 522 So. 2d 845 (Fla. 1988), had ruled that treble damages were punitive and could not be recovered against the Estate. The majority distinguished *Lohr*, characterizing treble damages as remedial rather than punitive and holding that they could be awarded against the Estate. The dissent disagreed citing "well settled" precedent that treble damages are punitive in nature.

The Estate now petitions this Court to resolve the conflict highlighted by the majority and dissenting opinions.

spoliation verdict on legal grounds and reduced the punitive damage award against Snyder.

SUMMARY OF THE ARGUMENT

The decision below conflicts with this Court's decision that punitive damages should not be awarded against an estate. As this Court observed, to do so only punishes innocent beneficiaries. The majority's characterization of civil theft treble damages as remedial also conflicts with decisions of the Third, Fourth, and Fifth Districts characterizing treble damages as punitive. These conflicts should be resolved. In addition to wrongfully punishing the innocent, permitting treble damages against an estate will only complicate and make more burdensome and expensive, litigation against estates brought by competing or would be beneficiaries. This Court should accept jurisdiction and resolve the conflict.

ARGUMENT

This Court has clearly ruled that punitive damages may not be awarded against a deceased tortfeasor's estate. *Lohr*, 522 So. 2d at 846. As this Court explained, the purpose of punitive damages is to punish and deter. Neither function is served by punishing the tortfeasor's innocent heirs. The majority opinion below attempted to distinguish *Lohr* by characterizing treble damages as remedial rather than punitive. This argument is belied by the legislative history of the civil theft statute. In 1984 the Act was amended to delete any reference to punitive damages. The senate staff concluded that punitive damages are redundant because trebling already constitutes punishment.² When the Florida House of Representatives Committee on Judiciary Staff Analysis revisited this issue in 1986, it also noted that "treble damages are, in and of themselves, punitive in nature."³ Thus, the decision below is in irreconcilable conflict with *Lohr*.

By holding that treble damages are remedial rather than punitive, the decision also conflicts with decisions of the Third, Fourth, and Fifth Districts, all

² The appellate courts have generally frowned upon awards for treble damages, plus punitive damages, upon the grounds that treble damages are punitive in nature already and the combinations are necessarily duplicative as a matter of punitive element, resulting in an excessive penalty. Florida Senate and Staff Analysis and Economic Impact Statement, H.B. 69 (April 13, 1984), Series 18, Carton 1391, page 1; see *Bill Terry's, Inc. v. Atlantic Motor Sales, Inc.*, 409 So. 2d 507, 509 (Fla. 1st DCA 1982) (an award of both treble damages and punitive damages for the same act amounts to a double recovery or an excessive penalty.)

³ Florida House of Representative's Committee on Judiciary Staff Analysis Report (April 23, 1996), 86 SS PCB 17; Series 19, Carton 1493, page 3.

of which have held that treble damages are punitive. For example, in *McArthur Dairy, Inc. v. The Original Kielbs, Inc.*, 481 So. 2d 535 (Fla. 3rd DCA 1986), the Court held that an innocent employer of a thief could not be vicariously liable for treble damages. The court concluded that a treble damage award is punitive and held that such punishment was inappropriate without fault.

Similarly in *Vining v. Martyn*, 660 So. 2d 1081, 1982 (Fla. 4th DCA 1995), the Court ruled that pre-judgment interest could not be awarded on treble damages because treble damages were punitive. Likewise, the Fifth District in *United Pacific Insurance Co. v. Berryhill*, denied recovery for treble damages under a surety bond noting: “Treble damages are punitive and in the nature of fines.” 620 So. 2d 1077, 1079 (Fla. 5th DCA 1993).⁴

As noted by the dissent below, Florida’s characterization of treble damages as punitive accords with federal precedent. *See, e.g., Summers v. Federal Deposit Insurance Corp.*, 592 F. Supp. 1240, 1243 (W.D. Okla. 1984)(treble damages, like punitive damages, could not be assessed against the FDIC); *Shires v.*

⁴ *See also Rosen v. Marlin*, 486 So. 2d 623, 624-25 (Fla. 3rd DCA 1986), *rev. denied*, 494 So. 2d 1151 (1986); *Keegan v. Ennia General Insurance Company*, 591 So. 2d 300, 301 (Fla. 3rd DCA 1991) (treble damages were of “a punitive nature”); *Greenburg v. Grossman*, 683 So. 2d 156, 157 (Fla. 3rd DCA 1996) (plaintiff may recover pre-judgment only on amount stolen, not amount as trebled); *Zucker v. Sears, Roebuck & Co.*, 589 So. 2d 454 (Fla. 5th DCA 1991)(pre-judgment interest not appropriate on trebled damages because such damages are for retribution not restitution). *See also Black’s Law Dictionary*, (4th Ed. 1968)(the test to apply to determine whether a statute is remedial or punitive is whether it “seeks to impose an arbitrary deterring punishment” or whether its purpose is to secure “just and reasonable compensation for a possible loss.”)

Magnavox Co., 432 F. Supp. 231, 235 (E. D. Tenn. 1976) (treble damages are punitive and could not be recovered against an estate).

This Court should accept jurisdiction to resolve the conflict with *Lohr* and the many cases holding treble damages to be punitive. The issue of assessing civil theft treble damages against an estate is worthy of this Court's review, as evidenced by the *Lohr* decision itself which was certified to this Court as a matter of great public importance. This case is of similar import. Permitting civil theft treble damage awards against an estate will have significant consequences and affect numerous other estates. Indeed, this case will serve as a blueprint for future estate litigation. In second marriage situations like this, or in any case where parties dispute the decedent's intent, a surviving plaintiff or their heirs will be tempted to add civil theft or other treble damages claims. As demonstrated by the unfortunate history of this case, such claims dramatically raise the stakes of the litigation and present difficult proof problems because the accused tortfeasor and perhaps other critical parties will not be available to testify. Indeed, in this case, both Frances and Malvern, the two critical parties, were unavailable. The increased litigation costs attendant to such claims will punish innocent beneficiaries of the estate regardless of the success or failure of the claims against the estate.

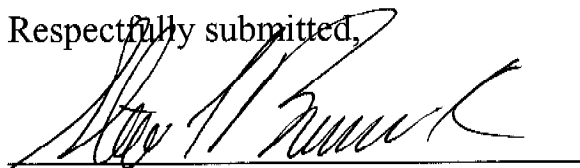
The award of treble damages against an Estate is an issue of great importance that almost inevitably will be decided by this Court one day. The

Estate respectfully suggests that this case is an appropriate vehicle for the resolution of the issue.

CONCLUSION

Accordingly, for the foregoing reasons, this Court should accept jurisdiction and resolve the conflicts created by the decision below.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to: Robert Turffs, Esquire, 2055 Wood Street, Suite 206, Sarasota, FL 34237; A. Lamar Matthews, Esquire, 1777 Main Street, Suite 500, Sarasota, FL 34236; and W. Andrew Clayton, Jr., Esquire, 1800 Second Street, Suite 888, Sarasota, FL 34236, this 16th day of December, 1999.



Attorney

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Appendix

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JANET SNYDER, as Conservator
of Frances Bell,

Appellant/Cross-appellee,

v.

WILLIAM G. BELL, in his capacity
as Trustee of the Malvern Hill Bell
Revocable Trust U/A/D 01-25-95
and in his capacity as Personal
Representative of the Estate of
Malvern Hill Bell, deceased,

Appellee/Cross-appellant.

Case No. 98-00191

WILLIAM G. BELL, in his capacity
as Trustee of the Malvern Hill Bell
Revocable Trust U/A/D 01-25-95
and in his capacity as Personal
Representative of the Estate of
Malvern Hill Bell, deceased,

Appellant/Cross-appellee,

v.

JANET SNYDER, as Conservator
of Frances Bell,

Appellee/Cross-appellant.

Case No. 98-00853

CONSOLIDATED.

Opinion filed September 10, 1999.

Appeal from the Circuit Court for
Sarasota County; Robert B. Bennett,
Judge.

A. Lamar Matthews, Jr. and Arthur S.
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Eastmoore, Sarasota, and Robert E.
Turffs of Brann & Turffs, Sarasota, for
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John J. Waskom, Thomas F. Icard, and
Michael L. Foreman of Icard, Merrill,
Cullis, Timm, Furen & Ginsberg, P.A.,
Sarasota, and Steven L. Brannock of
Holland & Knight, LLP, Tampa, for
Appellee/Cross-appellant.

PER CURIAM.

Appellant/cross-appellee Janet Snyder, as conservator¹ of Frances Bell (Frances), and Appellee/cross-appellant William G. Bell, in his capacity as trustee of the Malvern Hill Bell (Malvern) Revocable Trust and in his capacity as personal representative of the estate of Malvern Hill Bell (the Estate), both appeal the final judgment of the trial court awarding each party damages in this dispute involving the Estate. Of the seven issues appealed to this court, we affirm six without comment. On the issue of the trial court's failure to permit Snyder to receive treble damages on a claim of civil theft against the Estate, we reverse.

Frances and Malvern married in 1976. Frances came into the marriage as a wealthy divorcee, but the amount of money Malvern brought to the marriage is

¹ The trial court order granting the conservatorship was entered in the State of Tennessee.

disputed. Prior to their marriage, Frances and Malvern entered into a prenuptial agreement, which provided that any funds placed into joint accounts by either Frances or Malvern would remain that individual's separate property unless a gift could be proven. During the course of the marriage, Malvern assumed control over Frances' finances.

In 1994, Frances suffered a debilitating stroke. Frances' daughter, Snyder, made arrangements to have Frances transported to an assisted-care living facility in Tennessee, where she currently resides. Malvern continued to control Frances' finances and subsequently received a check from a brokerage house in the amount of \$122,634.59 made payable to Frances. Malvern deposited the check into his personal bank account. The endorsement on the back of the check purported to be the signature of Frances.

In October 1995, Malvern entered the hospital for cancer treatments. Because of his illness, Malvern became physically unable to continue paying the bills for Frances' care. That event caused Snyder and Bell, Malvern's nephew, to become actively involved in the property and business matters of Frances and Malvern. Malvern's death in November 1995 quickly led to bitter feelings, allegations, and lawsuits between Snyder and Bell.

Snyder filed suit against Bell, and Bell counterclaimed. During the time between the filing of the suit and trial, the court consolidated the cases and the parties filed numerous pleadings and amendments. The amendments included a claim by Snyder for civil theft against the Estate, alleging that Malvern wrongfully deposited the

\$122,634.59 check and requesting treble damages in the amount of \$367,903.77 pursuant to section 772.11, Florida Statutes (1995).

In July 1997, the trial court entered an interlocutory order on Snyder's civil theft claim dismissing Snyder's claim for treble damages. The court concluded that, as a matter of law, treble damages are not available against an estate. In a two-week trial, a jury considered Snyder's claims against the Estate and the Trust for constructive fraud, breach of prenuptial agreement, civil theft, and conversion; Snyder's claims against Bell, individually, for conversion and breach of fiduciary duty; and Snyder's claim against Bell for spoliation of evidence. The jury also considered Bell's claims against Snyder for conversion and spoliation of evidence. The trial court resolved Snyder's additional nonjury claims for an accounting and for removal of Bell as personal representative and trustee.

The jury made the following findings: (1) that Malvern committed constructive fraud against Frances and breached the prenuptial agreement, with damages in the amount of \$140,000; (2) that Malvern committed civil theft of the \$122,634.59 check; (3) that Malvern did not commit conversion; (4) that Bell, individually, did not commit conversion; (5) that Bell, as trustee, did not breach his fiduciary duty; (6) that Snyder converted property belonging to Malvern in the amount of \$13,200, which merited punitive damages in the amount of \$250,000; and (7) that Snyder spoliated evidence with damages in the amount of \$40,000. The trial court subsequently reduced the punitive damages award to \$30,000 and set aside the \$40,000 spoliation verdict.

The only issue we address is the trial court's failure to permit Snyder to recover treble damages for the civil theft of the \$122,634.59 check. The Florida Civil Theft Statute, part of the Civil Remedies for Criminal Practices Act, provides as follows:

Any person who proves by clear and convincing evidence that he has been injured in any fashion by reason of any violation of the provisions of ss. 812.012-812.037 has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts. . . . In no event shall punitive damages be awarded under this section.

§ 772.11, Fla. Stat. (1995) (emphasis added). Notwithstanding the mandatory requirement of the civil theft statute, the trial court ruled that, based on public policy reasons previously applied by the Florida Supreme Court to punitive damage claims in Lohr v. Byrd, 522 So. 2d 845 (Fla. 1988), treble damages cannot, as a matter of law, be recovered against a decedent's estate.

In Lohr, the Florida Supreme Court addressed the following question certified to be of great public importance:

MAY PUNITIVE DAMAGES BE AWARDED AGAINST A
DECEASED TORTFEASOR'S ESTATE?

In answering this question in the negative, the supreme court analyzed the public policy considerations and ramifications of allowing such damages, which are solely meant to punish, against the innocent heirs or creditors of a decedent's estate. Specifically, the court stated that because the basic purpose of punitive damages is punishment and not compensation to the injured party, the imposition of these damages at the expense of innocent heirs and creditors "ignores our basic philosophy of justice." Id. at 847.

In this case, the trial court expanded Lohr to include treble damages. The basis for this ruling is found, primarily, in the trial court's conclusion that treble damages are a "form of punitive damages." According to the trial court, if treble damages are no more than a form of punitive damages and a court may not award punitive damages against a deceased tortfeasor's estate, then a court may not award treble damages against a deceased tortfeasor's estate.

The trial court's position fails upon a critical examination of the differences between judicially-created punitive damages and legislatively-created treble damages. Florida's civil theft statute is without question remedial, rather than punitive, in nature. See § 812.037, Fla. Stat. (1995) ("Notwithstanding s. 775.021, ss. 812.012-812.037 shall not be construed strictly or liberally, but shall be construed in light of their purposes to achieve their remedial goals.") (emphasis added). See also Ziccardi v. Strother, 570 So. 2d 1319, 1321 (Fla. 2d DCA 1990) (finding that the Civil Remedies for Criminal Practices Act was remedial in nature); Stuart L. Stein, P.A. v. Miller Indus., Inc., 564 So. 2d 539 (Fla. 4th DCA 1990); Senfeld v. Bank of Nova Scotia Trust Co., 450 So. 2d 1157, 1165 (Fla. 3d DCA 1984) (finding that the prior version of the civil theft statute, then section 812.035, was remedial in nature); cf. Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477 (1977) (stating that treble damage provision of Clayton Act to any person injured in business or property by reason of a violation of antitrust laws is designed primarily as a remedy). Therefore, the Florida Supreme Court's decision in Lohr and its reasoning do not apply to the treble damages provision of section 772.11.

Moreover, a conclusion that the treble damages recoverable under

section 772.11 are a form of punitive damages flies in the face of the statute itself. The civil theft statute expressly provides that "[i]n no event shall punitive damages be awarded under this section." § 772.11, Fla. Stat. (1995). However, the statute also provides for and mandates an award of treble damages upon a finding of liability. If treble damages are no more than a "form of punitive damages," as the trial court concluded, the statute would contain an inherent inconsistency.

We find that the federal decisions holding that treble damages survive the death of the defendant are persuasive authority for the reversal of the trial court's order denying Snyder a remedy expressly provided by the Florida Legislature. See Epstein v. Epstein, 966 F. Supp. 260 (S.D.N.Y. 1997) (holding that treble damages, which are remedial in nature, are not precluded under the common law rule that punitive claims do not survive the defendant's death); First American Corp. v. Al-Nahyan, 948 F. Supp. 1107 (D.D.C. 1996). Similarly, we conclude that a claim for treble damages under the civil theft statute is remedial in nature and survives the death of the tortfeasor. Accordingly, the trial court erred in extending Lohr to preclude treble damages against a deceased tortfeasor's estate.

Affirmed in part; reversed and remanded for the trial court to enter an order granting Snyder treble damages on the civil theft claim.

CAMPBELL, A.C.J. and CASANUEVA, J., Concur.
PARKER, J., Concur in part; dissents in part with opinion.

PARKER, Judge, Concurring in part; dissenting in part.

I concur with the majority that six of the issues should be affirmed. I would also affirm the trial court on its denial of treble damages to Snyder. Therefore, I respectfully dissent as to that issue.

In Lohr v. Byrd, 522 So. 2d 845, 846 (Fla. 1988), the Florida Supreme Court concluded that punitive damages may not be awarded against a deceased tortfeasor's estate. The court reasoned that it would not be just to punish the decedent's innocent heirs when the wrongdoer is unavailable because of death. See id. In holding that Lohr precluded the award of treble damages against the estate of a deceased tortfeasor, the trial court found that treble damages were punitive in nature and concluded that the same reasoning which supported Lohr supported prohibiting treble damages.

I would affirm the trial court because it is well-settled that treble damages are punitive in nature. See Summers v. Federal Deposit Ins. Corp., 592 F. Supp. 1240, 1243 (W.D. Okla. 1984) (holding that treble damages could not be assessed against the FDIC in light of a case which held that punitive damages could not be assessed against the FDIC); Shires v. Magnavox Co., 432 F. Supp. 231, 235 (E.D. Tenn. 1976) (holding that a party could not recover treble damages from the estate of a deceased defendant because treble damages were punitive in nature); Country Manors Ass'n, Inc. v. Master Antenna Sys., Inc., 534 So. 2d 1187, 1195 (Fla. 4th DCA 1988) (holding that treble damages were not covered by liability insurance because treble damages are "fines or penalties imposed by law or matters which may be deemed uninsurable under the law"); McArthur Dairy, Inc. v. Original Kielbs, Inc., 481 So. 2d 535, 539-40

(Fla. 3d DCA 1986) (holding that ordinary rules of civil liability relating to punitive damages determined liability under the civil theft statute). These cases show a trend of disallowing treble damages where the party against whom they are awarded is an innocent party, as opposed to the tortfeasor. This trend is also consistent with the policy espoused in Lohr.

Additionally, Snyder's argument that principles of statutory construction preclude a finding that treble damages are punitive in nature is without merit. It is clear from the application of the statute that the statement "[i]n no event shall punitive damages be awarded under this section" purports to preclude a double recovery of damages which are punitive in nature. See, e.g., Pelletier v. Cutler, 543 So. 2d 406, 407 (Fla. 4th DCA 1989) (affirming the trial court's order denying treble damages where punitive damages had already been awarded because "[t]he award amounted to a double recovery and an excessive penalty"). As such, the inclusion of the word "punitive" would not negate the fact that the statute awards damages that are punitive in nature.

Because treble damages are punitive in nature, I concur with the trial court's finding that Lohr precludes an award of treble damages against the estate of a deceased tortfeasor. Accordingly, I would affirm the trial court's denial of treble damages on Snyder's civil theft claim.