

**SUPREME COURT OF FLORIDA**

---

**CASE NO. SC10-823**

---

**SOLVEIG EDNA HILL,**

**Petitioner,**

**vs.**

**DOUGLAS DAVIS, as Personal  
Representative of the Estate of  
Kristine E. Davis, deceased,**

**Respondent.**

---

**ON REVIEW FROM THE DISTRICT COURT OF APPEAL,  
FIRST DISTRICT, CASE NO. 1D09-4020**

---

**PETITIONER'S INITIAL BRIEF ON THE MERITS**

---

**H. GUY GREEN  
Fla. Bar No. 153300  
4387 Clinton Street  
Marianna, Florida 32446  
(850) 526-3707  
(850) 526-5810 (fax)**

**LOUIS K. ROSENBLOUM  
Fla. Bar No. 194435  
LOUIS K. ROSENBLOUM, P.A.  
4300 Bayou Boulevard, Suite 36  
Pensacola, Florida 32503  
(850) 475-1211  
(850) 475-1290  
lrosenbloum@rosenbloumlaw.com**

**Attorneys for Petitioner**

## TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	8
STANDARD OF REVIEW	8
ARGUMENT	9
THE THREE-MONTH TIME LIMIT PROVIDED BY SECTION 733.212(3), FLORIDA STATUTES (2007), FOR FILING OBJECTIONS TO THE PERSONAL REPRESENTATIVE’S QUALIFICATIONS DOES NOT APPLY WHEN THE PERSONAL REPRESENTATIVE IS NEVER ELIGIBLE TO SERVE AND DOES NOT FURNISH NOTICE THEREOF AS REQUIRED BY FLORIDA PROBATE RULE 5.310 AND SECTION 733.3101, FLORIDA STATUTES (2007).	9
Preliminary Statement	9
Discussion	9
CONCLUSION	15
CERTIFICATE OF SERVICE	16
CERTIFICATE OF TYPE STYLE AND SIZE	16

## TABLE OF CITATIONS

### CASES

<u>Angelus v. Pass,</u> 868 So. 2d 571 (Fla. 3d DCA), <u>rev. denied</u> , 873 So. 2d 1223 (Fla. 2004).....	<i>passim</i>
<u>Cason ex rel. Saferight v. Hammock,</u> 908 So. 2d 512 (Fla. 5th DCA 2005).....	14
<u>Hill v. Davis</u> , 31 So. 3d 921 (Fla. 1st DCA 2010), <u>rev. granted</u> , No. SC10-823 (Fla. July 7, 2010).....	1, 7, 13, 15
<u>In re Estate of Ballett,</u> 426 So. 2d 1196 (Fla. 4th DCA 1983).....	14
<u>In re Estate of Greenberg,</u> 390 So. 2d 40 (Fla. 1980), <u>appeal dismissed</u> , 450 U.S. 961 (1981).....	6
<u>Marsh v. Valyou,</u> 977 So. 2d 543 (Fla. 2006).....	9
<u>Nardi v. Nardi,</u> 390 So. 2d 438 (Fla. 3d DCA 1980).....	14
<u>Sanders v. State,</u> 35 So. 3d 864 (Fla. 2010).....	8
<u>Schreiber v. Rowe,</u> 814 So. 2d 396 (Fla. 2002).....	9

### RULES

Florida Probate Rule 5.310 .....	<i>passim</i>
----------------------------------	---------------

### STATUTES

Section 731.201(23), Florida Statutes (2007).....	6
Section 733.212, Florida Statutes (2007).....	12
Section 733.212(2)(c), Florida Statutes (2007) .....	2
Section 733.212(3), Florida Statutes (2007).....	<i>passim</i>

Section 733.304, Florida Statutes (2007).....8, 9  
Section 733.304(3), Florida Statutes (2007).....6, 7  
Section 733.3101, Florida Statutes (2007)..... *passim*

## **STATEMENT OF THE CASE AND FACTS**

Petitioner Solveig Edna Hill, appellant below, seeks review of the decision in Hill v. Davis, 31 So. 3d 921 (Fla. 1st DCA 2010), rev. granted, No. SC10-823 (Fla. July 7, 2010), in which the District Court of Appeal, First District, held that her motions to disqualify respondent, appellee below, as nonresident personal representative of the estate of Kristine E. Davis, deceased, were time barred by section 733.212(3), Florida Statutes (2007). In so holding, the First District certified conflict with a decision of the District Court of Appeal, Third District, Angelus v. Pass, 868 So. 2d 571 (Fla. 3d DCA), rev. denied, 873 So. 2d 1223 (Fla. 2004), which reached the opposite conclusion.<sup>1</sup>

The facts of this case as they pertain to the conflict issue are not disputed. Petitioner's daughter, Kristine E. Davis, died in Marianna, Florida, on March 1, 2007, at age 57. (R-I 1, 23). She was predeceased by her husband, John R. Davis, who died in 2004. (R-II 226, 322). Several months after Mrs. Davis's death, respondent Douglas Davis filed a petition for administration in Jackson County, Florida, listing his address as 7 Gibb Lane, Islip, New York 11751. (R-I 1). Douglas Davis is the son of John R. Davis but not of Kristine E. Davis. (R-II 322). Despite his nonresident status, Douglas Davis alleged he "is qualified under the laws of the State of Florida to serve as personal representative of the decedent's

---

<sup>1</sup> Copies of Hill (Tab 1) and Angelus (Tab 2) are appended to this brief.

estate, is entitled to preference in appointment as personal representative because he is the step-son of the decedent and the nominated personal representative under decedent's will." (R-I 1-2).

Respondent attached to his petition for administration a document which he represented as decedent's last will and testament executed in Islip, New York, on March 8, 1997. (R-I 10-19). Douglas Davis also attached an affidavit from a New York attorney stating the will was witnessed in accordance with New York law (R-I 5) and an affidavit from Kenneth G. Donahue who testified he found the will in decedent's desk drawer in a damaged condition caused by water from a nearby leaking window. (R-I 6).

On June 27, 2007, the probate court entered an order, as amended, appointing Douglas Davis personal representative and admitting the proffered will to probate. (R-I 9, 56). The court issued letters of administration to Douglas Davis that same date. (R-I 22). Douglas Davis published notice of administration beginning July 13, 2007, and served copies on interested persons, including petitioner. (R-I 27; R-II 266). Consistent with section 733.212(2)(c), Florida Statutes (2007),<sup>2</sup> the notice of administration served by Davis included the following information:

---

<sup>2</sup> Section 733.212(2)(c), Florida Statutes (2007), provides:

- (2) The notice shall state:

All persons on whom this notice is served who have objections that challenge the validity of the will, the qualifications of the personal representative, venue, or jurisdiction of this Court are required to file their objections with this Court WITHIN THE LATER OF THREE MONTHS AFTER THE DATE OF THE FIRST PUBLICATION OF THIS NOTICE OR THIRTY DAYS AFTER THE DATE OF SERVICE OF A COPY OF THIS NOTICE ON THEM.

(R 26) (underlining supplied). Respondent's notice of administration did not include the information specified in Florida Probate Rule 5.310 which requires an unqualified personal representative to immediately notify interested persons of the reasons he is not qualified and their right to petition for his removal as personal representative.<sup>3</sup> (R-I 26).

---

\* \* \*

(c) That any interested person on whom a copy of the notice of administration is served must file on or before the date that is 3 months after the date of service of a copy of the notice of administration on that person any objection that challenges the validity of the will, the qualifications of the personal representative, the venue, or the jurisdiction of the court.

<sup>3</sup>Florida Probate Rule 5.310 provides:

Any personal representative who was not qualified to act at the time of appointment or who would not be qualified for appointment if application for appointment were then made shall immediately file and serve on all interested persons a notice describing:

Beginning with a petition filed August 22, 2007, petitioner, a resident of Marianna, Florida, filed several motions to revoke probate of decedent's purported will (R-I 23-25, 118-19, 135-37) on the following grounds:

- The will admitted to probate is not Kristine E. Davis's will, "and the will itself is so riddled with significant errors that it appears to be 'cut and pasted' to create a will." (R-I 135).

---

(a) the reason the personal representative was not qualified at the time of appointment; or

(b) the reason the personal representative would not be qualified for appointment if application for appointment were then made and the date on which the disqualifying event occurred.

The personal representative's notice shall state that any interested person may petition to remove the personal representative.

Rule 5.310 implements section 733.3101, Florida Statutes (2007), which states:

Any time a personal representative knows or should have known that he or she would not be qualified for appointment if application for appointment were then made, the personal representative shall promptly file and serve a notice setting forth the reasons. A personal representative who fails to comply with this section shall be personally liable for costs, including attorney's fees, incurred in any removal proceeding, if the personal representative is removed. This liability shall be cumulative to any other provided by law.



- The will was not found in a location expected for decedent to deposit her will. (R-I 135).

- The will provides for persons unrelated to decedent rather than for decedent's natural bounty. (R-I 135).

- Decedent's late husband, John R. Davis, unlawfully attempted to have decedent's sister execute a will for Kristine E. Davis in 2004. (R-I 135).

On July 15, 2008, petitioner filed a petition for administration claiming preference in appointment as personal representative of her daughter's estate. (R-I 103-04). Petitioner also filed a motion and a renewed motion asking the probate court to remove respondent as nonresident personal representative because he is not eligible to serve under section 733.304, Florida Statutes.<sup>4</sup> (R-I 126; R-II 226).

---

<sup>4</sup>Section 733.304, Florida Statutes (2007), provides:

A person who is not domiciled in the state cannot qualify as personal representative unless the person is:

(1) A legally adopted child or adoptive parent of the decedent;

(2) Related by lineal consanguinity to the decedent;

(3) A spouse or a brother, sister, uncle, aunt, nephew, or niece of the decedent, or someone related by lineal consanguinity to any such person; or

(4) The spouse of a person otherwise qualified under this section.

Petitioner asserted in her motions that Douglas Davis does not qualify under section 733.304(3) as “someone related by lineal consanguinity to” decedent’s “spouse” because the personal representative’s father, John R. Davis, predeceased his wife, decedent Katherine E. Davis by several years.<sup>5</sup> (R-II 226).

Respondent filed several motions to strike Hill’s motions to disqualify and remove him as personal representative. (R-I 138-41, 176-77; R-II 234-36). Respondent argued Hill’s motions were untimely because she did not object to his appointment as personal representative within three months after service of notice of administration as required by section 733.212(3), Florida Statutes. (R-I 176-77). Respondent also asserted petitioner lacked standing to contest his appointment because she was not an “interested person” as defined by section 731.201(23), Florida Statutes. (R-II 249-50). On the merits, respondent contended he was qualified to serve as nonresident personal representative because the word “spouse” used in section 733.304(3), Florida Statutes (2007), includes both living and deceased spouses. (R-II 248).

On these undisputed facts, the trial court found “Douglas Davis is qualified as non-resident Personal Representative pursuant to Section 733.304 Florida

---

<sup>5</sup> A nonresident who is not related to decedent as specified in this statute may not qualify as personal representative notwithstanding the testator’s preference stated in her will. See In re Estate of Greenberg, 390 So. 2d 40, 42 (Fla. 1980), appeal dismissed, 450 U.S. 961 (1981).

Statutes by virtue of being the son of John Davis who had been married to Kristine Davis until his death in May, 2004.” (R-II 323). The trial court thus denied petitioner’s motions to disqualify respondent as nonresident personal representative of her daughter’s estate. (R-II 324). The trial court also found Hill’s motions to disqualify were made more than three months after service of the notice of administration but did not indicate whether this finding was a ground for its ruling. (R-II 323).

On appeal, petitioner argued the trial court erred in concluding respondent was qualified to serve as nonresident personal representative under section 733.304(3), Florida Statutes (2007). See Hill, 31 So. 3d at 922. In affirming the trial court’s order, the district court declined to address petitioner’s argument on the merits, concluding instead “that appellant’s motions to disqualify appellee as personal representative were time barred pursuant to section 733.212(3), Florida Statutes (2007).” Id. In reaching this conclusion, the district court disagreed with Angelus in which the Third District held the three-month statute of limitations contained in section 733.212(3) does not bar an untimely motion challenging the qualifications of a personal representative who was never eligible to serve. See Angelus, 868 So. 2d at 772-73. The court below certified conflict with Angelus. See Hill, 31 So. 3d at 924 (“We also certify conflict with Angelus.”).

## **SUMMARY OF ARGUMENT**

The district court below erred by holding that petitioner's motions to disqualify and remove the nonresident personal representative were untimely under section 733.212(3), Florida Statutes (2007). As recognized by the Third District in Angelus, the moving party's failure to comply with the three-month limitation period contained in section 733.212(3) does not bar a motion disqualify and remove a nonresident personal representative when, as here, the personal representative was never eligible to serve under section 733.304, Florida Statutes (2007), and failed to furnish notice thereof in accordance with Florida Probate Rule 5.310 and section 733.3101, Florida Statutes (2007). The result reached in Angelus is consistent with decisions which prohibit the personal representative from taking advantage of the time limitations provided by the Florida Probate Code without first strictly complying with statutes and rules authorizing such limitations.

## **STANDARD OF REVIEW**

Because the issue presented involves interpretation of statutes and court rules, the standard of review is de novo. See, e.g., Sanders v. State, 35 So. 3d 864, 868 (Fla. 2010).

## ARGUMENT

**THE THREE-MONTH TIME LIMIT PROVIDED BY SECTION 733.212(3), FLORIDA STATUTES (2007), FOR FILING OBJECTIONS TO THE PERSONAL REPRESENTATIVE'S QUALIFICATIONS DOES NOT APPLY WHEN THE PERSONAL REPRESENTATIVE IS NEVER ELIGIBLE TO SERVE AND DOES NOT FURNISH NOTICE THEREOF AS REQUIRED BY FLORIDA PROBATE RULE 5.310 AND SECTION 733.3101, FLORIDA STATUTES (2007).**

### Preliminary Statement

Although the issue was vigorously contested in the courts below, petitioner's argument in this Court necessarily assumes that the trial court erred by determining respondent was qualified to serve as nonresident personal representative under section 733.304, Florida Statutes (2007). Because it affirmed and certified conflict on procedural grounds, the district court below did not reach this issue. Although it has jurisdiction, petitioner assumes this Court will not reach that issue as well. See Schreiber v. Rowe, 814 So. 2d 396, 398 n.1 (Fla. 2002) (declining to consider issue not addressed by district court); Marsh v. Valyou, 977 So. 2d 543, 546 n.1 (Fla. 2006) (declining to consider issue beyond the scope of the certified question).

### Discussion

Respondent contends that petitioner's motions to disqualify and remove him as nonresident personal representative were untimely filed and therefore barred by section 733.212(3), Florida Statutes, which provides:

Any interested person on whom a copy of the notice of administration is served must object to the validity of the

will, the qualifications of the personal representative, the venue, or the jurisdiction of the court by filing a petition or other pleading requesting relief in accordance with the Florida Probate Rules on or before the date that is 3 months after the date of service of a copy of the notice of administration on the objecting person, or those objections are forever barred.

§ 733.212(3), Fla. Stat. (2007) (emphasis supplied). Although petitioner admittedly filed her motions to disqualify the personal representative more than three months after service of the notice of administration, her motions were not untimely because the three-month filing deadline contained in section 733.212(3) does not bar a motion challenging the qualifications of a personal representative who was never eligible to serve and who failed to comply with the notice provisions contained in the Florida Probate Rules and Florida Probate Code. See Angelus, 868 So. 2d at 772-73.

In Angelus, decedent's son (Angelus) filed a motion to disqualify the nonresident personal representative (Pass) well beyond the three-month limitation contained in section 733.212(3). Although the nonresident personal representative was not qualified to serve (he was the nephew of the deceased's first and second wives, both of whom predeceased decedent), the trial court denied the motion as untimely. In reversing, the Third District "disagree[d] with the conclusion that Section 733.212 can be applied to allow a legally unqualified personal

representative to escape the requirements of Section 733.304 and Florida Probate Rule 5.310.” Angelus, 868 So. 2d at 272-73. The court explained:

The three-month statute of limitations period contained in Section 733.212(3) does not apply to bar Angelus’s petition because Pass was never legally qualified to serve as personal representative at any time. The legislature has enacted separate and distinct statutes dealing with the commencement of administration, and with the qualifications required of a personal representative. There is no time limit specified by the qualifications statutes. See §§ 733.304, 733.3101, Fla. Stat. (2003). We find no basis to engraft the three-month limitation of the commencing administration statute onto the explicit provisions of the qualifications statute nor upon Rule 5.310, particularly where the applicant was never otherwise legally qualified to serve. See In re Estate of Anderson, 583 So. 2d 801 (Fla. 1st DCA 1991); Pontrello v. Estate of Kepler, 528 So. 2d 441 (Fla. 2d DCA 1988).

To do so would render Rule 5.310 meaningless and would improperly shift the burden of discovery of an applicant’s misrepresentations to the court and interested parties. Such a result would be antithetical to the policy of requiring personal representatives to hold specific qualifications and to be held to the highest standards of honesty and truthfulness. Simply, Section 733.212(3) does not provide the trial court with discretion to allow a legally unqualified person the privilege to serve as personal representative.

Id. at 273.

In this case, the nonresident personal representative failed to inform petitioner and other interested parties he was not qualified to serve as personal representative as required by Florida Probate Rule 5.310 and section 733.3101.

His notice also should have contained a statement informing interested persons of their right to “petition to remove the personal representative.” Fla. Prob. R. 5.310. Having failed to comply, the nonresident personal representative should not be permitted to take advantage of the three-month limitation.<sup>6</sup>

The district court below disagreed with Angelus, opting instead to apply the three-month deadline contained in section 733.212(3) even when the nonresident personal representative fails to comply with Rule 5.310 and section 733.3101. The court explained:

However, we disagree with the sweeping holding in Angelus because it effectively renders part of section 733.212(3) meaningless. See State v. Goode, 830 So. 2d 817, 824 (Fla. 2002) (“[A] basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless”). The statute clearly states that interested persons such as appellant “must object to . . . the qualifications of the personal representative” within three months of the service of the notice of administration or such an objection is “forever barred.” A claim that a nonresident is not qualified to serve as a personal representative pursuant to section 733.304 is an objection

---

<sup>6</sup> The nonresident personal representative in Angelus misrepresented his relationship to decedent, claiming in his petition for administration he was decedent’s nephew when in fact he was the nephew of decedent’s former husband. In this case, although respondent likewise is the nephew of decedent’s former husband, he did not misrepresent his relationship to decedent in his petition for administration. Although the First District below noted this distinction, Angelus was based on the relationship between section 733.212 and Rule 5.310, not on the misrepresentation made in that case by the nonresident personal representative.



to “the qualifications of the personal representative” and should be subject to the clear and unambiguous provisions of section 733.212(3). Although section 733.212(3) and section 733.304 are found in separate parts of the Florida Probate Code, statutes which relate to the same or closely related subjects should be construed together. See Alachua County v. Powers, 351 So. 2d 32, 40 (Fla. 1977); Smith v. Crawford, 645 So. 2d 513, 522 (Fla. 1st DCA 1994). Contrary to the Third District’s decision in Angelus, we find nothing in Florida Probate Rule 5.310 or sections 733.304 and 733.3101, Florida Statutes, which would preclude the application of the three-month statute of limitations period contained in section 733.212(3) to appellant’s claim that appellee was not qualified to serve as a nonresident personal representative pursuant to section 733.304 where the factual basis for the claim was known to appellant and could have been raised within the three-month period.

Hill, 31 So. 3d at 923-24.

Although the First District in Hill correctly noted that courts should construe related provisions in the Florida Probate Code together to determine the issue before this Court, the First District failed to give credence to section 733.3101, Florida Statutes (2007), which plainly states that “[a]ny time a personal representative knows or should have known that he or she would not be qualified for appointment if application for appointment were then made, the personal representative shall promptly file and serve a notice setting forth the reasons.” The First District also failed to apply Florida Probate Rule 5.310 which imposes the same requirement. Reading section 733.3101 and Rule 5.310 together with section 733.212(3) indicates the three-month limitation period for filing objections to the

personal representative's qualifications does not commence until the personal representative gives the required notice.

Angelus from the Third District represents the better view because Angelus is consistent with the principle that “[i]f interested persons are to be limited by special time constraints, the personal representative must strictly comply with the statute authorizing such limitations.” In re Estate of Ballett, 426 So. 2d 1196, 1199 (Fla. 4th DCA 1983). Applying this principle, petitioner should not be constrained by the three-month deadline for objecting to the nonresident personal representative's qualifications unless and until the personal representative strictly complies with Florida Probate Rule 5.310 and section 733.3101, Florida Statutes (2007). See Cason ex rel. Saferight v. Hammock, 908 So. 2d 512, 517-18 (Fla. 5th DCA 2005) (holding that where personal representative did not properly serve decedent's minor granddaughter with a copy of the notice of administration, service on the granddaughter was ineffective and the three-month time limitation for challenging the will and the personal representative's appointment did not apply); Nardi v. Nardi, 390 So. 2d 438, 440 (Fla. 3d DCA 1980) (holding that optional provisions of Florida Probate Code relating to adjudication of validity of will before issuance of letters and precluding challenges to validity of will except in connection with proceedings before issuance of letters may be applied only when there is strict adherence to preconditioned safeguards).

Approving the First District decision in Hill will permit personal representatives to benefit from the time limitation contained in the Florida Probate Rules and Florida Probate Code for challenging their qualifications without requiring strict compliance with the rules and statutes authorizing that limitation. Petitioner respectfully suggests the Legislature never intended that result.

### **CONCLUSION**

This Court should quash the decision below and remand to the district court with directions to address the merits of petitioner's appeal on the question whether respondent is qualified to serve as nonresident personal representative.

Respectfully submitted:

H. GUY GREEN  
Fla. Bar No. 153300  
4387 Clinton Street  
Marianna, Florida 32446  
(850) 526-3707  
(850) 526-5810 (fax)

---

LOUIS K. ROSENBLOUM  
Fla. Bar No. 194435  
LOUIS K. ROSENBLOUM, P.A.  
4300 Bayou Boulevard, Suite 36  
Pensacola, Florida 32503  
(850) 475-1211  
(850) 475-1290 (fax)  
lrosenbloum@rosenbloumlaw.com

Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the following attorneys for respondent by U.S. Mail this 2nd day of August, 2010.

Frank A. Baker, Esquire  
4431 Lafayette Street  
Marianna, Florida, 32446

Michele M. Lenoff, Esquire  
Steven Lenoff, Esquire  
Lenoff & Lenoff, P.A.  
1761 West Hillsboro Boulevard, Suite 405  
Deerfield Beach, Florida 33442

**CERTIFICATE OF TYPE SIZE AND STYLE**

The undersigned attorney hereby certifies that this brief was prepared using a 14-point Times New Roman font in accordance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

---

LOUIS K. ROSENBLOUM  
Fla. Bar No. 194435  
LOUIS K. ROSENBLOUM, P.A.  
4300 Bayou Boulevard, Suite 36  
Pensacola, Florida 32503  
(850) 475-1211  
(850) 475-1290 (fax)  
lrosenbloum@rosenbloumlaw.com

Attorney for Petitioner