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 JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

Petitioner Solveig Edna Hill, appellant below, seeks review of the decision of the District Court of Appeal, First District, in Hill v. Davis, Case No. 1D09-4020 (Fla. 1st DCA March 31, 2010), based on certified conflict with a decision of the District Court of Appeal, Third District, Angelus v. Pass, 868 So. 2d 571(Fla. 3d DCA 2004).

The district court summarized the procedural history and operative facts of this case as follows:

> Following the decedent's death in Florida, appellee [respondent in this Court], a resident of New York, filed a petition for administration which claimed that he was entitled to be appointed the personal representative of the decedent's estate because he was the decedent's stepson and was nominated representative in the decedent's will. The trial court subsequently appointed appellee as personal representative and admitted the proffered will to probate. Appellee published the notice of administration and served a copy on appellant who was the decedent's mother. Appellant then filed two motions to have appellee removed as personal representative on the ground he was not qualified to serve as a nonresident personal representative pursuant to section 733.304(3), Florida Statutes (2007),[1] because appellee's father had

[1] 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;

predeceased the decedent and was not the decedent's spouse at the time of her death and, therefore, appellee was not a lineal descendent of a spouse of the decedent. Appellee responded by moving to strike appellant's motions as untimely because they were not filed within three months after service of the notice of administration as required by section 733.212(3), Florida Statutes (2007).[2] He also asserted that he was qualified to serve as personal representative because section 733.304(3) did not limit service by nonresidents to lineal descendants of a surviving spouse. The trial court denied appellant's motions to disqualify upon concluding that appellee qualified as a nonresident personal representative pursuant to section 733.304(3). The court also found that appellant'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. This appeal follows.

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(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.

[2] Section 733.212(3), Florida Statutes (2007), 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.

Hill, slip op. at 2-3 (footnotes added).

On appeal, Hill argued the trial court erred in concluding respondent was qualified to serve as a nonresident personal representative under section 733.304 (3), Florida Statutes (2007). See Hill, slip. op. at 2. In affirming the trial court's order, the district court declined to address Hill'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 v. Pass, 868 So. 2d 571(Fla. 3d DCA 2004), 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, slip op. at 6 ("We also certify conflict with Angelus.").

SUMMARY OF ARGUMENT

In Angelus, the Third District held the three-month statute of limitations period contained in section 733.212(3), Florida Statutes, does not bar a petition to remove a nonresident personal representative who was never eligible under section 733.304, Florida Statutes, to serve in that capacity at any time. On the other hand, the First District in Hill disagreed with Angelus and held that section 733.212(3),

Florida Statutes, bars an untimely petition to remove a nonresident personal representative even though the nonresident personal representative was never qualified to serve under section 733.304, Florida Statutes.

The two decisions are irreconcilable and thus create jurisdictional conflict.

ARGUMENT

I. As certified by the court below, the district court decision expressly and directly conflicts with Angelus v. Pass, 868 So. 2d 571 (Fla. 3d DCA 2004), concerning the issue whether the three-month statute of limitations found in section 733.212(3), Florida Statutes, bars an untimely petition to remove a nonresident personal representative who was never qualified to serve.

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), Florida Statutes. 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 filed.

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 . . . ." Angelus, 868 So. 2d at 272. In other words, "[t]he 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." Id. at 273.

The Angelus court also found the trial court's ruling inconsistent with Florida Probate Rule 5.310 which requires an unqualified personal representative to immediately notify interested persons of their right to petition for his or her removal as personal representative. See Angelus, 868 So. 2d at 273. 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:
>
> (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.

Concerning the relationship between section 733.212(3) and Florida Probate Rule 5.310, the Angelus court found "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." Angelus, 868 So. 2d at 272. The court explained further:

> 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.

Although the facts of this case are not materially distinguishable from those in Angelus, the Hill court declined to follow Angelus based on the following rationale:

> 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 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. This is not a situation where the factual basis for the claim of disqualification was concealed from appellant or arose after the three-month period had expired. Because appellant's motions to disqualify appellee as personal representative were time barred under section 733.212(3), we affirm the trial court's denial of the motions on that basis. We also certify conflict with Angelus. In light of this disposition, it is unnecessary for us to decide whether appellee was qualified to serve as a nonresident personal representative pursuant to section 733.304(3).

Hill, slip op. at 5-6.

As certified by the court below, Hill and Angelus reached the opposite conclusion on the same point of law based on the same essential facts. The two decisions are "irreconcilable" and thus create express and direct conflict. See Aravena v. Miami-Dade Cty., 928 So. 2d 1163, 1166-67 (Fla. 2006).

CONCLUSION

This Court should accept jurisdiction and decide the case on the merits.

Respectfully submitted:

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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 6th day of May, 2010.

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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.

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