
IN THE SUPREME COURT OF FLORIDA

Case No.: SC19-102

JOAN JOHNSON,

Petitioner,

vs.

LEE TOWNSEND, LESLIE LYNCH,
ELIZABETH DENECKE, and LISA EINHORN,

Respondents.

ON REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL
WEST PALM BEACH, FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENTS

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INTRODUCTION

Petitioner asks this Court to exercise its discretionary jurisdiction to determine whether a surviving spouse's alleged community property interest in property in the possession of the decedent and titled solely in the decedent's name gives rise to a "claim" subject to Florida's statutory claims procedures. The Court should decline to exercise its jurisdiction because the Legislature's answer to this question is readily ascertainable from a review of the applicable Florida statutes.

Petitioner further contends that the Fourth District's decision conflicts with *Quintana v. Ordone*, 195 So. 2d 577 (Fla. 3d DCA 1967) on the issue of whether community property is a vested property interest subject to the claims procedures. There is no conflict because the statutory language underpinning the conclusion in *Quintana* was deleted from the Florida Statutes in 1975. Accordingly, *Quintana* is no longer authoritative and presents no basis for conflict. Moreover, the current version of the nonclaim statute, Section 733.710, Florida Statutes, was adopted after *Quintana* and bars not just claims, but also causes of action. Even if petitioner's community property interest were not a "claim," it could otherwise be enforced only through a cause of action now time barred under Section 733.710.

Finally, petitioner argues that the Fourth District's decision conflicts with *Quintana* and *Meltzer v. Estate of Norrie*, 705 So. 2d 967 (Fla. 5th DCA 1998) on the issue of whether the trust exception to the probate claims procedures is limited

to express trusts. Again, the statutory language underpinning the trust exception discussed in *Quintana* has been deleted. In addition, *Meltzer* is consistent with the Fourth District's decision because it involved an express joint venture agreement, not an unwritten trust relationship created by operation of law.

STATEMENT OF THE CASE AND FACTS

The decedent, Clark Johnson, died on January 21, 2015. (A7). Petitioner Joan Johnson, was appointed as personal representative of Mr. Johnson's estate on March 19, 2015. (A7). Petitioner published notice to creditors on March 31, 2015. (A7). The notice instructed that "all creditors of the decedent and other persons having claims or demands against decedent's estate" must file their claims with the court within three months. (A7). The notice also stated that any claim filed two years or more after the date of the decedent's death is barred. (A8).

On September 6, 2017, petitioner filed a Petition to Determine and Perfect Surviving Spouse's Community Property Interest in Estate Assets. (A8). Notwithstanding her role as personal representative, and the notice she provided setting forth the applicable time limits, petitioner did not file her petition until well after the expiration of the three-month statute of limitations and the two-year claims bar deadline. (A7-8). In the petition, petitioner claimed a 50% community property interest in an investment account titled solely in decedent's name. (A8).

Respondents, decedent's daughters from a prior marriage, filed a motion to

strike the petition as untimely. (A8). In response, petitioner argued that the three-month statute of limitations and the two-year claims bar statute do not apply because her Petition to Determine and Perfect Surviving Spouse's Community Property Interest in Estate Assets is not a "claim" subject to those statutory filing deadlines. (A9). Petitioner also argued that there is no deadline in Florida by which a surviving spouse must seek to perfect an alleged interest in community property. (A9). Finally, petitioner argued that if a demand to perfect a community property interest is a claim, then it is nonetheless subject to the common law trust exception and statutory lien exception to the claims filing deadlines. (A9).

The trial court held that the Petition to Determine and Perfect Surviving Spouse's Community Property Interest in Estate Assets is a "claim" subject to the statutory filing deadlines. (A11). The trial court further held that no exception excused the filing of the claim more than two years after decedent's death. (A11). The trial court struck the petition as untimely and the Florida Fourth District Court of Appeal affirmed. (A11-14). Petitioner filed a Motion for Rehearing and/or Rehearing *En Banc* or to Certify a Question to the Florida Supreme Court as a Matter of Great Public Importance. (A5). The Fourth District denied rehearing and rehearing *en banc*, but certified the following question:

Whether a surviving spouse's vested community property rights are part of the deceased spouse's probate estate making them subject to the estate's claims procedures, or are fully owned by the surviving spouse and therefore not subject to the estate's claims procedures.

Petitioner filed a Notice of Intent to Invoke the Discretionary Jurisdiction of this Court based on the certified question and the existence of a conflict. The Court postponed its decision on jurisdiction and directed the parties to proceed with jurisdictional briefing.

SUMMARY OF THE ARGUMENT

The Court should decline to exercise its jurisdiction because the certified question is easily answered by the Florida statutes. A “claim” is defined by statute as a liability of the decedent. A decedent’s possession of alleged community property titled solely in the decedent’s name creates a potential liability of the decedent to the surviving spouse with respect to the community property interest. By statute, a surviving spouse enforces that liability by perfecting a community property interest in the probate court. The statutes also require a claim for personal property in the possession of the personal representative be brought in the probate court within the three-month statute of limitations. Thus, a demand to perfect a community property interest in assets in the possession of the personal representative is a claim the surviving spouse must file within the claims filing deadline.

Even if a surviving spouse’s community property interest does not give rise to a “claim” that must be filed in the probate court, that interest in property titled solely in the decedent’ name could otherwise be enforced only through a cause of action against the estate, the personal representative, or the beneficiaries. Petitioner,

however, missed the two-year nonclaim deadline for bringing such a cause of action.

Nor is there a conflict requiring this Court's exercise of its jurisdiction. *Quintana* was decided prior to the adoption of Florida's Probate Code. The statutory basis for *Quintana's* holding was deleted in 1975. Accordingly, *Quintana* is no longer authoritative and does not create a conflict with the Fourth District's decision. Also, the Fourth District's decision does not conflict with *Meltzer* by limiting the trust exception to express trusts. *Meltzer* involved a written joint venture agreement, not an unwritten trust established by operation of law.

ARGUMENT

The Florida Statutes Answer the Certified Question.

The Court need not exercise its discretionary jurisdiction to consider the certified question. A review of the applicable Florida Statutes provides the answer.

Section 731.201(4), Florida Statutes, defines a "claim" as a liability of the decedent, whether arising in contract, tort, or otherwise. The section excludes from the definition of "claim" certain expenses, but does not exclude a decedent's liability to a surviving spouse for a community property interest. Instead, Section 733.702, Florida Statutes, states that a claim for personal property in the possession of the personal representative, like the investment account here, is binding on the estate, the personal representative, and beneficiaries only if it is filed in the probate proceeding within three months after notice. If a surviving spouse claims a

community property interest in property titled in decedent's name, and therefore in the possession of the personal representative, the surviving spouse must file a claim to perfect that interest within the three-month statute of limitations.

Section 733.706, Florida Statutes, further states that no execution shall issue and no levy shall be made against property of the estate except with approval of the probate court. Earlier versions of this statute expressly permitted the enforcement of "claims to specific property, real or personal" outside of the claims administration process. *See* § 733.19, Fla. Stat. (1973); § 733.706, Fla. Stat. (1974). In 1975, the Legislature deleted the reference to "claims to specific property." *See Velzy v. Estate of Miller*, 502 So. 2d 1297, 1300 (Fla. 2d DCA 1987); § 733.706, Fla. Stat. (1975). The current version of Section 733.706 reads, "This section shall not be construed to prevent the enforcement of mortgages, security interests, or liens encumbering specific property." Section 733.706 thus prohibits a surviving spouse from levying on purported community property held by the estate. Instead, the surviving spouse must enforce the decedent's liability for the community property interest by asserting a claim in the probate proceeding.

Section 732.223 confirms this conclusion. If a decedent has possession of alleged community property that is titled solely in the decedent's name, the surviving spouse must perfect his or her community property interest in the probate court. The probate court has no duty to discover whether property held by the decedent is

community property. Similarly, the personal representative has no duty to discover whether property held by the decedent is community property unless the surviving spouse makes a written demand within three months after service of the notice of administration. Absent timely filing of a written demand, the personal representative may distribute property titled in the decedent's name.

Finally, Section 733.710 provides that neither the estate, the personal representative, nor the beneficiaries shall be liable for any claim or cause of action against the decedent unless it is filed within two years after the decedent's death.

Here, petitioner's filing in the probate court concedes two material points. Entitled "Petition to Determine and Perfect Surviving Spouse's Community Property Interest in Estate Assets," the filing acknowledges in its title that i) the investment account is an asset of the estate and ii) petitioner must perfect her purported community property interest in that estate asset in the probate court. Petitioner's own actions defeat her suggestion that her purported community property interest in the investment account is not an asset of the estate and that title to that interest passed to her outside of the claims administration process.

Even if petitioner were right and her community property interest does not create a probate claim, she is nonetheless precluded by the nonclaim statute, Section 733.710, from enforcing her interest in the community property against the estate, the personal representative, or the beneficiaries. Petitioner's community property

interest in property titled in the decedent's name could be enforced outside of probate only through a cause of action against the estate, the personal representative, or the beneficiaries. *See Meltzer*, 705 So. 2d at 968. Section 733.710 requires any such cause of action to be brought within two years of decedent's death. Petitioner missed that nonclaim filing deadline. As this Court has explained, Section 733.710 is a jurisdictional nonclaim statute. *See May v. Illinois Nat'l Ins. Co.*, 771 So. 2d 1143, 1157 (Fla. 2000). The nonclaim statute bars not just probate claims, but all causes of action seeking recovery against the estate, the personal representative, or the beneficiaries. § 733.710, Fla. Stat.

The Fourth District's Decision Does Not Conflict with *Quintana* or *Meltzer*.

Petitioner next suggests that the Fourth District's decision conflicts with *Quintana* on the issue of whether a surviving spouse's claim to a purported community property interest in property titled in the decedent's name is subject to Florida's statutory claims procedures. There is no conflict because, as discussed above, the statutes underpinning the *Quintana* decision have been repealed. At the time *Quintana* was decided, Florida had not yet adopted the Probate Code. Section 733.19, Florida Statutes, specifically exempted from its operation the enforcement of "claims to specific property, real or personal." Thus, a surviving spouse could enforce a community property interest in specific property by levying on that property. In 1975, that exemption was deleted from the language of Section 733.706

(which replaced Section 733.19). A surviving spouse can no longer levy against assets held by the estate to enforce claims (including a community property interest) in specific property.

Similarly, at the time the Third District decided *Quintana*, the Florida Legislature had not yet adopted Section 732.223, which provides for the perfection of a community property interest in the probate court. If a surviving spouse fails to file a written demand within three months, the personal representative shall have no duty to determine whether any asset held by the estate is community property and is free to distribute the assets free of any community property interest. Petitioner maintains that Section 732.223 operates solely to exonerate personal representatives. In the Fourth District, petitioner's only authority in support of this point was the Comment to Section 4 of the Uniform Disposition of Community Property Rights at Death Act. Petitioner's reliance is entirely misplaced because, unlike Florida's Act, Section 4 of the Uniform Act does not include any filing deadline. When Florida adopted Section 732.223, it imposed a three-month filing deadline that is absent from the Uniform Act, and is consistent with the statute of limitations in Section 733.702. Accordingly, the Comment to the Uniform Act sheds no light on the purpose or effect of the filing deadline in the Florida statute.

Even if petitioner were correct, the three-month deadline in Section 732.223 at a minimum creates a practical deadline after which a surviving spouse has no

recourse against a personal representative who distributes community property.

Finally, petitioner contends that the Fourth District's decision conflicts with *Quintana* and *Meltzer* by limiting the "trust exception" to the statutory claims procedures to express trusts. As discussed above, the deletion from Section 733.706 of the language permitting enforcement of claims against specific property outside of the claims administration process severely limited – if it did not eliminate entirely – the trust exception. *See Velzy*, 502 So. 2d at 1300; *Scott v. Reyes*, 913 So. 2d 13, 18 (Fla. 2d DCA 2005). Because *Quintana* was decided prior to the statutory change, it does not create conflict with the Fourth District's decision. Moreover, *Meltzer* is entirely consistent with the Fourth District's decision, *Velzy*, and *Scott*. In *Meltzer*, the decedent and the claimant executed a written joint venture agreement. The court concluded that, as a result of the written agreement, the surviving claimant's property interest did not become property of the estate. There is no similar written agreement here. The Fifth District did not, as petitioner argues, apply the trust exception to trusts created by operation of law. In fact, the Fifth District rejected the notion that the law imposed a constructive trust on the property interest of the surviving joint venturer.

CONCLUSION

For the foregoing reasons, respondents respectfully request that the Court decline to exercise its discretionary jurisdiction in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 28, 2019, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal system, which will transmit the foregoing document via email to all counsel of record. I further certify that a copy of the foregoing was served via electronic mail on the following:

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CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel for respondents certifies that this Jurisdictional Brief is typed in 14-point (proportionately spaced) Times New Roman.

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