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IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

JOAN JOHNSON,

Petitioner,

v.

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

Respondents.
_____/

Case No: SC19-102

L.T. Nos: 4D18-432;
502015CP001096XXXXNB

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BRIEF OF PETITIONER ON JURISDICTION

On Appeal from the Fourth District Court of Appeal of the State of Florida

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STATEMENT OF THE CASE AND FACTS

This case addresses whether a surviving spouse's community property rights which vested while domiciled in another jurisdiction are able to be divested by the application of the Florida probate claims process when the spouses move to Florida and one of them dies.

The decedent, Clark Johnson, died in January 2015 (A7). Petitioner, JOAN JOHNSON ("Mrs. Johnson" or "Surviving Spouse"), was appointed as Personal Representative of her late husband's Estate (A7). In March 2015, she published a notice to creditors, pursuant to section 733.702(1), Fla. Stat. (A7). Tracking the statute, the Notice provided all "creditors" of her late husband and others having "claims or demands" to file their claims within 3 months (A7). Additionally, the Notice provided any "claim" filed two years or more after her late husband's death is barred, pursuant to section 733.710, Fla. Stat. (A8).

In September 2017, outside of these time frames, Mrs. Johnson filed a Petition to Determine and Perfect Surviving Spouse's Community Property Interests in Estate Assets (A8) (citing sections 732.216-.228, Fla. Stat. (2015), known as the "Florida Uniform Disposition of Community Property Rights at Death Act."). Respondents, the decedent's daughters from another marriage, moved to strike the filing as untimely pursuant to the 3-month and 2-year "claim" deadlines cited above

(A8-9). The lower court agreed with Respondents and struck the Petition since it determined the Petition was an untimely claim (A8, A12).

At the appellate level, as she had in the lower court, Mrs. Johnson continued to argue, *inter alia*, that her Petition seeking to perfect her community property interest did not constitute a *claim* against the Estate and therefore was not subject to any statutory claim deadline (A10, A12). The Fourth District, however, agreed with the Respondents' argument and the lower court's ruling that Mrs. Johnson's Petition constituted a "claim." (A6, A12, A14). As defined in section 731.201(4), Fla. Stat., the Fourth District went on to find that since it was a claim, Mrs. Johnson had to file for her claim within the three-month claim period and/or the later two-year statute of repose period (A6, A8, A13).

As part of her argument, Mrs. Johnson relied on Quintana v. Ordono, 195 So.2d 577 (Fla. 3d DCA 1967), which held that a claim was unnecessary to enforce a surviving spouse's community property rights in property. The Quintana court held that a community property interest is a vested right, and that additionally, there was no obligation to file a claim against the deceased spouse's estate since the surviving spouse's community property interest in property titled in the name of the decedent is held by the decedent in the nature of a trust interest. 195 So.2d at 580. The Third District noted that the non-claim statute at that time, section 733.16, Fla.

Stat. (1966), did not apply to require the surviving spouse to file a claim against the Estate of her deceased husband/trustee. Id.

The Fourth District, however, held that "Quintana's viability is questionable." (A13). The Fourth District went further and found that Mrs. Johnson's reliance on Quintana was unavailing because after Quintana, the Legislature had revised the Florida Probate Code (A13). The Fourth District reasoned that a community property interest is a trust interest subject to Florida's revised claim statutes, as the nature of a community property interest is not an express trust (A13-14). The Fourth District did not specifically address Quintana's holding that a community property interest is a vested interest, however (A12-14).

On rehearing, while denying Mrs. Johnson's Motion for Rehearing and Rehearing En Banc, the Fourth District Court of Appeal has certified the following question as a matter of great public importance to this Court (A5):

> 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.

SUMMARY OF ARGUMENT

This case presents issues of first impression on the fundamental issue presented – the application of the Florida Probate Code's creditor claim procedures to the vested community property rights of a surviving spouse of a Florida decedent.

This Court already has discretionary jurisdiction to grant review because the Fourth District certified a question of great public importance. Independently, this Court should grant review because of an express and direct conflict between the Fourth District's decisions and other district court of appeal decisions on two issues regarding the surviving spouse's community property interest.

First, the Fourth District's decision conflicts with another decision on whether a community property interest is a *vested* interest that cannot be subject to Florida's claims statutes. It is true that the earlier court [Quintana] which addressed this issue was confronted with a now-repealed and revised claim statute. However, Quintana's reasoning on this issue was not reliant on the claim statute in existence at that time.

Second, the Fourth District's decision conflicts with two decisions on whether a surviving spouse's interest is not subject to the claim statute under the so called trust exception to the probate claims statutes. The Fourth District limited the trust exception to "express" trusts, and reasoned a community property interest is not such an interest. However, two other courts have not required the existence of an express trust in order to apply the trust exception.

ARGUMENT

THE FOURTH DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH OTHER DISTRICT COURT OF APPEALS DECISIONS ON TWO DIFFERENT ISSUES REGARDING COMMUNITY PROPERTY INTERESTS.

First, there is a conflict between Johnson and Quintana regarding the nature of the vested rights of a surviving spouse in community property and whether the claims procedures (i.e., the creditor claims procedure found within the Florida Probate Code) can be invoked to void those vested rights without due process of law. The Fourth District's certified question even references and appears to recognize a surviving spouse has "*vested* community property rights" (A5). Quintana held exactly as such. Yet at the same time in this case, the Fourth District determined that Mrs. Johnson's surviving spouse rights were *not* vested.

Although Florida is not a community property state, it is a state of immigrants who come from community property states and foreign community property countries. With millions of people moving to this state every decade, the vested community property rights of spouses moving to Florida is a growing concern. The Quintana case involved a couple moving to Florida from Cuba. 195 So.2d at 578. At the time of the Quintana case, Cuba provided community property rights and protections for spouses. Id. at 580. In Johnson, Mr. and Mrs. Johnson moved to Florida from Texas, a community property state (A8).

In Quintana, the Third District noted that even though the decedent spouse died in Florida, it is well-settled that the interests of spouses regarding "movables" acquired during the marriage is determined by the law of the domicile of the parties

when the "movables are acquired." 195 So.2d at 579-80. In unequivocal language, the Third District concluded that the surviving spouse "had a vested interest in the stock equal to that of her husband." Id. Thus, the court held that the surviving spouse's community property rights in property were *vested property interests*. Id. Consequently, the creditor claims procedure set forth in the then-applicable creditor claims statute (at that time, §731.111, Fla. Stat. (1966)) could not be invoked and asserted by the Estate to divest the surviving spouse of those vested community property rights – otherwise, finding that such application of the statute would violate the due process rights of the surviving spouse.

In Johnson, the Fourth District recognized Quintana, but concluded that the intervening application of the updated Florida Probate Code divested the surviving spouse's community vested property rights – holding that the enactment of the updated Florida Probate Code, turned a vested right into a "claim" subject to the claims procedure in the Probate Code. (As we noted above, the Johnson court's certified question nonetheless references the surviving spouse's *vested* rights).

The revised statutory scheme, however, did not eliminate Quintana's core holding that community property rights are vested rights. Indeed, after Quintana, the Legislature specifically enacted statutory provisions of community property rights of surviving spouses as it relates to the disposition and administration of a

Florida decedent's Estate and the obligations of the Personal Representative arising therefrom (commonly referred to as FUDCPRA and more generally the Florida Uniform Disposition of Community Property Rights at Death Act found in §732.216-.228). The enactment of FUDCPRA actually *strengthens* the vested community property rights recognized in Quintana and articulates them as legal/statutory recognized rights in the property. Pursuant to FUDCPRA, those vested community property rights are not subject to testamentary disposition by the deceased spouse (i.e., the first spouse to die). See F.S. §732.219.

By its holding, the Johnson court concluded that these vested and statutorily recognized property rights in a surviving spouse nevertheless are subject to the creditor claim procedures of the Florida Probate Code – thereby divesting the surviving spouse of vested and legally recognized property rights. This directly conflicts with Quintana, which held that these same community property rights (which Quintana identified as equitable property rights in the nature of a resulting Trust interest) were not subject to the creditor claim statute.

The conflict is not displaced by any statutory revisions, when the Third District's holding is premised on its understanding of community property rights as vested rights. Surviving spouses within the Third District now have different rights (and obligations and deadlines to meet when their spouse dies) than within the

Fourth District. While the Quintana court treated the community property rights as equitable property rights, these are still vested rights that would, within the Third District, still necessarily not be subject to the revised probate claim statutes.

A second conflict among the district courts found within the Johnson holding relates to the "trust exception" to the creditor claim procedure. This conflict again is found in competing district courts of appeal opinions relating to the application of the creditor claim statute to an assertion of debts/liability and/or interest in property titled in the name of the decedent which is held by the decedent in the nature of a Trust (i.e., that is, the decedent being deemed to hold the property as Trustee for the benefit of the claimant).

In Velzy v. Estate of Miller, 502 So.2d 1297 (Fla. 2d DCA 1987), the court articulated the "trust exception" to the creditor claims procedure. Later, in Scott v. Reyes, 913 So.2d 13 (Fla. 2d DCA 2005), the court went further and purported to limit the "trust exception" to only those circumstances where there was an express Trust in place (thus, limiting the so-called "trust exception" to only those circumstances where there was an actual Trust instrument in existence thereby establishing the Decedent's Trustee status). In Johnson, the court agreed there is a limited "trust exception" to the creditor claim statute.

Mrs. Johnson contends that the Johnson court's reliance upon the Scott limited version of the "trust exception" to the creditor claim procedure conflicts with Quintana. The Third District in Quintana did not require a so-called "express" Trust. Thus, the court in Quintana allowed the trust exception to apply to circumstances including the community property circumstance whereby community property titled in the name of the Decedent is considered to be held in the nature of a Trust interest. As Quintana noted, "a resulting trust is generally found to exist in transactions affecting community property in noncommunity property states where a husband buys property in his own name. Therefore, while the husband held legal title to the note and contract, he held a one-half interest in trust for his wife." Id.

The revised probate claim statute does not state that it is limited to express trusts. In fact, Johnson also conflicts with a Fifth District decision that did not limit the trust exception to express trusts. In Meltzer v. Estate of Norrie, 705 So.2d 967 (Fla. 5th DCA 1998), the decedent had a joint venture on an office building with the appellant. After the decedent's death, appellant did file a notice of claim asserting that decedent held 50% of the property for her in "trust." Id. at 968. The trial court recognized the claim but refused to give it priority as a secured claim.

On appeal, the Fifth District agreed this was not a secured claim. Id. However, the Fifth District then went on to state that the appellant's property

ownership, whether viewed under partnership *or under trust law*, "never became a part of the decedent's estate and thus is not properly the subject of a 'claim.'" Id. (citing to decisions holding trust interests are not the subject of a claim). Indeed, the Fifth District explained that the property ownership was "not part of the probate estate" and judicial recognition of appellant's claimed entitlement to 50% of the property had to be determined outside of probate court. Id.

This decision, decided under the current statutory scheme, holds the exact opposite of Johnson. The Fifth District did not impose a limitation that *only* express trusts fall outside the claim statute. On the other hand, the Fourth District in Johnson imposed this limitation. While the Fifth District did not address a community property interest, these two decisions expressly and directly conflict on the issue of whether trust interests are subject to the claim statute, depending on the nature of the trust interest *as express or not*.

CONCLUSION

This Court should accept review because the Fourth District's decision expressly and directly conflicts with other district court of appeal decisions (in addition to this Court's discretionary jurisdiction to accept review on the certified question of great public importance).

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was furnished to all counsel on the attached service list, by email, on February 14, 2019.

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CERTIFICATE OF TYPE SIZE & STYLE

Petitioner hereby certifies that the type size and style of the Jurisdictional Brief of Petitioner is Times New Roman 14pt.

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