

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DOUGLAS STALLEY,
Appellant,

v.

HARRISON WILLIFORD, as
Representative of the Estate of
Pamela Lynn Williford, Deceased,
Appellee.

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Case No. 2D09-4635

Opinion filed December 8, 2010.

Appeal from the Circuit Court for Pinellas County; Patrick K. Caddell, Acting Circuit Judge.

Laura Whitmore of Gunn Law Group, Tampa, and Tracy Raffles Gunn of Gunn Appellate Practice, P.A., Tampa, for Appellant.

Brian E. Johnson of Brian E. Johnson, P.A., Seminole, for Appellee.

NORTHCUTT, Judge.

Pamela Lynn Williford died in 2008, leaving two minor children as the sole heirs of her intestate estate. Douglas Stalley was tendered by the children as a suitable personal representative, but the circuit court appointed Williford's father, Harrison Williford, instead. This appointment was contrary to the statute prescribing the order of

preference for appointment of a personal representative in this case. Accordingly, we reverse.

The statute, section 733.301, Florida Statutes (2008), sets forth the following order of preference in appointment of a personal representative of an intestate estate:

1. The surviving spouse.
2. The person selected by a majority in interest of the heirs.
3. The heir nearest in degree.

§ 733.301(1)(b).

There was no surviving spouse in this case. Douglas Stalley was the person selected by both heirs, acting through the guardians of their property as authorized under section 733.301(2). Thus, Stalley should have been appointed unless otherwise disqualified. Cf. §§ 733.302, 303 (providing qualifications for personal representative); In re Estate of Snyder, 333 So. 2d 519, 521 (Fla. 2d DCA 1976) (holding, under earlier version of statute, that court did not abuse its discretion in declining to appoint person with statutory preference where he lacked "the qualities and characteristics necessary to properly perform the duties").

There was a complete absence of evidence to suggest that Stalley was unfit to serve. Thus, the court abused its discretion by appointing the decedent's father rather than the representative chosen by the heirs.

Reversed and remanded.

ALTENBERND and KHOUZAM, JJ., Concur.