Third District Court of Appeal

State of Florida

Opinion filed February 12, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-31
Lower Tribunal No. 16-78

Vernal Robinson,
Appellant,

vs.

In Re: Estate of John E. Robinson,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Mindy S. Glazer, Judge.

Golden Glasko & Assoc., P.A., and William H. Glasko, for appellant.

Law Offices of Mery Lopez, P.A., and Mery Lopez, for appellee.

Before SCALES, HENDON and LOBREE, JJ.

LOBREE, J.

In this probate action, Vernal Robinson ("Robinson") appeals from an order granting Sylvia Michel's ("Michel") petition for rehearing of a prior order vacating

orders of summary administration and determining homestead status, contending that Michel's claim for a paternity determination was barred by the statute of limitations, section 95.11(3)(b), Florida Statutes (2002). We agree and reverse.

Robinson's brother, John E. Robinson (the "decedent"), died intestate in February 2004. In 2016, petitions for summary administration of his estate and to determine homestead status were filed by Michel, who claimed that she was the decedent's daughter and heir.[1] After amendments to the petition and the affidavit of heirs, the trial court entered orders of summary administration and determination of homestead, finding in pertinent part, "that all interested persons have been served proper notice of the petition and hearing, or have waived notice thereof . . . ." Five months later, Robinson wrote to the court asking that the estate be reopened based on lack of notice and disputed Michel's claim to be the decedent's daughter. Thereafter, he formally petitioned to reopen the estate and vacate the orders of summary administration and determining homestead.

After the estate was reopened, Michel filed a verified petition for release of a blood sample of the decedent. Robinson argued that Michel's claim to establish paternity was barred by the statute of limitations. The trial court initially ruled in Robinson's favor and vacated the summary administration. Thereafter, a successor

[1] When Michel later filed a copy of her birth certificate as ordered by the court, another person was listed as her father.

judge granted Michel's petition for rehearing and the requested DNA testing, reasoning that "if there is a DNA sample that could scientifically establish whether or not John Robinson is the father, it would be . . . an extreme injustice for this not to occur." The probate court emphasized that it was a court of equity and reversed its order that had vacated the two prior rulings.

Questions of statutory interpretation, such as application of a governing statute of limitations, are matters of law that are reviewed de novo. Green v. Cottrell, 204 So. 3d 22, 26 (Fla. 2016). Section 95.11(3)(b), Florida Statutes, imposes a four-year statute of limitations for "[a]n action relating to the determination of paternity, with the time running from the date the child reaches the age of majority." However, in 2009, section 732.108(2)(b), Florida Statutes, was amended to provide that chapter 95 shall not apply in determining paternity in a probate proceeding relating to intestate succession.

Robinson relies on Rose v. Sonson, 208 So. 3d 136, 139 (Fla. 3d DCA 2016), and Dixon v. Bellamy, 252 So. 3d 349, 351 (Fla. 3d DCA 2018), in his contention that section 732.108(2)(b), as amended in 2009, does not provide relief to Michel because her claim had already been extinguished by section 95.11(3)(b) in 2002 (four years after she reached majority), and the 2009 amendment does not apply retroactively. Michel responds that the probate court must do what is equitable, as

the legislature has now determined that children born out of wedlock have a right to inherit from their natural fathers if paternity is established.

In Rose, 208 So. 3d at 137, this court first addressed whether the 2009 amendment to section 732.108(2)(b) applied retroactively. The putative son was born out of wedlock in 1964 and turned 18 in 1982. Id. Pursuant to section 95.11(3)(b), he had until 1986 to bring suit to establish paternity, which he failed to do. Id. at 138. Rose's alleged biological father died in 2012. Id. Thereafter, Rose filed a petition to determine beneficiaries, claiming to be the decedent's surviving son. Id. This court held that his paternity claim was "time barred because more than four years has passed since [he] attained majority in 1982." Id. at 139. The court further held that the 2009 amendment to section 732.108(2)(b) did not affect this outcome because the Florida Legislature did not make the amendment retroactive in its application. Id. Finally, this court stated that even if the amendment were retroactive, it could not revive Rose's claim because his claim had been extinguished by the applicable statute of limitations. Id.

Here, Michel was born out of wedlock in 1980, and she reached the age of majority in 1998. She did not petition for summary adjudication until 2016, or for a blood sample from the decedent to verify paternity until 2017. By the time Michel filed her paternity claim, it had already been time barred by section 95.11(3)(b), because more than four years had passed since she attained the age of majority in

1998. Because her right to establish paternity was extinguished in 2002, it could not be revived by the 2009 amendment. See Rose, 208 So. 3d at 139; Dixon, 252 So. 3d at 351 ("[A]s there is no explicit statutory language in the 2009 amendment . . . to indicate that the Florida Legislature intended to create a new and separate cause of action [not] subject to the statute of limitations, Bellamy's right to establish paternity was extinguished in 1981—four years after she reached [18]."). Thus, while section 732.108(2)(b), as amended in 2009, prospectively provided relief to similarly situated individuals seeking paternity determinations in probate proceedings, this amendment provides no relief to those such as Michel whose claims had already expired by the time the amendment became law. See Rose, 208 So. 3d at 140-41.

Michel maintains that the probate court sits in equity and must do what is equitable. She argues that because Robinson raised the issue that she is not the decedent's daughter, she should be given every opportunity to prove the opposite.[2] While we are sympathetic to Michel's argument, the probate court erred on rehearing when it invoked equity as a basis to ignore the statute of limitations and this court's precedents of Rose and Dixon. As the Florida Supreme Court has explained:

> [W]e cannot agree that courts of equity have any right or power under the law of Florida to issue such order it considers to be in the best interest of 'social justice' at the particular moment without regard to established law. This

[2] Michel further relies on the doctrine of unclean hands, contending that Robinson lived on the property for years without paying rent or taxes. The trial court did not address this factually disputed issue. Thus, we decline to reach it now.

> court has no authority to change the law simply because the law seems to us to be inadequate in some particular case.

Flagler v. Flagler, 94 So. 2d 592, 594 (Fla. 1957) (en banc). Where the legislature has provided "a plain and unambiguous statutory procedure . . . courts are not free to deviate from that process absent express authority." Oreal v. Steven Kwartin, P.A., 189 So. 3d 964, 967 (Fla. 4th DCA 2016) (quoting Pineda v. Wells Fargo Bank, N.A., 143 So. 3d 1008, 1011 (Fla. 3d DCA 2014)). Accordingly, we reverse the order granting Michel's petition for rehearing and remand with directions to again vacate the orders of summary administration and determining homestead status and conduct further proceedings consistent herewith.

Reversed.