

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MARY JO FUTCH,

Appellant,

v.

TOM J. HANEY, as personal representative of the Estate of Alvin C. Futch, deceased; TOM J. HANEY and R. READ PEASLEE, as successor co-trustees of the Alvin C. Futch Revocable Living Trust u/a/d December 23, 1997; CARSON FUTCH; WAYNE FUTCH; MORRIS FUTCH; and JANET FUTCH,

Appellees.

No. 2D20-3299

October 13, 2021

Appeal from the Circuit Court for Hillsborough County; Artemeus McNeil, Judge.

Robert C. Wilkins, Jr., of Robert C. Wilkins, Jr., P.L., Orlando, for Orlando, Appellant.

Steven L. Hearn and Frederick Hearn of Steven L. Hearn, P.A., Tampa, for Appellees Tom J. Haney, as personal representative of the Estate of Alvin C. Futch, deceased, and Tom J. Haney and R. Read Peaslee, as successor co-trustees of the Alvin C. Futch Revocable Living Trust u/a/d December 23, 1997.

Mark N. Miller, Kristie Hatcher-Bolin, and Katherine Sultenfuss Schichtel of GrayRobinson, P.A., Lakeland, for Appellees Carson Futch, Wayne Futch, Morris Futch, and Janet Futch.

MORRIS, Chief Judge.

Mary Jo Futch, the surviving spouse of Alvin Futch (the decedent), appeals an order denying her petition for extension of time to make election for elective share and sustaining the objections to her election to take elective share filed by the personal representative (PR) of the decedent's estate, the trustees of the decedent's trust, and the beneficiaries of the estate and trust. We reverse because Futch's timely petitions for extension of time tolled the time period in which she could make her election for the elective share.

The decedent died in April 2019. Tom J. Haney filed a petition for administration in June 2019 and was appointed as PR of the estate in July 2019. The notice of administration was filed on August 14, 2019.

On January 6, 2020, Futch filed a petition for extension of time to make election for elective share, requesting a three-month extension until April 8, 2020, on the basis that she had recently

received documents relating to the calculation of the elective share and needed additional time to review them. On April 7, 2020, Futch filed a second petition for extension of time, alleging that the COVID-19 emergency had "limited her ability to travel, meet with counsel, sign documents, and otherwise take action necessary to protect her interests in this case," that she was "not able to effectively participate in teleconferencing or video conferencing that would currently be required to attend probate court hearings and to consult with counsel," and that the circuit court had limited in-person proceedings of probate cases. Futch asked for an extension until June 8, 2020, or "a date when the [c]ourt resumes in-person probate proceedings." Futch obtained new counsel and on June 9, 2020, filed a third petition for extension of time, until June 18, 2020. There is no indication that any of the interested parties filed objections to Futch's three petitions for extension. On June 10, 2020, Futch filed her election to take elective share.

The PR, the trustees of the decedent's trust, and the beneficiaries all filed objections to Futch's election, and Futch responded. After hearing argument from counsel, the trial court denied Futch's June 9, 2020, petition for extension and sustained

the objections "on the grounds that [Futch's] Election to Take Elective Share was untimely filed."

On appeal, Futch argues that her election to take elective share was timely because it was filed while her timely petitions for extension of time were pending. She contends that under section 732.2135(4), Florida Statutes (2019), her petitions for extension of time tolled the time in which she was required to make her election.

Section 732.2135 provides as follows:

(1) Except as provided in subsection (2), the election must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent's death.

(2) Within the period provided in subsection (1), or 40 days after the date of termination of any proceeding which affects the amount the spouse is entitled to receive under s. 732.2075(1), whichever is later, but no more than 2 years after the decedent's death, the surviving spouse or an attorney in fact or guardian of the property of the surviving spouse may petition the court for an extension of time for making an election. For good cause shown, the court may extend the time for election. If the court grants the petition for an extension, the election must be filed within the time allowed by the extension.

(3) The surviving spouse or an attorney in fact, guardian of the property, or personal representative of the surviving spouse may withdraw an election at any time within 8 months after the decedent's death and before the court's order of contribution.

(4) A petition for an extension of the time for making the election or for approval to make the election shall toll the time for making the election.

Pursuant to subsection (1), Futch was required to file her election within six months after the date of service of the notice of administration. However, within that time, she was permitted to petition the court for an extension, as provided in subsection (2). Such a petition for extension of time was required to "toll the time for making the election," as provided in subsection (4). The statutory language is clear; because Futch had filed a timely petition for an extension of time, the time for making the election was tolled. *See Rollins v. Pizzarelli*, 761 So. 2d 294, 297 (Fla. 2000) ("[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." (quoting *Modder v. Am. Nat'l Life Ins. Co.*, 688 So. 2d 330, 333 (Fla. 1997))). Each additional petition for extension was filed within the time sought in the prior petition, thus continuing to toll the time.

The plain language of the statute does not limit the amount of time that a surviving spouse may seek in a petition for extension, it

does not prevent the surviving spouse from filing a timely subsequent petition seeking additional time, and it does not require a hearing or ruling on a petition in order for the time to be tolled. Subsection (2) addresses when a trial court may grant an extension (for good cause shown) and provides that if the trial court grants the extension, the election must be filed within the time allowed by the extension. But subsection (2) does not require the trial court to grant a petition for extension before the time is tolled; such a reading would render meaningless the tolling provision in subsection (4). See *Bennett v. St. Vincent's Med. Ctr., Inc.*, 71 So. 3d 828, 838 (Fla. 2011) ("Courts should avoid readings that would render part of a statute meaningless." (quoting *Gomez v. Vill. of Pinecrest*, 41 So. 3d 180, 185 (Fla. 2010))). Here, the tolling provision in subsection (4) applied to Futch's petitions. Because Futch's election was filed during the tolling period, the election was timely. Our conclusion is consistent with Florida's strong public policy of protecting a surviving spouse. See *Via v. Putnam*, 656 So. 2d 460, 462 (Fla. 1995) (recognizing that the elective share statutes "suggest a strong public policy in favor of protecting a surviving spouse's right to receive an elective share" (quoting *Putnam v. Via*,

638 So. 2d 981, 984 (Fla. 2d DCA 1994)); *Velde v. Velde*, 867 So. 2d 501, 507 (Fla. 4th DCA 2004) (noting "Florida's strong public policy favoring protection of the surviving spouse").

Accordingly, we reverse the order denying Futch's petition and sustaining the objections to her election and remand for further proceedings.

Reversed and remanded.

KELLY and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.