Probate, Trust, and Guardianship Case Law Update

At The

Annual Legislative & Case Law Update

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July 21, 2023

The Breakers
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These materials are an amalgamation of decisions, mostly from Florida Law Weekly. The order of presentation may seem like no order at all, yet some method certainly existed at some point during the preparation of these materials. Much of the text presented is directly from decisions cited, yet quotes are typically omitted unless seemingly additive to the presentation. Sometimes sentences have been shortened, while others are just as scribed by the member of the judiciary who penned the particular opinion. Sometimes paragraphs are eliminated and even entire arguments deleted when those provisions seem more distracting than useful in making the intended points. None, or nearly none, of the positions presented are my own; all come from the judiciary, with the exception of the headings. Those are mine and meant to be tantalizing or at least catchy.

I generally resisted the temptation to include a decision just because it related to my assigned scope if I concluded the decision was of no particular use in other situations or did not present an interesting issue. While some decisions of this type might have slipped into the outline, many did not.

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1. Timeliness of Appeals[1]

Procedure matters. A *pro se* appellant appealed multiple orders, including an Order of Summary Administration. However, no claim of error was made as to any of the appealed orders. Instead, appellant complained that he had not been appointed as the personal representative. He failed to appeal the order appointing a personal representative. When the ever-helpful appellate bench went looking for that order, it discovered the time for an appeal had passed. The court wrote to point out the lack of timeliness required dismissal because the court lacked jurisdiction.

[1] **Dowdy v. Estate of Dowdy, 48 Fla. L. Weekly D1167a (Fla. 6th DCA 2023)**

2. Offers of Judgment and A Procedural Morass[2]

After decades of litigation, the (hopefully) final chapter of the Saga of Desrosiers has been written. Going out with a procedural twist, the court was presented with a request for fees pursuant to an offer of judgment pursuant to Fla. Stat. §768.79. The lower court denied the motion, and the movants appealed.

The appellants were not entitled to fees for a simple reason: the appellants had never made an offer of judgment. Instead, a party aligned with them had made the only offer of judgment. But that party did not appeal the order. (That party did try to tag herself into the appeal as an appellant by seeking to correct a "scrivener's error" by filing an amended notice of appeal adding herself as an appellant. The court denied that request quoting authority that indicated the subjective intent of the attorney when filing a notice of appeal does not determine which parties in the lower court proceedings become parties in the appeal.

[2] **Gladding v. Daher, 48 Fla. L. Weekly D1046a (Fla. 2nd DCA 2023)**

3. Convenience Accounts and Overplaying One's Hand[3]

The father added one of his sons to an existing bank account and marked the signature card "multiple-party account with right of survivorship" leaving unmarked the choice "convenience account." The "dutiful" son apparently believing the bank card would control, took the money (and spent it on himself) after his father's death. A four day bench trial resulted in an order that determined the account was, in fact, intended by the father as a convenience account and ordered the "dutiful" son to return the funds to the estate. Losing an effort at rehearing, the "dutiful" son decided that having spent all of those funds, he would take an offset from the other portion of the estate to which he would be entitled. The lower court was apparently not amused and ordered the "dutiful" son to show cause why he should not be found in contempt of court. The judge, likely having lost all patience, made minimum findings at the show cause hearing and directed the personal representative (a lawyer appointed by the judge) to prepare the order, and then signed the order provided by the personal representative verbatim ten minutes after having received it. In addition to the purge amount, the order imposed daily and escalating fines, none of which were announced by the court at the show cause hearing. Not surprisingly, the "dutiful son" moved for rehearing of the contempt order, which also not surprisingly was denied.

Judge Scales, of the appellate panel, wrote to explain that the signature card creates a presumption that is rebuttable. Because the lower court had entered a detailed order identifying the evidence relied upon for its determination and because there was no mistake of the law on which the determination was based, the order finding the account was a convenience account withstood the appellate attack.

On the other hand, the lower court was not as thorough when entering the contempt order. The appellate panel focused on certain shortcomings when reversing the contempt order. The appellate court indicated that the record reflected the lower court failed to exercise independent judgment, which was supported by the judge having signed the "five-page, single-spaced proposed order verbatim ten minutes after receiving it." Specifically, the appellate panel wrote that the lower court "(i) did not make detailed factual findings; (ii) solicited from [the personal representative] what [the personal representative] wished to see in the proposed contempt order; (iii)instructed [the personal representative] to draft and submit the proposed order, allowed [the personal representative] to author the findings of fact and conclusions of law, and to establish the daily fine; (iv) deferred to [the personal representative] whether to include in the proposed order a sixty-day purge provision, as requested by the

[3] **Larkins v. Mendez, 48 Fla. L. Weekly D1002a (Fla. 3rd DCA 2023)**

"dutiful" son (which was not included); and (v) did not require that [the personal representative] share a draft of the proposed order with counsel and, indeed, [the personal representative] did not do so before submission. Based upon those shortcomings, the contempt order was reversed.

4. Settlement Agreements, Vexatious Litigants, and an Unforced Error[4]

After several years of sibling judicial-centric warfare, the parties entered into a settlement agreement, in fact a "Global Settlement Agreement." Yet, the fighting found a way to continue, apparently moving this to the galactical arena (i.e., beyond the globe). The global settlement agreement had even been approved by the court in the probate proceeding.

For two years *after* the global settlement was approved, litigation continued. The result earned one of the siblings the label of "vexatious" and another fee award. The sibling on the good end of the fee award lost the appeal because the lower court did not provide the vexatious sibling with an evidentiary hearing at which he would have an opportunity to present witnesses and other evidence.

[4] **Buechele v. Estate of Buechele, 48 Fla. L. Weekly D896a (Fla. 3rd DCA 2023)**

5. Dismissals and Staying in Bounds[5]

The lower court was reversed because it looked beyond the filings when dismissing a counter-petition for administration. The widow sufficiently alleged an interest, including eventually as an heir in the event of intestacy. The appellate court reversed and remanded to reinstate the widow's counter-petition for administration, quoting authority by noting "it is apodictic that matters dehors the four corners of a complaint or petition may not be considered on a motion to dismiss."

[5] **De Holguin v. Godin, 48 Fla. L. Weekly D857a (Fla. 3rd DCA 2023)**

6. ***Forum Non Conveniens***[6]

A proceeding based upon a claim filed in an estate was dismissed because there was a more convenient forum, that being in Columbia. An estate proceeding was also pending in Columbia where the same issues were being addressed.

The appellate decision recites the established four-step test to address *forum non conveniens* challenges. The standard of review is abuse of discretion, of which the appellate court found none.

[6] **De Holguin v. Godin, 48 Fla. L. Weekly D856a (Fla. 3rd DCA 2023)**

7. Homesteads and Deeds[7]

Husband and wife conveyed their homestead by warranty deed to them as trustee of their respective revocable trusts, each receiving a 50% tenancy in common interest. After the death of first the husband and later the wife, the appellee petitioned to determine the homestead status of the 50% conveyed to husband as trustee of his revocable trust.

The lower court held that by executing the deed the spouses had waived their homestead rights. The appellate court, after a scholarly dissertation on waivers of homestead rights, reversed and held the deed was not adequate to waive spousal homestead rights. In doing so, the court referred to the 2018 legislation that addresses the central issue. While acknowledging that the legislation did not apply based upon the timing of the execution of the deed, the panel found comfort for its decision by noting the action required in the 2018 legislation for a deed to constitute a waiver of homestead rights.

[7] **Thayer v Hawthorn, 48 Fla. L. Weekly D1247 (Fla. 4th DCA 2023), replacing 48 Fla L. Weekly D745**

8. Revocation by a Holographic Will[8]

A testator executed a Last Will and Testament in 2014, followed by a handwritten Will in 2015 that purported to revoke all prior Wills. The 2015 handwritten Will, a classic holographic Will, was not witnessed, which was not required in Louisiana where the testator was then domiciled. By his death in 2019, the testator had become domiciled in Florida. His daughter, unaware of any Wills, petitioned for appointment as personal representative of an intestate estate, which petition was granted.

In 2021 and while the estate administration was still pending, the decedent's long time partner, then having found both the 2014 Will and the 2015 handwritten Will, petitioned to admit the 2014 Will. The daughter replied by asserting the handwritten 2015 Will revoked the 2014 Will and because the 2015 handwritten Will was not valid, then the estate continued to be intestate.

The lower court determined that just as the 2015 handwritten Will was not capable of being admitted to probate in Florida, it was also not capable of revoking prior Wills. Consistently, the court revoked the letters of administration that had been issued to the daughter to administer an intestate estate, admitted the 2014 Will, and appointed a personal representative to administer the estate.

The appellate court acknowledged that the polestar rule of construction of a Will requires effecting the manifest intent of the testator. However, the appellate court then focused on Florida's mandate of strict compliance, and referred to the well established premise that a Will is ambulatory and speaks not until the death of the testator.

Consequently, the appellate court affirmed the lower court, determined the 2015 handwritten Will was ineffective for all purposes, and permitted the estate to be administered based upon the 2014 Will.

[8] **Cageglia v. Heinen, 48 Fla. L. Weekly D516 (Fla. 4th DCA 2023)**

9. Attorneys Fees Requires Evidence - even in County Court[9]

The county court in Flagler County dismissed the appellant's complaint for damages and ordered him to pay fees pursuant to Fla. Stat. §57.105. The county court received into evidence: affidavits from two fee experts, testimony from one of those experts, an affidavit from [appellee's] counsel, but that was not filed until after the hearing, an exhibit which purports to be an unsworn time sheet with no other title or description, and a declaration under penalties of perjury with calculations of fees and costs which did not comply with the requirements for an affidavit. However, the county court did not receive any retainer agreement or billing and was unable to analyze the required factors because of lack of evidence. Nevertheless, the county court awarded fees.

The appellate court recognized that an award of fees under Fla. Stat. §57.105 requires support with competent, substantial evidence, and held that the county court did not receive the necessary evidence to support the fee award. Rather than give the county court another chance to receive evidence and make a proper determination, the appellant court reversed and remanded with direction to the county court to enter an order finding the movant is not entitled to attorneys fees.

The appellate court pointed out that the moving party had presented solely expert testimony of fees without a properly authenticated fee affidavit or testimony from any of the moving party's attorneys. The appellate court determined that remand for another evidentiary hearing would be improper.

[9] **Horowitz v. Rossdale CLE, Inc., 48 Fla. L. Weekly D383 (Fla. 5th DCA 2023)**

10. Garnishment of a Joint Account - What is a Writing?[10]

Husband and wife opened a bank account for which the signature card did not contain any language designating the type of ownership. The bank's standard account agreement indicated that an account would only be considered a tenancy by the entireties if expressly designated on the account records. No designation was made when the account was established.

A creditor of the husband sought to garnish the account. The writ of garnishment was dissolved by the lower court, relying upon Beal Bank. Beal Bank established a judicial presumption of tenancy by the entireties for accounts established by spouses. After Beal Bank, the legislature added a new sentence to the relevant statute that may have been intended to only codify Beal Bank, but has been determined as having done more. The new statutory language acknowledges that an account in the name of two spouses "shall be considered a tenancy by the entirety unless otherwise specified in writing."

The issue before the court was whether the general statement in the bank's account agreement was a specification in writing. After a thorough analysis, the court found that the account agreement was, in fact, such a writing, and reversed the order dissolving the writ of garnishment, in effect finding for the creditor and allowing the funds in the account to be garnished.

[10] **Storey Mountain, LLC v. George, 48 Fla. L. Weekly D369 (Fla. 4th DCA 2023)**

11. Appointment of Successor Trustee - A Chance to Be Heard[11]

Appellee petitioned for, and obtained, an order appointing her as trustee of a trust. The order was entered without any hearing. Appellant brought the obvious due process short-comings to the court's attention by a motion to set aside the appointment, and the lower court exacerbated the situation by refusing that request.

This text-book example of lack of due process resulted in the appellate court quashing the order appointing a trustee, reversing the order denying the motion, and remanding for further proceedings to be conducted with appropriate pleadings, joinder, service of process, notice, and the opportunity for Appellant and all other indispensable parties to meaningfully and timely participate.

[11] **In Re Trust of Adean E. Wines, 48 Fla. L. Weekly D254 (Fla. 5th DCA 2023)**

12. Terminating Trusts Timely[12]

The appellant sued appellee for an accounting for a trust. The appellee asserted as an affirmative defense that appellant was not a beneficiary and therefore lacked standing to seek an accounting.

The settlor provided in the trust instrument that upon his death the trust property was to be distributed to his wife if she survives, otherwise to appellant and appellee equally. The settlor died, survived by wife. Appellee became the trustee but did not distribute the trust property to wife – for seven years. During those seven years, wife changed her estate planning documents to disinherit the appellant, making appellee her only beneficiary.

The lower court granted the motion to dismiss and found that appellant is not a beneficiary because the wife survived the settlor. While that result certainly seems correct based on the facts in the opinion, the appellate court held that summary judgment is not warranted because genuine issues of material fact exist.

The appellate court was concerned that genuine disputes existed as to material facts regarding termination of the trust and the appellee status as trustee. The opinion indicates the appellate panel believed the facts not in dispute raise more questions than answers, and expressed confusing about tax reporting of income generated by the property that remained in the trust after the settlor's death. Because of those concerns, the appellate court refused to affirm the summary judgment that was likely correctly granted by the lower court with Judge Hunter Carroll presiding.

[12] **Sunley v. Dunley, 48 Fla. L. Weekly D216 (Fla. 2nd DCA 2023)**

13. Reopening Estates - Either You've Got It (Jurisdiction) or You Don't[13]

The lower court was asked to reopen an estate that was fully administered and had been closed for over 60 years. The record contained no allegation of procedural irregularities, fraud, or bad faith, so the appellate court affirmed the dismissal by the lower court.

However, the lower court did not just dismiss the effort to reopen the estate. The lower court also included findings as to the lawful owner of certain property. This required reversal because the matter was not properly before the lower court, the lower court possessed no jurisdiction to make those findings.

[13] **Williams v. Williams, 48 Fla. L. Weekly D154b (Fla. 3rd DCA 2023)**

14. No Homestead Tax Exemption For Rented Premises[14]

The property appraiser in Sarasota County determined that the owner of a property was not entitled to homestead tax exemption on the portion that is rented. The property appraiser's determination that 15% of the property was rented and reduced the exemption accordingly.

The owner prevailed below when the circuit court concluded that the entire structure should be considered the owner's residence and that merely sharing the residence with a tenant does not create a classification of property not exempted. The circuit court continued by announcing that Florida law does not authorize the Property Appraiser to deny a homeowner his constitutional homestead exemption for a room rented within his residence while he simultaneously maintains the property as his permanent residence.

A divided panel at the district court affirmed in relevant part, and echoed the sentiment that property appraisers are not authorized by law to carve up a homeowner's permanent residence in order to remove the protection provided by the constitutional homestead exemption when that person rents a bedroom or any other space within their home.

In a well reasoned opinion written by Chief Justice Muniz for a unanimous court, the decision was in favor of the property appraiser, reversing the lower courts. The court determined that the property at issue was more functionally akin to a boarding house than a single family residence. The determination was not based on labels but rather on the use by the owner of the property. The court also found that the property appraiser has authority to apply the homestead exemption to a portion of the property relying upon Florida Statute §196.031(4).

At the conclusion of the opinion, the court distinguished the situation before it from the situation with countless Florida citizens who are residing within their permanent residences while working from home.

[14] **Burst v. Rebholz, 48 Fla. L. Weekly S53a (Fla. 2023)**

15. Removal of Trustee of Land Trust - Right Result, Wrong Authority[15]

Certain beneficiaries of a land trust, governed by Fla. Stat. §689.071, were sued by the trustee seeking foreclosure on the participation interests because of lack of payment of required contributions for expenses. In response, those beneficiaries counter-sued, including seeking removal of the trustee. The beneficiaries moved for a temporary injunction against the trustee and sought removal under Fla. Stat. §736.0706(2). The lower court granted that motion, after an appropriate evidentiary hearing.

The appellate court reviewed the legislative history of land trusts in Florida, and determined that the Florida Trust Code, in Chapter 736, is generally inapplicable. Accordingly, reliance upon the referenced statutory provision from the Florida Trust Code would not support the relief granted by the lower court.

The appellate court also, correctly, determined that the statute applicable to land trusts does not provide for removal of a trustee.

Nevertheless, in a rare split decision, the appellant court proceeded to describe the common law rights of beneficiaries to remove a trustee when the trustee is seriously misbehaving. The majority applied those equitable common law remedies to stave off the potentially harmful future actions of the trustee.

Neither the majority opinion nor the descent refer to the Tipsy Coachman doctrine, which might have been helpful in supporting the majority's holdings and avoiding the split decision.

[15] **Freeman v. Berrin, 47 Fla. L. Weekly D2533 (Fla. 2nd DCA 2022)**

16. Freezing Accounts is an Injunction[16]

A guardian filed an unverified motion to freeze accounts of the ward's spouse. The motion was granted after an emergency hearing. At that hearing, appellant was not permitted by the lower court to testify or present any evidence, announcing that the hearing was not evidentiary. After the (non-evidentiary) hearing, the court entered an order temporarily freezing certain accounts in the name of the spouse. The order did not include the findings required for issuing a temporary injunction.

The appellate court realized that the freeze order was effectively a temporary injunction. Because the process below was void of any hints of due process, and the order was silent as to the required findings for the entry of a temporary injunction, the order was reversed.

[16] **Leposky v. Ego, 47 Fla. L. Weekly D2103 (Fla. 4th DCA 2022)**

17. Summary Judgment Evidence - More than an Affidavit[17]

The personal representative paid significant amounts from the estate for debts of the decedent well after the 2 year non-claim period had passed without the filing of a claim by the creditor. The lower court, on a motion for summary judgment, held that the payments were improper and surcharged the personal representative for the entire amount paid.

The appellate court provides a review of the effect of Florida Probate Code §733.710 and the two year limitations on claims against an estate. However, the focus of the opinion, yet another in the world of jurisprudence from Judge Scales, is on the sufficiency of evidence from the personal representative to avoid summary judgment under the new standards.

The only evidence offered by the personal representative was an affidavit, described in the opinion as self-serving. Judge Scales writes that because the personal representative submitted only an affidavit in opposition to the beneficiaries' motion for summary judgment, the affidavit must set forth specific facts to show why there is an issue for trial. After examining the content of the affidavit, the appellate court held that, under the new standard, the affidavit is insufficient to create a triable issue of fact.

The appellate court affirmed the lower court's granting of summary judgment.

[17] **Rich v. Narog, 47 Fla. L. Weekly D1933 (Fla. 3rd DCA 2022)**

18. Homestead Status in Face of Two Mortgages and a Spousal Waiver[18]

A husband and wife resided in a homestead owned by wife. The wife passed away, survived by husband. Wife's will, executed two days prior to her death, directed the sale of the homestead and allowed the husband to reside on the property until the sale had taken place.

During the wife's lifetime, she mortgaged the homestead twice, and both times the husband signed a qualified mortgage waiver which was buried within documents of other legal significance. After the wife's death, her personal representative also obtained the husband's signature on a spousal waiver of homestead rights, although the husband likely was uninformed regarding the intended legal effect of that document.

The lower court determined that the husband had not waived his homestead rights, which was affirmed upon appeal.

[18] **Feldman v. Schocket, 47 Fla. L. Weekly D1930 (Fla. 3rd DCA 2022)**

19. Freezing Personal Assets Because of a Fiduciary Fight[19]

Brother sued sister for breach of fiduciary duties regarding trusts established by their parents. Brother sought, within that lawsuit, to require the sister deposit into a restricted account the net proceeds from the sale of a property that is not part of those trusts. The reason provided by the brother was so that he did not have to "chase her down" to collect a judgment if he was successful in his breach of duty lawsuit.

The property was owned by the sister as a result of a gift by the mother of the brother and the sister. The gift was effected by a deed executed by the mother and the validity of that deed had not been challenged by the brother.

The lower court granted the brother's motion and ordered the sister to deposit the sales proceeds into a restricted account. The order did not state any legal basis for the relief granted.

The appellate court reversed, having found no authority to require the sister to place the sale proceeds into a restricted account.

[19] **Trombino v Echeverria, 47 Fla. L. Weekly D1925 (Fla. 4th DCA 2022)**

20. Striking a Statement Regarding Creditors?[20]

A step-granddaughter and a daughter of the decedent filed a flurry of orders and notices of appeal. Most of the appeals were dismissed because of lack of timeliness. One warrants comment, and another deserves a passing mention.

The lower court denied a Petition to Establish a Lost Will and did so without prejudice. The indication of "without prejudice" does not mean that order lacks finality. Accordingly, the time for appealing that order began when the order was entered, even though the order was without prejudice.

A passing mention is given to the Motion to Strike a Statement Regarding Creditors. Writing for a unanimous panel, the esteemed Judge Scales acknowledges that the Statement Regarding Creditors merely advised the probate court that a notice to creditors was published and that, to date, the personal representative had not yet identified creditors who had not filed a timely claim against the estate or had their claim included in the personal representative's proof of claim. With this keen understanding of the details of the probate procedure, the court then dismisses for lack of jurisdiction that appeal because the order denying the motion to strike did not determine with finality a right or obligation of an interested person as defined in the Florida Probate Code.

[20] **Anderson v. In Re Estate of Mario Quintero, 47 Fla. L. Weekly D1817 (Fla. 3rd DCA 2022)**

21. Appoint the Nominated[21]

The decedent's Last Will and Testament nominated one of his sons to serve as personal representative. That son petitioned for the administration of the estate and sought appointment as personal representative. His brother objected. After an evidentiary hearing, the court declined to appoint the nominated son, even though the court found that he was qualified to serve under the Florida Probate Code. The court determined that there were "tangible and substantial reasons to believe that damage [would] accrue to the estate if [nominated son] were appointed Personal Representative in this case, because the facts presented display[ed] an adverse interest to the Estate."

The appellate court reversed, reconfirming that a court is without discretion to refuse appointment of a nominated personal representative if otherwise qualified.

In reaching its conclusion, the appellate court found a distinction between the discretion provided to the court when appointing a personal representative in an intestate estate versus consider a person nominated by the decedent in the decedent's Will.

[21] **Araguel v. Bryan, 47 Fla. L. Weekly D1517 (Fla. 1st DCA 2022)**

22. Adoption and Testamentary Rights - This Child is Still The Child[22]

In 2014, the testator executed a Will naming his wife, or if she did not survive him, then their child as the sole beneficiary. The wife passed away and the testator served as the child's primary caretaker until 2018, at which time the testator was diagnosed with severe dementia and was declared mentally incapacitated and adjudged a ward of the state. The child was subsequently adjudicated dependent, and the state filed a petition for termination of parental rights. Because the testator lacked the mental capacity to participate in the termination proceedings, the testator was represented by a plenary guardian. The court determined the testator's condition was irreversible, and he was not offered a case plan or any other avenue for reunification with the child. The state futilely searched for relatives with whom to place the child, and the plenary guardian executed a written surrender of parental rights on behalf of the testator. The dependency court terminated the testator's parental rights, and the child was placed in the custody of the state.

In 2019, while the testator was still alive, the child was legally adopted and was given a new name, reflecting the surname of his adoptive parents. The following year, the testator died, and appellants filed a petition for administration of the estate. The child responded with a caveat and sought a judicial determination that he was a beneficiary under the Will. The co-personal representatives contended that although the decedent "intended for his son to take under his will, . . . at the time of his death, and for some time before that, [he] did not have a son." Judge Soto in the lower court determined that the child was still the decedent's son and held he would take as the sole beneficiary. The appeal was by those who would inherit if the decedent had been survived by neither his wife nor his son.

The opinion, authored by the esteemed Judge Scales, acknowledges the well-reasoned order from below. The appellate decision examines the interrelated laws involving adoption and probate, including referring to the common law on relationships arising from adoption.

The appellate court recognized that, other than in limited circumstances not applicable in the instant situation, adoption severs ties between the adopted child and his prior parents, and establishes legal relationships with the adoptive parents. The court even recognized the stranger designation is extended to the interpretation or construction of documents, statutes, and instruments, whether executed before or after entry of the adoption judgment, that do not expressly include the adopted person by name or by some designation not based on a parent and child or blood relationship. However, the court also recognized that by naming the child, albeit with his former name, the intent of the decedent was to have that person (irrespective of name) inherit under his Will. The decision makes a passing reference to the fact that the decedent had lost mental capacity to revise his Will after the adoption.

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[22] **Taulbee v. Kozel, 48 Fla. L. Weekly D154c (Fla. 3rd DCA 2022)**

The argument of the appellants failed because the child is the child even with a different name and with new adoptive parents, and the reference in the Will was sufficient to override the general rules regarding familial relationships after adoption.

23. Leave My Health Care Surrogate In Place[23]

In the context of a determination of incapacity and appointment of a guardian, the lower court revoked the ward's appointment of a health care surrogate. The revocation was silent as to grounds for the revocation and failed to include any statutory references.

The appellate court remanded the matter to determine the statutory grounds, if any, that support revocation.

[23] **Sanjuan v. Mena, 47 Fla. L. Weekly D1856b (Fla. 4th DCA 2022)**

24. Exempt Assets Beyond Guardians' Post-Death Reach[24]

In (hopefully) the last of the appeals spawned by the guardianship of the now deceased Ms. Araguel, the appellate court refused to allow the guardian to retain the ward's individual retirement accounts to pay expenses or other obligations.

After the ward's death, the guardian filed a motion to retain access to individual retirement accounts, to the exclusion of the named beneficiaries. The guardian asserted that the guardianship law allowed that retention, and the lower court agreed.

The majority of the appellate panel determined that the guardian did not have the right to retain the individual retirement accounts, relying primarily upon the exempt nature of those assets under Chapter 222. The dissent would not consider the amounts due to the guardian to be the type of obligation from which Chapter 222 provides protection, and would have affirmed the lower court.

[24] **Araguel v. Bryan, 47 Fla. L. Weekly D1746 (Fla. 1st DCA 2022)**

25. Conclusion