



THE ADVOCATE

An Online Publication of the South Palm Beach County Bar Association

WINTER 2017/2018 EDITION

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Message from our President



At the risk of getting too personal in a bar association President's Message, here are my thoughts for February 2018.

"I always thought there would be more time, until there wasn't."

These are some of the words I spoke to a temple filled with family and friends during the eulogy for my father, Barry Gordon, who died on January 18. He was 81 years old which, when I was in my teens, seemed very old, but now, actually seems pretty young. During the last few years of his life, my Dad made a point of "scheduling" breakfast with me on a regular basis. At times it was once a month, at other times less, but it was important to him that we sat together for breakfast and talked. It wasn't quite "Tuesdays with Morrie", but it was still really great. We talked about a lot of things, mostly about our family. He loved to talk about his family.

But it really did not matter what we talked about. It was one hour, just he and I, eating eggs and drinking coffee/tea (he liked tea). He just wanted to spend time with me.

Following the funeral, when I finally made my way back to the office and started looking through email, I looked back at my calendar from before November when Dad got sick for the last time and was admitted to Boca Raton Regional Hospital. Our last breakfast was October 24. It's still on my calendar . . . "Breakfast with Dad" (yes, I would actually write that on my calendar, seems strange now). We met at Way Beyond Bagel in West Boca Raton where we usually met. One hour, catching up, not knowing then that it was the last time we would share a breakfast together.

I'm sharing these personal thoughts not to make you sad, and not because this is much less expensive than an hour of therapy, but because there is a lesson to be learned. Some of us learn it earlier in life, some later, and some maybe never. But time for all of us is finite. There comes an end for all of us and – whenever it comes – it comes too soon. So even though we are all extremely busy with the work we do on behalf of our clients, it is critically important for all

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Amendment of Petitions In Contested Probate Proceedings



By: *Brandon J. Pratt, Esq., CFP® and Jennifer L. Fox, Esq.*

In *Winslow v. Deck*, 225 So. 3d 276 (4th DCA 2017), the issue presented to the appellate court was whether the trial court erred in dismissing appellant's counter-petition for administration on the grounds that appellant failed to properly request relief to revoke a prior will admitted to probate within three months of receiving a notice of administration of the Decedent's estate. Section 733.212(3), Florida Statute, provides in pertinent part that "any interested person on whom a copy of the notice of administration is served must object to the validity of the will...by filing a petition or other pleading requesting relief... on or before the date that is 3 months after the date of service... or those objections are forever barred." Section 733.208, Florida Statute, provides that "on the discovery of a later will or codicil, any interested person may petition to revoke the probate of a prior will or probate a later will."

In this case, the Decedent passed away on March 9, 2015. The Decedent's daughter, Mallory, filed a petition to admit a Will dated January 11, 1991 and a Codicil dated October 2, 2008 to probate. On May 14, 2015, the probate court entered orders admitting the 1991 Will and 2008 Codicil to probate and appointed Mallory as the personal representative. The Decedent's longtime girlfriend, Karen, did not receive notice of the filings. On May 27, 2015, Karen filed a Will dated November 13, 2014 with the probate court. On May 29, 2015, the Notice of Administration was formally served on Karen. On the same day, Karen filed (1) an emergency petition to revoke the letters of administration that were issued to Mallory and (2) a counter-petition for administration in which she sought to have the 2014 Will admitted to probate. Karen did not file a petition to revoke the order admitting the 1991 Will and 2008 Codicil to probate, and her counter-petition for administration did not contain a prayer for such relief. After the three month deadline expired in Section 733.212, Florida Statute, Mallory moved to dismiss the counter-petition that Karen had filed arguing that Karen did not seek to timely revoke the probate of the 1991 Will and 2008 Codicil. The probate court granted the motion and dismissed Karen's counter-petition.

The appellate court held that the trial court erred in dismissing the counter-petition for administration because Karen satisfied both Sections 733.208 and 733.212(3), Florida Statute. As a general rule, the appellate court held that "trial courts should not prevent a petitioner from challenging a will because of a technical defect in the petitioner's pleading without allowing for a reasonable opportunity to amend. The law is clear that trial courts must liberally construe court rules to allow parties to freely amend their pleadings in the interests of justice." *Winslow v. Deck* at 279. Absent exceptional circumstances, requests for leave to amend pleading should be granted unless the privilege has been abused, there is prejudice to the opposing party or the amendment would be futile. *Winslow v. Deck* at 279; Florida Rule of Civil Procedure 1.190(a). Specifically, the appellate court held that the probate court erred in not granting Karen leave to amend her counter-petition to include a statement in the prayer for relief to revoke the probate of the 1991 Will and 2008 Codicil since an amendment would not prejudice Mallory and would not be futile.

Additionally, the appellant court held that the counter-petition was timely filed because Karen filed the original counter-petition within three months after receiving notice, so the amendment would relate back to the date of the original counter-petition.

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