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A PUBLICATION OF THE FLORIDA BAR REAL PROPERTY, PROBATE & TRUST LAW SECTION

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Winslow vs. Deck Case Summary

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When may a litigant amend a petition in a contested probate proceeding? The Fourth District Court of Appeal addressed this issue in *Winslow v. Deck*, 225 So. 3d 276 (Fla. 4th DCA 2017). In *Winslow*, 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. Fla. Stat., §733.212(3), 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." Fla. Stat., §7733.208, 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, Michael S. Deck, 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 appointing Mallory as the personal representative of the estate. The decedent's longtime girlfriend, Karen Winslow, 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 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 contained in Fla. Stat., § 733.212(3), had expired, Mallory moved to dismiss the counter-petition, arguing that Karen did not seek to timely revoke the probate of the 1991 will and 2008 codicil. Karen sought leave to amend her counter-petition however the probate court dismissed Karen's counter-petition with prejudice.

The Fourth District Court of Appeal held that the trial court erred in dismissing Karen's counter-petition for administration because the trial court should have been provided with the opportunity to amend her counter-petition. The appellate court explained:

"Florida Probate Rule 5.020(a) provides that "[a]ll technical forms of pleadings are abolished. No defect of form impairs substantial rights, and no defect in the statement of jurisdictional facts actually existing renders any proceeding void." Moreover, after an interested person petitions the court

to probate a later will or requests to revoke an earlier will, the proceedings are declared adversarial and the Florida Rules of Civil Procedure govern the proceedings. See Fla. Prob. R. 5.025(d)(2)... Florida Rule of Civil Procedure 1.190(a), which governs amendments to pleadings, "reflect[s] a clear policy that, absent exceptional circumstances, requests for leave to amend pleadings should be granted."

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* 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* 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 appellate court noted that the counter-petition was timely filed under Fla. Stat., §733.212(3), because Karen filed the original counter-petition within three months after receiving a copy of the notice of administration, and the amendment would relate back to the date she filed the original counter-petition, citing Fla. R. Civ. P. 1.190(c). ■