



THE ADVOCATE

An Online Publication of the South Palm Beach County Bar Association

SPRING 2018 EDITION

2017-2018 Officers

Eric A. Gordon
President

eric.gordon@akerman.com

Andrew M. Dector

President-Elect

amdecor@sbwh.law

Holly G. Gershon

Treasurer

hgershon@hollygershonlaw.com

L.A. Perkins

Secretary

lperkins@perkispershes.com

Patricia Alexander

Immediate Past-President

patricia.alexander@palexanderlaw.com

2017-2018 Directors

Gordon A. Dieterle

gdieterle@feamanlaw.com

Ellen Leibovitch

euml@assoulineberlowe.com

Christopher A. Sajdera

cas@sajderakimlaw.com

Daniel Kaskel

dkaskel@ssclawfirm.com

Brandan J. Pratt

bpratt@hplawyers.com

Wilnar Julmiste

julmiste@asglaw.com

Sean Lebowitz

sean@floridatx.com

Scott M. Weiss

YLS President

sweiss513@gmail.com

Sia Baker-Barnes

Ex-Officio Member

President, PBCBA

Editorial Board

Holly Gayle Gerhson

Editor-In-Chief

Eric Gordon

Assistant Editor

Jacqueline Abramovich

Layout and Design

Linda Oroz

Executive Director

linda@southpalmbeachbar.org

Message from our President



It is hard to believe the 2017-2018 bar association year is quickly coming to an end. It seems like only yesterday we were gathered together at Woodfield Country Club celebrating with our fellow lawyers and Judges and toasting to another successful year. A lot can happen in a year. In our community, we have witnessed a horrible tragedy in Parkland, but have attained some renewed faith in what may be accomplished when a community comes together with a common purpose: the hope of making our schools – and our children – safer from gun violence.

In my personal and professional life, I have experienced both sadness and joy during the past year. I celebrated twenty years of marriage with my amazing wife, Felicia, and we enjoyed our daughter's first year of high school, and our son's last year of high school, with graduation less than a month away. It was also the year in which we lost my father at the age of 81. But I'm thankful he was with us on that night in June 2017 for the Bar's annual Installation Gala. And I am grateful to have had the opportunity to serve as the President of the South Palm Beach County Bar Association during the past twelve months.

But don't think for a minute that the Bar year is already done! The month of May is always our busiest month of the year, and this month we have MANY events for our members – there is truly something for everyone.

On Thursday, May 3, our Young Lawyers Section is holding its last Happy Hour of the year at Kapow! Noodle Bar in Mizner Park. Our YLS has had an incredible year of events! We are very lucky to have such a vibrant and engaged group of "younger" lawyers. And remember, you don't need to be a "young" lawyer to attend their events!

Our 14th Annual Golf Classic is on Friday, May 4 at Westchester Country Club in Boynton Beach. There are still openings for players, but act now before registration ends!

Continue to next page



DISPOSITION OF PERSONAL PROPERTY AT DEATH

By: Brandan J. Pratt, Esq., CFP®

In estate proceedings, it is all too common for family members to get into arguments over who should receive certain items of personal property upon the death of a loved one. The disputes range from who should receive the diamond ring, artwork, fine china or other family heirlooms. The disputes often involve claims that a deceased relative made a verbal promise that the family member could have the item upon death or agreements that beneficiaries claimed existed with each other and/or the Decedent. The Fourth District Court of Appeal recently gave practitioner's some instruction on how to address these issues in, *Eisenpresser v. Koenig*, 43 Fla. L. Weekly D376 (Fla. 4th DCA February 14, 2018). In *Eisenpresser v. Koenig*, the Decedent was survived by two daughters, Eisenpresser and Koenig. The Decedent signed a separate writing identifying devises of tangible property that would go to each daughter in conformance with Section 732.515, Florida Statutes, which provides:

A written statement or list referred to in the decedent's will shall dispose of items of tangible personal property, other than property used in trade or business, not otherwise specifically disposed of by the will. To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be prepared before or after the execution of the will. It may be altered by the testator after its preparation. It may be a writing that has no significance apart from its effect upon the dispositions made by the will. If more than one otherwise effective writing exists, then, to the extent of any conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each prior writing.

The separate writing that the Decedent signed was a multipage document that contained 169 pictures of various items including furniture, artwork, jewelry, crystal and other items. Each picture was numbered and the Decedent designated which item was supposed to go to each daughter by writing the daughter's name next to the item number. The separate writing clearly designated item 157 as an item that was to go to Eisenpresser. However, Koenig was appointed as personal representative of the Decedent's estate and had possession of item 157 upon the Decedent's death. Koenig refused to give item 157 to Eisenpresser. Koenig argued that she gave item 157 to the Decedent, and there was a verbal agreement that the heir who purchased an item for the Decedent would inherit the item upon the Decedent's death. A trial was held on numerous objections to a final accounting, which included an objection to the disposition of item 157. The trial court ruled in favor of Koenig with respect to item 157, Eisenpresser appealed.

The 4th District Court of Appeal reasoned "Appellant testified that the heir who purchased an item for the decedent would inherit the item upon the decedent's death. During closing argument, Appellees' counsel stated that Koenig, also an heir of the decedent, had originally purchased and gifted this jewelry item to decedent. Beyond this bare assertion, however, Appellee offered no proof to support the claim that Koenig purchased jewelry item 157 or that the decedent intended the item for Koenig. By contrast, jewelry item 157 was clearly identified in the statement of personal property attached to decedent's will as to be gifted to Appellant." Although, the separate writing was unambiguous, the 4th District Court of Appeal turned to Section 732.615, Florida Statutes to determine if the separate writing should be reformed to correct a mistake. Section 732.615, Florida Statutes provides:

Upon application of any interested person, the court may reform the terms of a will, even if unambiguous, to conform the terms to the testator's intent if it is proved by clear and convincing evidence that both the accomplishment of the testator's intent and the terms of the will were affected by a mistake of fact or law, whether in expression or inducement. In determining the testator's original intent, the court may consider evidence relevant to the testator's intent even though the evidence contradicts an apparent plain meaning of the will.

The 4th District Court of Appeal reasoned “For the trial court to find that the decedent had the intent to give item 157 to Koenig despite the unambiguous language of the will, Koenig would have to show this purported mistake of fact by clear and convincing evidence.” In this case, the 4th District Court of Appeal reversed the trial court, holding that “the decedent’s will unambiguously bequeathed jewelry item 157 to Appellant, and Appellee presented no evidence, let alone clear and convincing evidence, to contradict this bequest.” In conclusion, if a will or separate writing unambiguously bequeaths item of personal property to specific individual, a contestant must present clear and convincing evidence to contradict the bequest.

BAR TALK



Ellen M. Leibovitch, Board Certified Labor & Employment lawyer with Assouline & Berlowe, P.A., and member of the SPBCBA’s Board of Directors, presented “Employment laws which all employers - big and small - should know” at the February 15, 2018 monthly luncheon of the South Palm Beach County chapter of the Florida Association for Women Lawyers.



At the Legal Aid Society of Palm Beach County’s 30th Annual Pro Bono Recognition Gala that took place on May 12th; Alan R. Crane, Esq. of Furr & Cohen, and Anne E. Hinds, Esq. of Schwartz-White, were both honored with a Legacy Award in recognition of their service to the community over the years. They are also members of the Legal Aid Society’s Hall of Fame for providing over 500 hours of pro bono services.



Congratulations to Assistant State Attorney Elise Haverman and Justin Hunter, JD LLM on their engagement.