

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

BARBARA A. FACH *nee* CAIN and **LAUREN K. CAIN**,
Appellants,

v.

BROWN BROTHERS HARRIMAN TRUST COMPANY OF FLORIDA, as
Trustees, et al.,
Appellees.

Nos. 4D06-1941 and 4D06-1942

[February 7, 2007]

MAY, J.

In this consolidated appeal, Barbara A. Fach and her daughter Lauren K. Cain appeal two non-final orders denying, without hearing, their emergency motions for relief from orders, filed pursuant to Rule 1.540(b), Florida Rules of Civil Procedure. The orders from which they sought relief were entered in an adversarial proceeding in which the probate court appointed U.S. Trust as the successor trustee to Brown Brothers Harriman Trust Company on an emergency basis in two separate cases. The appellees argue that this court lacks jurisdiction because the orders from which the appellants sought relief in the probate court were not final orders, and thereby not subject to Rule 1.540. We agree and dismiss the appeal.

At oral argument, the appellants essentially agreed that this appeal was taken to insure that the trial court had left certain issues open for consideration. In fact, in this case the probate court specifically asked whether it could appoint U.S. Trust as successor trustee and leave the situs of the trust in Palm Beach County, without prejudice to addressing the latter issue at a subsequent hearing. The court then dictated its order to counsel, again reiterating that the appointment was without prejudice to addressing the situs of the trust at a later time.

The orders in this case appointing U.S. Trust on an emergency basis without prejudice were not final orders. They were therefore not subject to review under Rule 1.540. We therefore lack jurisdiction to review the

probate court's order denying review. Our dismissal does not preclude the probate court from addressing those issues left open in its original orders.

Appeal Dismissed.

KLEIN and HAZOURI, JJ., concur.

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Consolidated appeals of non-final orders from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Gary L. Vonhof, Judge; L.T. Case Nos. 502005CP001905XXXXSB and 502005CP001903XXXXSB.

Jan Douglas Atlas and Jeffrey A. Backman of Adorno & Yoss, LLP, Fort Lauderdale, for appellants.

Robert J. Hauser and Patricia A. Leonard of Beasley, Hauser, Kramer, Leonard & Galardi, P.A., West Palm Beach, for appellees.

Not final until disposition of timely filed motion for rehearing.