

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

In re Estate of Robert W. Magee.)
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))

JUDITH MAGEE,)
))

Appellant,)
))

v.)

Case No. 2D04-3294

EDNA MAGEE,)
))

Appellee.)
_____))

Opinion filed June 3, 2005.

Appeal from the Circuit Court for Pinellas
County; George W. Greer, Judge.

Robert W. Goldman of Goldman Felcoski &
Stone, P.A., Naples, for Appellant.

Joseph W. Fleece, III of Baskin Fleece,
Clearwater, for Appellee.

ORDER DISMISSING APPEAL

NORTHCUTT, Judge.

Judith Magee, the beneficiary of a revocable trust created by her now-deceased father, appeals the order denying her objections to the elective share claimed by Edna Magee, the surviving spouse. As explained in Dempsey v. Dempsey, 30 Fla.

L. Weekly D1067 (Fla. 2d DCA Apr. 27, 2005), an order determining the surviving spouse's entitlement to an elective share is a nonfinal and nonappealable order. In this case, the nonappealable nature of the order is further demonstrated by the circuit court's ruling that one of the claims, regarding whether the elective share statute was an unconstitutional impairment of contracts, was premature because it was too soon to tell whether trust assets would be needed to satisfy the elective share. Accordingly, we dismiss this appeal.

Dismissed.

WALLACE and LaROSE, JJ., Concur.