

Third District Court of Appeal

State of Florida, January Term, A.D. 2011

Opinion filed February 2, 2011.

Not final until disposition of timely filed motion for rehearing.

No. 3D10-488

Lower Tribunal No. 08-46100

**Joan Ruble, Individually and as Personal Representative of the
Estate of Lance Ruble, deceased,**
Appellant,

vs.

Rinker Material Corporation, et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Joseph P. Farina, Judge.

The Ferraro Law Firm, Russell Koonin and Case Dam, for appellant.

Holland & Knight and Larry A. Klein (West Palm Beach); Holland & Knight and Chris N. Kolos (Orlando), for appellees.

Before WELLS, LAGOA and EMAS, JJ.

WELLS, Judge.

Affirmed. See § 768.20, Fla. Stat. (2010) (providing that “[w]hen a personal injury to the decedent results in death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate”); Fla. R. Civ. P. 1.260(a)(1) (stating that the court may order substitution of the proper parties “[i]f a party dies and the claim is not thereby extinguished”); Capone v. Philip Morris U.S.A. Inc., 35 Fla. L. Weekly D2639 (Fla. 3d DCA Dec. 1, 2010) (“The original complaint for personal injury could not be amended, on [the plaintiff’s] death, to include a new wrongful death claim because Florida law establishes that a personal injury claim is extinguished upon the death of the plaintiff, and any surviving claim must be brought as a new and separate wrongful death action-it cannot be brought as an amendment to a personal injury action. See Martin v. United Security Servs., Inc. 314 So. 2d 765, 770 (Fla. 1975) (upholding section 768.20, and explaining that, “a separate lawsuit for death-resulting personal injuries cannot be brought as a survival action”); ACandS, Inc. v. Redd, 703 So. 2d 492, 494 (Fla. 3d DCA 1997) (plaintiff’s personal injury action is extinguished and abated even when the plaintiff’s death occurs during the trial of his/her case); Niemi [v. Brown & Williamson Tobacco Corp.], 862 So. 2d 31 (Fla. 2d DCA 2003)], (holding that, when death is the result of a personal injury, the law of Florida essentially substitutes a statutory wrongful death action for the personal

injury action that would otherwise survive under section 46.021.)” (citation omitted) (footnote omitted).