

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed October 10, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D18-2546  
Lower Tribunal No. 14-11578

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**Adeena Weiss Ortiz, etc., et al.,**  
Appellants,

vs.

**Caroline Weiss, et al.,**  
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Migna Sanchez-Llorens, Judge.

Kula & Associates, P.A., and Elliot B. Kula, Ashley P. Singrossi and William D. Mueller, for appellants.

Schlesinger Law Group, and Michael J. Schlesinger and Alexander I. Cohen, for appellees.

Before **SALTER, MILLER** and **GORDO, JJ.**

**SALTER, J.**

This appeal arises from a circuit court lawsuit involving disputed claims of ownership of property (eight contiguous lots; the “Property”) along Royal Road in Coconut Grove, Florida. The primary parties to the dispute are members of the Weiss Family: the late Jack Weiss (“Father”), his wife Caroline Weiss (“Mother”), and their daughters Adeena Weiss Ortiz (“Ms. Ortiz”) and Alitza Weiss (“Sister”).

The final judgment ruled for the Mother and other defendants, and against Ms. Ortiz as plaintiff. Ms. Ortiz appealed. The legal issues presented are (1) whether the claims of Ms. Ortiz were required to be filed and determined in the probate estate of her Father, who passed away in 1995, and (2) if so, whether those claims are barred by the special statutes of limitation applicable to claims in a probate proceeding, sections 733.702 and 733.710, Florida Statutes (2014). The trial court answered each of those questions, and we answer them, in the affirmative.

#### Facts and Procedural History

Ms. Ortiz, herself a licensed Florida attorney,<sup>1</sup> filed a circuit court action against her Mother, the Estate of her Father, her Sister’s trust, and other parties who might claim an interest in the Property. Ms. Ortiz’s Third Amended Complaint (“Complaint”), filed in 2016, included two counts: fraudulent transfer of the

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<sup>1</sup> Though licensed to practice law in Florida and pro se during an interval in 2017, Ms. Ortiz retained counsel in the trial court and a separate firm to represent her here.

Property, and an action to quiet her title to the Property. Her Mother filed a counterclaim against her to quiet title and for slander of title.<sup>2</sup>

Ms. Ortiz's Complaint attached and referred to a bewildering assortment of recorded and unrecorded documents, but the trial court found that all were ultimately dependent on the probate proceedings in the Father's Estate. The Mother was appointed personal representative of the Estate, and the Estate was administratively closed by the probate court in 2000.

It was undisputed that, at the time of the Father's death in 1995, record title to the Property resided in a Florida corporation, "JAAC, Inc.," Ms. Ortiz alleged in the Complaint that the corporate name stood for "Jack-Adeena-Alitza-Caroline," and that each Weiss family member was a 25% shareholder. Based on her own alleged entitlement to those shares, Ms. Ortiz's Complaint also purported to include derivative claims on behalf of JAAC against her Mother, Sister, and the other defendants.

In the course of the lawsuit, Ms. Ortiz testified that she had no physical shares, no tax returns, and no other documents confirming such an interest. Her Mother and

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<sup>2</sup> The counterclaim had not been concluded when this appeal was commenced by Ms. Ortiz. The appellees sought to dismiss the appeal "pending the resolution of the related counterclaims in the continuing trial court proceedings." Ms. Ortiz responded that the remaining counterclaim is permissive, such that the trial court's final judgment on Ms. Ortiz's claims was an immediately-appealable partial final judgment under Florida Rule of Appellate Procedure 9.110(k). This Court denied the motion to dismiss.

Sister contended that her Mother and Ms. Ortiz's Father had owned the shares as tenants by the entireties. The Father, an attorney, formed JAAC in 1973, a time when he and the Mother purchased the property through JAAC<sup>3</sup> and Ms. Ortiz was a child. It was also uncontroverted that Ms. Ortiz had never paid any part of the property taxes, insurance, or maintenance relating to the Property.

The Cross-Motions for Summary Judgment and Motion for Reconsideration

The parties filed cross-motions for summary judgment, and these were denied. The Mother and other defendants then filed a motion for reconsideration and rehearing focused on the alleged factual issues that were the basis of the initial denial order.

The motion for reconsideration addressed each of the alleged factual issues in the context of the Father's probate case following his death in 1995. The Mother contended that the summary judgment evidence established that, as a matter of law, Ms. Ortiz's claims of interests in JAAC were required to have been filed timely as claims against the Father's Estate or as claims against the Mother (as personal representative) for her alleged failure or refusal to distribute shares to Ms. Ortiz.

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<sup>3</sup> See Ortiz v. Weiss, 227 So. 3d 689, 690 (Fla. 3d DCA 2017) ("In 1973, Weiss and her husband Jack bought bayfront lots in Coconut Grove, numbered 0 through 7 ["the Property"] through their corporation, JAAC, Inc."). In that certiorari proceeding involving the same parties and circuit court case, Ms. Ortiz contended unsuccessfully that the trial court erred in ordering her to post a \$3,000,000.00 lis pendens bond by a date certain, failing which her lis pendens would be discharged.

The docket of the probate proceeding included no such claims, and the case file “was administratively destroyed on January 25, 2012,” according to Ms. Ortiz’s verified “Petition to Appoint Successor Personal Representative to Complete Estate Administration” filed in the probate court in October of 2013. That petition and Ms. Ortiz’s verified “Emergency Petition to Reopen Estate for Subsequent Administration” were voluntarily withdrawn by her in July 2014, two months after she filed her circuit court lawsuit against her Mother and the other defendants.

Following a hearing on the motion for reconsideration, the trial court entered a detailed order: vacating the prior order denying the defendants’ motion for summary judgment; granting their motions for reconsideration and for summary judgment; and issuing a final judgment denying Ms. Ortiz’s claims. This appeal followed.

#### Standard of Review

We review orders granting summary judgment de novo. Sierra v. Shevin, 767 So. 2d 524, 525 (Fla. 3d DCA 2000). All doubts and inferences must be resolved in favor of the non-moving party, and the movant must demonstrate that there is no genuine issue of material fact. Id.; Hernandez v. United Auto. Ins. Co., 730 So. 2d 344, 345-46 (Fla. 3d DCA 1999).

#### Analysis

The answer, affirmative defenses, and counterclaims included allegations that Ms. Ortiz's claims were barred as a matter of law by the applicable statutes of limitation and repose. The motion for reconsideration and rehearing filed in April 2018, seven months before the final order and judgment denying Ms. Ortiz's claims, expressly contended that Ms. Ortiz was obligated to file her claim in the Father's Estate within three months after the time of first publication of the notice of administration,<sup>4</sup> as required by section 733.702, Florida Statutes. See Scott v. Reyes, 913 So. 2d 13 (Fla. 2d DCA 2005).

Ms. Ortiz argues that the statute of limitations defense was not pled, and that this defense was therefore waived. The record on this point includes: (1) the Mother's answer and affirmative defenses to the Complaint raising separate affirmative defenses based on the statute of limitations (though citing section 726.110, Florida Statutes (2016), rather than the probate statutes), laches, and the statute of repose, and reserving the right to raise additional affirmative defenses "as may be identified and supported by investigation and discovery during the course of this litigation"; (2) the Mother's and other defendants' April 2018 motion for reconsideration of the order denying summary judgment, which specifically

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<sup>4</sup> The record objectively, and without dispute, establishes that publication date as June 15, 1995. Under any scenario, Ms. Ortiz's claim against the estate or her Mother as personal representative or beneficiary, would have to have been filed within the two-year period following the Father's death (i.e., by February 21, 1997). § 733.710, Florida Statutes.

addresses sections 733.702 and 733.710, as well as cases supporting the applicability of those statutes; and (3) the transcript of the July 12, 2018, hearing on the defendants' motion for reconsideration.

The motion for reconsideration specifically raised the two probate statutes and the cases of Pezzi v. Brown, 697 So. 2d 883, 884 (Fla. 4th DCA 1997), and May v. Illinois National Insurance Co., 771 So. 2d 1143 (Fla. 2000), applying those statutes. Neither Ms. Ortiz's memorandum in opposition to the motion for reconsideration, nor the argument of her trial counsel during the hearing on the motion, contended that the probate statutes had not been properly or timely raised.

Ms. Ortiz may not raise this argument for the first time here in her briefing. Ms. Ortiz had over three months between service of the motion for reconsideration and the hearing to make such an argument, but did not, thereby waiving that objection. See Danford v. City of Rockledge, 387 So. 2d 968, 969-70 (Fla. 5th DCA 1980).

### Conclusion

Ms. Ortiz initiated her claims over 18 years after her Father's death. She conceded that her claims to interests in JAAC and the Property were required to be prosecuted in the administration of her Father's estate when she alleged under oath in her 2013 "Emergency Petition to Reopen Estate for Subsequent Administration" that "her interest in real property may be lost or wasted" since it was not distributed

as Ms. Ortiz contended it should have been. The same concession appears in her 2013 motion in her late Father's probate estate case to appoint "an independent successor personal representative" because of the "documents that provide Adeena with an interest in this Estate." Several months later, she elected to pursue her separate civil case and voluntarily withdrew her emergency petition to reopen the probate estate. In that civil case, however, she named her late Father's estate as a defendant.

The trial court properly considered the Mother's and other defendants' motion for reconsideration, applied the probate statutes and cases relied upon in the motion and hearing on the motion, and entered a detailed eleven-page order and final judgment rejecting Ms. Ortiz's claims. Finding no error in the order and final partial judgment, we affirm them in all respects.

Affirmed.