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An Electronic Newsletter of Gutter Chaves Josepher Rubin Forman Fleisher Miller P.A.

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MANDATORY RESTRICTED DEPOSITORY ARRANGEMENTS IN PROBATE QUESTIONED [FLORIDA]

BY CHARLES (CHUCK) RUBIN

Fla.Stats. §69.031(1) authorizes a probate court to direct the financial assets of a probate estate be deposited into a restricted depository account held by a financial institution. This is a protective mechanism, since assets may be disbursed from that account only upon court order, instead of mere direction by the personal representative. Thus, it acts a mechanism to reduce the risk of improper use, dissipation, or disbursement of estate assets by the personal representative.

Fla.Stats. §69.031(1) reads as follows:

> (1) When it is expedient in the judgment of any court having jurisdiction of any estate in process of administration by any guardian, curator, executor, administrator, trustee, receiver, or other officer, **because the size of the bond required of the officer is burdensome or for other cause**, the court may order part or all of the personal assets of the estate placed with a bank, trust company, or savings and loan association (which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state) designated by the court, consideration being given to any bank, trust company or savings and loan association proposed by the officer. When the assets are placed with the designated financial institution, it shall file a receipt therefor in the name of the estate and give the officer a copy. Such receipt shall acknowledge the assets received by the financial institution. All interest, dividends, principal and other debts collected by the financial institution on account thereof shall be held by the financial institution in safekeeping, subject to the instructions of the officer

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> authorized by order of the court directed to the financial institution. (emphasis added)

Some counties have opted to impose restricted depository accounts for all estates, raising the issue whether a blanket prohibition is appropriate, or whether the above highlighted language of the statute first requires either a determination that the size of a bond would be burdensome or there is other good cause in each estate.

In an opinion released today, the Fourth District Court of Appeal ruled against local rules requiring the mandatory use of restricted depositories. The Court nonetheless allowed the restricted depository order under appeal in that case to stand, since there was otherwise good cause for the court to order the account under the facts. The case is not final, pending the possibility of a motion for rehearing and the outcome of such a rehearing if it is granted, but interested persons should monitor its status.

Assuming the Court's opinion becomes final, it is difficult to know how counties with such mandatory requirements will react, both within and without the counties making up the Fourth DCA (such as whether they will remove such mandatory requirement, otherwise attempt to re-work their rules in light of the opinion, or await appellate decisions in their own circuit).

DISCLOSURE: Our firm, through Jenna Rubin, Esq., represents the appellees in this case.

STEVEN GOODSTEIN, as Personal Representative of the Estate of Andrew Scott Goodstein v. SHELLEY GOODSTEIN, as Conservator for BLAKE GOODSTEIN and CHANDLER GOODSTEIN, and GRANT GOODSTEIN, 4th DCA, Case No. 4D18-2382 (January 9, 2019)

Rules Issued on Excess Remuneration Paid by Exempt Organizations

By Charles (Chuck) Rubin

The 2017 Tax Act imposed a penalty on excess compensation paid to employees of an applicable exempt organizations ("ATEO"). Code §4960 imposes an excise tax of 21 percent on compensation paid to a covered employee in excess of $1 million and on any excess parachute payments paid to a covered employee. A "covered employee" is any employee (or former employee) who is one of the five highest - compensated employees of the organization for the taxable year or was a covered employee of the organization (or any predecessor) for any preceding taxable year.

The IRS has issued Notice 2019-9, which contains interim rules on how the excise tax will apply. Some interesting aspects of the new statute and rules are summarized below:

- Related Entity Aspects:
    - Any remuneration paid to a covered employee by a related entity is included in the calculation of the covered employee's total remuneration for the year.
    - A payment from a related entity, including a related entity that is an ATEO, for services rendered to the common-law employer, is considered a payment to the employee from the common-law employer. Calculation of the excise tax is separate from any arrangement that an ATEO and any related organization may have for bearing the cost of the excise tax.
    - Remuneration paid by a separate organization on behalf of the ATEO, whether related to the ATEO or not, for services performed as an employee of the ATEO is treated as remuneration paid by the ATEO.
    - An employee may be a covered employee of more than one ATEO and that each ATEO employer calculates its liability under Code Sec. 4960(a)(1) taking into account the organizations to which it is related. However, an employer is liable only for the greater of the excise tax it would owe as an ATEO or the excise tax it would owe as a related organization with respect to that covered employee.

- Determining Compensation Aspects:
    - Wages include all remuneration for services performed by an employee for the employer, except for fees paid to a public official, and other specifically excluded types of remuneration.
    - Remuneration is treated as paid when there is no substantial risk of forfeiture of the rights to such remuneration (i.e., when the compensation is vested). Remuneration in which the covered employee vested before the effective date of Code §4960 is treated as paid before that effective date. The definition of substantial risk of forfeiture under Prop Reg § 1.457-12(e)(1) is the definition of substantial risk of forfeiture within the meaning of Code §457(f)(3)(B) for purposes of Code §4960(a). Under Prop Reg § 1.457-12(e)(1), an amount of compensation is subject to a substantial risk of forfeiture only if entitlement to the amount is conditioned on the future performance of substantial services, or upon the occurrence of a condition that is related to a purpose of the compensation if the possibility of forfeiture is substantial.
    - For purposes of determining when remuneration is treated as paid, the timing rule in Code Sec. 4960(a) applies,and the timing rule for wage inclusion under Reg § 31.3402(a)-1(b) is not relevant. Under Notice 2019-9, Q/A-13, the amount of remuneration treated as paid at vesting is the present value of the remuneration in which the covered employee vests.

- Who Is a Covered Employee:

  - Once an employee is a covered employee, he or she continues to be a covered employee for all subsequent tax years. There is no minimum dollar threshold for an employee to be a covered employee.
  - Remuneration paid for medical services is not taken into account for purposes of identifying the five highest-compensated employees.
  - Whether an employee is one of the five highest-compensated employees is determined separately for each ATEO, and not for the entire group of related organizations. Therefore, each ATEO has its five highest-compensated employees. Thus, a related group of entities may have more than five covered employees.
  - Only an ATEO's common law employees (including officers) can be one of an ATEO's five highest compensated employees. There is a limited services exception from highest compensated employee status under which, unless an ATEO pays at least 10% of the total remuneration paid by the ATEO and all related organizations to an employee during the calendar year, the employee is not treated as one of the ATEO's five highest compensated employees.

- Misc.:

  - Certain governmental entities are not ATEOs. A governmental entity (including a state college or university) that is not recognized as exempt from taxation under Code §501(a) and does not exclude income from gross income under Code §115(1) is not an ATEO described in Code §4960(c)(1). A governmental entity that sought and received a determination letter recognizing its tax-exempt status under Code §501(c)(3) may relinquish this status pursuant to the procedures described in Rev Proc 2018-5.
  - For purposes of calculating the remuneration upon which the tax is calculated, remuneration does not include certain retirement benefits or certain directors' fees.

Another Court Finds Failure to Check Off Foreign Account on Income Tax Return Is Enough to Find Willfulness For FBAR Penalty

By Charles (Chuck) Rubin

As discussed on numerous occasions in this blog, a substantial penalty applies if a foreign account is not reported on an annual FBAR filing and the failure to report was willful. As more attention has been focused on FBAR filing failures over the last 10 years or so, more courts are addressing when a failure to file is willful.

Problematic for taxpayers who claim a lack of knowledge of the FBAR filing requirement is the question on Schedule B of their federal income tax return that asks if they have an interest in or authority over an account in a foreign country, such as a bank account, securities account, or other financial account. The question, along with the instructions as to that question, is interpreted by the government as cluing in the taxpayer to the FBAR filing requirement. Whether the taxpayer answers 'yes' or 'no' to the question, since a taxpayer is deemed to know what is in a tax return that the taxpayer signs, they are deemed to have knowledge of the filing requirement. Thus, absent other contrary facts, the lack of filing is treated as willful. This is the case even if the taxpayer did not read the return - especially with the trend to treat the term 'willful' in a civil penalty context as including either reckless disregard of a filing requirement or willful blindness to the filing requirement.

While not completely clear, a recent Claims Court case accepted this approach and held on summary judgment that a taxpayer who had checked 'no' to the foreign account question on her income tax return and who knew she had a foreign account was subject to the willfulness penalty for failing to report the account on an FBAR regardless of actual knowledge of the FBAR filing requirement. While there were other bad facts for the taxpayer, the Court appears to hold that it would have ruled the same way without those other bad facts.

This trend risks most FBAR failures to report as being automatically willful when the taxpayer otherwise filed an income tax report, absent special facts such as lack of knowledge of the account itself or perhaps contrary tax advice - a highly unfavorable trend for taxpayers.

Kimble v. U.S., U.S. Court of Federal Claims, No. 17-421 (December 27, 2018)

FBAR "WILLFULNESS" DECISION

BY CHARLES (CHUCK) RUBIN

A substantial penalty applies for those who willfully fail to report a foreign account on an FBAR. A recent 2nd Circuit Court of Appeals opinion weighed in on two uncertainties regarding willfulness in context of FBAR violations.

First, the Court held that the definition of willfulness is not particular to FBAR violations but should involve the definition applied in other civil contexts. Particularly, the Court said:

> In assessing the inquiry performed by the District Court, we first consider its holding that the proper standard for willfulness is"the one used in other civil contexts—that is, a defendant has willfully violated [31 U.S.C. §5314] when he either knowingly or recklessly fails to file [a]FBAR." (Op. at 7.) We agree. Though "willfulness" may have many meanings, general consensus among courts is that, in the civil context, the term "often denotes that which is intentional, or knowing, or voluntary, as distinguished from accidental, and that it is employed to characterize conduct marked by careless disregard whether or not one has the right so to act." Wehr v. Burroughs Corp., 619 F.2d 276, 281 (3d Cir. 1980) (quoting

> United States v. Illinois Central R.R., 303 U.S. 239, 242–43 (1938)) (internal quotation marks omitted). In particular, where "willfulness" is an element of civil liability, "we have generally taken it to cover not only knowing violations of a standard, but reckless ones as well." Fuges v. Sw. Fin. Servs., Ltd., 707 F.3d 241, 248 (3d Cir. 2012) (quoting Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 57 (2007)). We thus join our District Court colleague in holding that the usual civil standard of willfulness applies for civil penalties under the FBAR statute.

Then, the Court held that knowledge of the filing requirement is not a necessary element - recklessness (i.e., reckless disregard) is enough. Here, the Court said:

> This holds true as well for recklessness in the context of a civil FBAR penalty. That is, a person commits a reckless violation of the FBAR statute by engaging in conduct that violates "an objective standard: action entailing 'an unjustifiably high risk of harm that is either known or so obvious that it should be known.'" Safeco, 551 U.S. at 68 (quoting Farmer v. Brennan, 511 U.S. 825, 836 (1994)). This holding is in line with other courts that have addressed civil FBAR penalties, see, *e.g.*, United States v. Williams, 489 F.App'x 655, 658 (4th Cir. 2012), as well as our prior cases addressing civil penalties assessed by the IRS under the tax laws, see, *e.g.*, United States v. Carrigan, 31 F.3d 130, 134 (3d Cir. 1994).

The Court then gave a definition for recklessness with respect to IRS filings, providing that:

> [A] person "recklessly" fails to comply with an IRS filing requirement when he or she "(1) clearly ought to have known that (2)there was a grave risk that [the filing requirement was not being met] and if (3) he [or she] was in a position to find out for certain very easily." Id. (quoting United States v. Vespe, 868 F.2d 1328, 1335 (3d Cir. 1989) (internal quotation omitted)).

Bedrosian v. U.S., 3rd Cir., Case No. 17-3525, December 21, 2018

INTERESTING MODIFICATIONS IN FATCA PROPOSED REGULATIONS

BY CHARLES (CHUCK) RUBIN

New Proposed Regulations modify withholding and other misc. requirements under FATCA and chapter 3. Some of the more interesting changes include:

1. No Withholding on Gross Proceeds. Under Code §§471(a) and 1472, withholdable payments made to certain FFIs and certain NFFEs are subject to withholding under chapter 4. Under Code §1473(1) the term "withholdable payment" means: (i) any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such

payment is from sources within the U.S.; and (ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the U.S. Because of the extensive network of agreements that have developed, the IRS has determined that the current chapter 4 withholding requirements already serve as a significant incentive for FFIs investing in U.S. securities to avoid status as nonparticipating FFIs. Therefore, withholding under (ii) above on gross proceeds will no longer be required.

2. Extension of Implementation of Withholding on Foreign Passthru Payments. The Proposed Regulations will further extend the time for withholding on foreign passthru payments. Thus, a participating FFI will not be required to withhold tax on a foreign passthru payment made to a recalcitrant account holder or nonparticipating FFI before the date that is two years after the date of publication in the Federal Register of final regulations defining the term "foreign passthru payment."
3. Insurance Premiums. Premiums for insurance contracts that do not have cash value will be excluded nonfinancial payments and, therefore, not withholdable payments.
4. "Investment Entity" Definition. An entity is an investment entity (and therefore a financial institution) if the entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets and the entity is "managed by" another entity that is a depository institution, custodial institution, insurance company, or an investment entity described in Reg. §1.1471-5(e)(4)(i)(A). The preamble to the proposed regulations clarify that an entity would not be "managed by" another entity solely because the first-mentioned entity invests all or a portion of its assets in such other entity, and such other entity is a mutual fund, an exchange traded fund, or a collective investment entity that is widely held and is subject to investor-protection regulation. However, in an investor in a "discretionary mandate" will be considered as managed by the financial institution. A "discretionary mandate" is an investment product or solution offered by a financial institution to certain clients where the financial institution manages and invests the client's funds directly (rather than the client investing in a separate entity) in accordance with the client's investment goals.

Generally, taxpayers may rely on the Proposed Regulations until final regulations are issued.

Preamble to Prop Reg REG-132881-17; Proposed Regulations §1.1441-1, Proposed Regulations §1.1441-6, Proposed Regulations §1.1461-1, Proposed Regulations §1.1461-2, Proposed Regulations §1.1471-1, Proposed Regulations §1.1471-2, Proposed Regulations 1.1471-3, Proposed Regulations §1.1471-4, Proposed Regulations §1.1471-5, Proposed Regulations §1.1473-1, Proposed Regulations §1.1474-1, Proposed Regulations 1.1474-2

LL.M. DEGREE NOT DEDUCTIBLE

BY CHARLES (CHUCK) RUBIN

A taxpayer went to law school in Spain and practiced law there for several years as an international attorney. He then moved to New York City and enrolled in an LL.M. program at NYU. He paid tuition expenses of $27,435. After obtaining his degree, he obtained a visiting attorney position in the U.S. at an international law firm, doing similar work to what he did in Spain. He then took and passed the New York State bar exam - he was eligible because of his LL.M. degree. He passed and was admitted to practice in New York and continued working at the law firm.

The issue is whether he could deduct his tuition expenses. Code §162(a) allows a deduction for education expenses if (1) made by a taxpayer to maintain or improve skills required in the taxpayer's business or employment, or (2) to meet the express requirements of the taxpayer's employer, or the requirements of law or regulations, imposed as a condition to retaining his or her salary, status or employment. See also Treas. Regs. §1.162-5. However, no deductions are allowed if the education is part of a program of study that will lead to qualifying the individual in a new trade or business, or are needed to meet the minimum education requirements for qualification in the taxpayer's employment. Treas. Regs.§ 1.162-5(b)(3)(i).

The Tax Court ruled that the deductions were nondeductible. While the taxpayer did perform similar job functions before and after the LL.M., and the LL.M. related to those functions, that the LL.M. allowed him to seek admission to the New York Bar sunk his boat by leading to qualifying him in a new trade or business. Also relevant was that he did not need the degree for his visiting attorney job.

Note that under the 2017 Tax Act, unreimbursed education expenses of employees are miscellaneous itemized deductions that are presently suspended through 2025.

Enrique Fernando Dancausa Valle, TC Summary Opinion 2018-51

Filing a Claim against Estate Grants IRS More Than 10 Years to Collect

Code §6502(a)(1) provides a 10 year collection period to the IRS, measured from the assessment date. The particular language reads: "Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun. . . (1) within 10 years after the assessment of the tax. . ."

In U.S. v. Estate of Albert Chicorel, 122 AFTR 2d 2018-XXXX (CA6 2018), the IRS sought to collect on an income tax assessment more than 10 years old. The Estate sought to bar the collection under the above language. The IRS countered that since it had timely filed a claim in the probate proceedings against the Estate, then it had begun a "proceeding" within the above statute within 10 years and thus could complete the collection process outside the 10 year period. The Sixth Circuit Court of Appeals sided with the IRS.

The court found a claim filing constituted a proceeding because filing a proof of claim in Michigan has significant legal consequences for the creditor, the estate, and for Michigan law generally. For example, if the estate does not provide notice that a claim is not allowed, it is automatically allowed. Further, Michigan law specifically equates presentation of the claim with a proceeding. The court noted that the Code §6502(a)(1) extension does not require a “judgment” to be reached in the applicable proceeding.

Once the timely proceeding is undertaken, the collection period does not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable. Code §6502(a) [flush language]. However, the government doesn’t have forever - the court notes that “the statute does not permit the government to allow an assessment to lie dormant and then to attempt collection long after the assessment has passed from reasonable memory.”

Would this case apply in Florida? I could not locate similar language in the Florida Probate Code that equates presentation of a claim with a proceeding. However, the effect of filing a claim and the procedures for the estate to object or be bound by the claim are substantially similar to the Michigan effect, so I would speculate that is enough for the same principles to apply in Florida.

Note the claim here was timely filed in the estate proceeding. The flush language in Code §6502(a) describes a “timely proceeding in court for the collection of a tax...” The appellate court expressly declined to rule on what would happen if the claim had been untimely. I would speculate that a different result may arise, per the statutory use of the word “timely.”

An unrelated issue is whether the personal representative/executor of the estate has personal liability for the unpaid income tax. Code §6905(a) provides a procedure for an executor to make application for a discharge of personal liability (which does not impact estate liability).

Another unrelated issue is whether the IRS is barred by state law limitations periods if they do not timely file a claim against the estate. The answer to this is no. *Board of Comm'rs of Jackson County v. United States*, 308 US 343 (1939) ; United States v. Summerlin, 310 US 414 (1940) .

U.S. v. Estate of Albert Chicorel, 122 AFTR 2d 2018-XXXX (CA6 2018)

FLORIDA CASE LAW UPDATE - TRUST, ESTATE & GUARDIANSHIP LITIGATION

BY JENNA RUBIN

Maldonado v. Buchsbaum, --- So.3d --- (Fla. 4th DCA 2018)

In certain situations, it is possible to get a temporary injunction without notice, but a court should not do so without strictly complying with the rules governing injunctions. In this case, the surviving spouse sought a temporary injunction against the decedent's aide who had allegedly fostered a relationship with the decedent and alienated him from his spouse during life. Following his death, the wife sought to enjoin the aide from taking possession of estate assets, destroying financial documents or representing to others that she was the sole beneficiary of the estate or representative of the decedent.

The trial court issued the temporary injunction without notice to the aide based on spouse's argument that notice of the proceedings prior to the issuance of the injunction would afford the aide the opportunity to transfer assets out of the country. The Court found that the injunction was appropriate but that the trial court failed to properly endorse the bond with the date and hour of entry and impose a bond in accordance with rule 1.610(a)(2). It ultimately affirmed the injunction and remanded so that the trial court could address these errors.

Senopoulos v. Senopoulos, 253 So.3d 1228 (Fla. 1st DCA 2018)

A probate court has the inherent authority to evaluate a person's fitness to serve as personal representative. However, in order to appoint a personal representative based on something other than that personal representative's entitlement under the statute, the trial court has to actually make a finding about the person's fitness to serve.

Here, the decedent and his spouse were married just four days before the decedent died. The decedent's father sought to be appointed as personal representative of the estate, alleging foul-play by the surviving spouse in the death of his son. The wife objected and asserted her right to serve as the surviving spouse. The court ultimately entered an order appointing the father, stating that the father was "entitled to" appointment as the "nearest heir of the Decedent willing to serve as personal representative."

The Court reversed the order appointing the father because the trial court based its order on the father's entitlement to serve rather than on a finding that the wife was not fit to serve, where the statutory order of preference actually favored the wife.

Gordon v. Fishman, 253 So.3d 1218 (Fla. 2d DCA 2018)

Under current Florida law, the provisions of a decedent's will that impact the former spouse of that person become void upon divorce. But what happens when the decedent's will is prepared before the marriage (which ultimately ended in divorce)? Here, the Court found that the language of F.S. 732.507(2) unambiguously requires that the person be married at the time of executing the will. Thus, a will executed before the marriage, leaving assets to the decedent's then-fiance, who he subsequently married and then divorced, are not subject to F.S. 732.507(2).

F.S. 732.507(2) reads as follows:

> Any provision of a will executed by a married person that affects the spouse of that person shall become void upon the divorce of that person or upon the dissolution or annulment of the marriage. After the dissolution, divorce, or annulment, the will shall be administered and construed as if the former spouse had died at the time of the dissolution, divorce, or annulment of the marriage, unless the will or the dissolution or divorce judgment expressly provides otherwise. (Emphasis added)

The Court held that the language of F.S. 732.507(2) is unambiguous in that it only governs wills executed by a married testator. It was not persuaded by the argument that allowing the former spouse to take, simply because the decedent was not married when he wrote his will, would be an unreasonable disregard of legislative intent.

Baden v. Baden, et al, --- So.3d --- (Fla. 2d DCA 2018)

Ordinarily, a plaintiff may voluntarily dismiss his or her action pursuant to FRCP 1.420(a)(1) at any time before a hearing on motion for summary judgment. In this case, the Plaintiff tried to dismiss certain trust litigation subsequent to a settlement agreement, but the trial court refused to grant his dismissal and attempted to retain jurisdiction over the subject trust. Ultimately, the Court found that the trial court erred and had no basis for not accepting the Plaintiff's voluntary dismissal.

The Defendants had two arguments about why the voluntary dismissal should be rejected. First, they argued that F.S. 736.0201 gives the trial court discretion to maintain ongoing jurisdiction over trust actions and that jurisdiction applied here where a prior court order had been entered authorizing the court to retain jurisdiction over the trust as part of a settlement. The Court disagreed. It found F.S. 736.0201 unambiguous in that the Florida Rules of Civil Procedure apply to trust actions (but for three exceptions which were not relevant here). The Court held that the trial court had attempted to add an additional exception, not enumerated in F.S. 736.0201, to the mandatory application of the Florida Rules of Civil Procedure, based on the language of F.S. 736.0201(3) which states that "[a] trust is not subject to continuing judicial supervision unless ordered by the court." The Court felt that such an additional exception would render the actual exceptions provided in the statute meaningless. It held that F.S. 736.0201(3) merely provides the trial court the discretion to continue supervision of a trust, but does not nullify F.S. 736.0201(1)'s mandate as to the applicability of the Florida Rules of Civil Procedure.

The Defendants also argued that the language in FRCP 1.420(a)(1) which states that a plaintiff may dismiss a lawsuit without an order of the court "[e]xcept in actions in which property has been seized or is in the custody of the court" applied here to prevent the dismissal. The Court held that the phrase "custody of the court" only means assets actually deposited in the court registry, not trust assets over which the court has issued orders.

Johnson v. Townsend, --- So.3d --- (Fla. 4th DCA 2018)

This is an interesting decision about the intersection of community property law and Florida probate claims. The decision centers around whether a surviving spouse who is claiming an interest in purported community property must file a timely claim against the estate. The Court held that such a claim is a claim under the Florida Probate Code and that no exceptions exist to usurp the time deadlines for filing a claim in these types of proceedings.

Prior to the decedent's death, he acquired property with his wife while domiciled in Texas, a community property state. The property was titled solely in the decedent's name. Following the decedent's death, and after more than 3 months had passed since the notice to creditors was published and over two years had passed since the decedent's date of death, the wife filed a "Petition to Determine and Perfect Surviving Spouse's Community Property Interest in Estate Assets." The decedent's children moved to strike the Petition as untimely.

The wife made several interesting arguments about why the Petition should not be treated as a claim subject to the statutory guidelines. First, she argued under F.S. 732.223, a spouse's community property interest is not treated as a creditor claim and there is no stated deadline for filing a petition to perfect a community property interest. Second, she argued that the definition of a claim in F.S. 731.201(4) does not encompass a community property interest. Finally, she argued that even if her Petition were a claim, her community property interest fell into one of two exceptions to the statutory deadlines. She argued that she fell within the common law "trust exception" because even though the husband held the property in his own name, a resulting trust arose in her favor by implication of the community property laws, and as a result she did not have to file a claim to perfect title. She also argued that she fell within the "lien exception," because the vesting of her community property interest gave rise to an equitable lien which is excepted from the claim statutes.

The Court disagreed. It held that the wife's interest in the husband's estate was a liability of the decedent and thus subject to the claim statutes, and that claim was untimely, as it was after the three month period and the two year claim period. It felt that neither the trust exception nor the lien exception were applicable. The trust exception has been limited to "express trust[s] or some other clearly defined means," which the Court felt did not exist here. The Court held that this was not a lien, because it was not a duly recorded mortgage or security interest, nor was she in possession of the property. Finally, it disagreed that the community property statutes were not subject to the 2 year non-claim period in F.S. 733.310.

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During your lifetime, you'll eat about 60,000 pounds of food, that's the weight of about 6 elephants.

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