

PROBATE CORNER

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ARTICLE: PERSONAL JURISDICTION – SERVICE BY FORMAL NOTICE OR SUMMONS?

Section 731.301(2), Fla. Stat. states that "[f]ormal notice shall be sufficient to acquire jurisdiction over the person receiving formal notice *to the extent of the person's interest in the estate.*" [emphasis added].

I. Who has a sufficient “interest in the estate” for purposes of service by formal notice?

Service by formal notice is only effective on parties interested in an estate. These parties include, but are not limited to, beneficiaries, claimants, and personal representatives. *See Galego v. Robinson*, 695 So. 2d 443 (Fla. 2d DCA 1997).

In *Payette v. Clark*, 559 So. 2d 630 (Fla. 2nd DCA 1990), the court held that in a closed estate, the former personal representative and beneficiaries had a sufficient “interest in the estate” under this section, regarding claims for relief within the jurisdiction of the probate court. The court reasoned:

At the inception of the probate proceedings the appellee Theodore W. Clark, by obtaining appointment as personal representative, submitted himself to the jurisdiction of the court for all purposes, including the resolution of the issues raised by this petition. The appellees Carter S. Clark and Shirley Lorraine Warner filed consents to his appointment with requests that he be permitted to serve without posting bond. All appellees accepted distribution of the estate assets, thereby availing themselves of the judicial powers of the Florida court, and filed receipts and consents to the discharge of Theodore W. Clark as personal representative. Additionally, the petition alleges that all the appellees had knowledge of the existence of the appellant and knowingly appropriated her interest in the estate assets. We conclude that this participation in the estate process by the remaining appellees is sufficient to constitute a voluntary submission to the jurisdiction of the court for the purpose of determination of counts one through four of the petition. [citations omitted]

Parties in possession of estate assets that had been improperly distributed by the personal representative could be served by formal notice. *See Hall v. Tungett*, 980 So. 2d 1289 (Fla. 2nd DCA 2008). In *Hall*, the court found that the following allegations in the personal representative’s motion sufficient to support service by formal notice:

The PR's motion alleged that the brokerage account was titled in the decedent's name at the time of his death, was wrongfully distributed to Ms. Hall by Ms. Green as the predecessor personal representative, and was in Ms. Hall's possession. The motion claimed that the account and other property belonged to

the Estate and must be returned to it, or if the account and property were no longer in Ms. Hall's possession then she had to return to the Estate the equivalent value, as well as any income earned on the assets or any gain received with respect to the assets.

II. Who does not have a sufficient “interest in the estate” for purposes of service by formal notice?

If the litigation is to determine whether the estate, in the first instance, had an interest in the assets, then service of process on the party in possession of those assets must be by summons. See Hall v. Tungett, supra.

A person who has no claim to estate property, and who does not otherwise claim any right to participate in the administration of the estate, does not possess an “interest in the estate” under s. 731.301(2). In re Estate of Vernon, 608 So. 2d 510 (Fla. 4th DCA 1992), involved an estate where the personal representative sued defendants claiming that shares of stock in a bank previously held in one of the defendant’s names were in truth owned beneficially by the decedent, and therefore should have been marshaled into the probate estate, rather than being liquidated by the defendant outside the estate. The court held that the probate court could not obtain jurisdiction over the defendants by formal notice, and that the estate’s remedy was to institute an ordinary civil action against the defendants.

In Galego v. Robinson, 695 So. 2d 443 (Fla. 2d DCA 1997), the court held that the probate court lacked jurisdiction over appellant, who allegedly damaged the estate through mismanagement of the decedent's assets using the decedent’s power of attorney. The appellees should have instituted a normal civil action against appellant for any mishandling of funds under the power of attorney.

In Kountze v. Kountze, 2009 Fla. App. LEXIS 15621; 34 Fla. L. Weekly D 2142 (Fla. 2nd DCA 10/16/09), appellee personal representative filed a petition against appellants, a decedent's former wife and a remainder beneficiary of a trust, to determine the whereabouts and the value of missing estate assets. The PR served the appellants with a notice of the personal representative's taking possession of assets of the estate; the notice was served by formal notice. In the notice, the PR alleged that he had taken possession of certain assets which had been listed in the trust. The court held that the formal notice that the appellants received in the estate proceeding was not sufficient for the trial court to acquire personal jurisdiction over them. The court reasoned:

An interested person is defined in the probate code as "any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved." § 731.201(23). However, the meaning of interested person "may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings." *Id.*

The appellants contend they are not interested persons within the meaning of section 731.201(23). Specifically, they disclaim any interest in the estate assets. Our understanding of appellants' position is that the assets in question are trust

assets that are separate and distinct from the estate assets and therefore they would not "reasonably be expected to be affected by the outcome" of the estate proceedings. §731.201(23). If that assertion is true, then the formal notice they received in the estate proceedings was not sufficient for the trial court to acquire personal jurisdiction over them.