

PROBATE CORNER

By: David M. Garten, Esq.

ARTICLE: Statute Of Limitations On Objection To The Qualifications Of A Personal Representative

Section 733.212(3), Fla. Stat. reads: “Any interested person on whom a copy of the notice of administration is served must object to the validity of the will, *the qualifications of the personal representative*, the venue, or the jurisdiction of the court by filing a petition or other pleading requesting relief in accordance with the Florida Probate Rules on or before the date that is 3 months after the date of service of a copy of the notice of administration on the objecting person, or those objections are forever barred.” [Emphasis added]

In Hill v. Davis, 2011 Fla. LEXIS 2048; 36 Fla. L. Weekly S 487 (Fla. 9/1/11), the issue before the Court was whether an objection to the qualifications of a personal representative of an estate is barred by the three-month filing deadline set forth in §733.212(3), Fla. Stat. when the objection is not filed within that statutory time frame.

FACTS: In 2007, the decedent’s stepson, a resident of New York, filed a petition for administration in the Florida estate asserting that he was entitled to be appointed personal representative of the estate because he was the decedent's stepson and was nominated as personal representative in the will. The trial court admitted the will to probate and appointed the stepson as the personal representative. The court granted letters of administration and the stepson published the notice of administration on July 13, 2007. A copy of the notice of administration was served on the decedent's mother on July 24, 2007. On August 6, 2008, the decedent's mother filed a motion challenging the appointment of the decedent's stepson as personal representative because he was a nonresident and was not eligible to serve. The stepson's status as a nonresident was known to the mother at the outset.

HOLDING: The Florida Supreme Court held that §733.212(3) bars an objection to the qualifications of a personal representative, including an objection that the personal representative was never qualified to serve, if the objection is not timely filed under this statute, except where fraud, misrepresentation, or misconduct with regard to the qualifications is not apparent on the face of the petition or discovered within the statutory time frame.