

No. 20-496

Supreme Court, U.S.
FILED

OCT 03 2020

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IN THE

SUPREME COURT OF THE UNITED STATES

In Re: ESTATE OF JOSEPH WEINBERG

LYNN WEINBERG - PETITIONER.

vs.

DEBORAH BORT - RESPONDENT

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT**

PETITION FOR WRIT OF CERTIORARI

Lynn Weinberg, Pro Se
Successor Personal Representative of Estate of Joseph Weinberg,
Successor Trustee of Joseph Weinberg Trust U/a 4/28/1997
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SUPREME COURT, U.S.

QUESTIONS PRESENTED:

1. Whether the Fourth District Court of Appeal of Florida ("4 DCA") violated the due process protections of the 5th and 14th Amendments to the U.S. Constitution and Florida constitution by blocking the Florida Supreme Court from reviewing the Florida per curium affirmation ("PCA") to prematurely close this WW2 veteran's estate and trust, which has been lost and taken without ever allowing due process or enforcement of probate laws, statutes or the Settlement Agreement due to the extreme departure of the normal course of judicial proceedings in both Florida and New Jersey.
2. Whether the Fourth District Court of Appeal of Florida violated the due process protections of the 5th and 14th amendments to the U.S. Constitution by blocking the Florida Supreme Court from reviewing important federal and constitutional law involving full faith and credit and the complete denial of due process where state statutes have been invalidated, and the decision is in direct conflict with decisions of other appellate courts and the Florida Supreme Court on the same issues.

PARTIES TO PROCEEDING AND RELATED CASES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceedings in the court whose judgment is the subject of this petition is as follows:

Deborah Bort
represented by Geoffrey Cahen, Esq.

RELATED CASES FLORIDA

In Re: Estate of Joseph Weinberg, Deceased
Case No: 502001CP003521XXFOIY, Circuit Court of the 15th
Judicial Circuit In and For Palm Beach County, Florida,
Probate Division

Bort, Deborah v. Kindred Nursing Centers East LLC Case No.
50-2001-CA-010284-ONAF-MB BORT, DBA 10/05/2001

Weinberg V. Bort Case No. CA01-12036AF

Weinberg v. Bort, Case No. 4D07-363, 961 So. 2d 1017 (Fla. 4th DCA 2007)

Weinberg v. Bort, Case No. 4D07-4608, 987 So. 2d 1227 (Fla. 4th DCA
2008)

Weinberg v. Turner, Case No. 50-2007-CA-022143-XXXX-MB (Cir. Ct.
Palm Beach Cnty.)

Weinberg v. Turner, Case No. 4D13-2246, 138 So. 3d 464 (Fla. 4th DCA 2014)

Weinberg v. Bort, Case No. 4D15-2504, 193 So. 3d 899 (Fla. 4th DCA
2016)

NEW JERSEY

In the Matter of the Irrevocable Funded Life Insurance Trust Established by Joseph
Weinberg U/A Dated May 11, 1952 Docket No: 02-01078 (Superior Court of New
Jersey, Somerset County, Chancery Division, Probate Part)

In the Matter of the Irrevocable Funded Life Ins. Trust Established by Joseph Weinberg, U/A dated May 11, 1982 (“Weinberg I”), Docket No. A-4036-03 (App. Div. July 20, 2006), certif. Denied, 189 N.J. (2007)

Lynn Weinberg, individually and as Executrix of the Estate of Joseph Weinberg, the Estate of Joseph Weinberg, and Lynn Weinberg, Individually and as Trustee of the Joseph Weinberg Revocable Trust U/A April 28, 1997, and the Joseph Weinberg Revocable Trust U/A April 28, 1997 vs. Deborah Bort and Norman Warner, Individually and as Trustee of the Joseph Weinberg Irrevocable Life Insurance Trust U/A May 11, 1982, and Warner Financial Group Docket No. L-6520-Q, September 14, 2006

In the Matter of the Irrevocable Funded Life Ins. Trust Established by Joseph Weinberg, U/A dated May 11, 1982 (“Weinberg II”), Docket No. A-5836-06 (App. Div. May 12, 2008), cert. denied, 196 N.J. (2008)

In the Matter of the Irrevocable Funded Life Ins. Trust Established by Joseph Weinberg, U/A dated May 11, 1982 (“Weinberg III”), Docket No. A-2351-09T3 (App. Div. Oct. 5, 2011)

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JURISDICTION

The date on which the highest state court decided my case was **May 7, 2020.**

A copy of that per curium affirmance sought to be reviewed appears at Appendix A.

An extension of time of 60 days to file a petition for the writ of certiori was granted by Supreme Court in its Order dated March 19, 2020.

The jurisdiction of this court is invoked under 28 U.S. C. 1257(a)

STATEMENT OF THE CASE

My father, Joseph Weinberg, died on March 22, 2001 from medical error. He was a Florida resident and left his Estate and Florida Trust. He also left a New Jersey Trust. Due to the extreme abberation of procedure, jurisdictional errors, attorney malpractice, violations, conflicts of interests, and the courts not enforcing of the Settlement Agreement, rules and statutes in both Florida and New Jersey - the entire Florida estate (which included my home, the homesteaded property, and other condo), and, the entire Florida Trust have been lost.

There has been no due process in this 19 year case. I was never given any opportunity, ever, in Florida or New Jersey to an evidentiary hearing or trial. Rules of procedure were not followed in either state. This Florida case was primarily decided by a New Jersey Guardian Ad Litem, who had a conflict of interest, and attorney's opinions only. No witnesses, cross examination and rules of evidence were ever allowed. All of my due process rights, individually, and in my fiduciary duties as successor personal representative and successor trustee of the Florida trust, have been repeatedly denied in both Florida and New Jersey, making it virtually impossible to properly close the estate in accordance with Florida laws and statutes.

As the result of rules, laws and statutes never being followed or enforced, this case became a convulted mess. I've had to appeal the fundamental errors and mistakes 3 (three) times in New Jersey and 3 (three) times in Florida in my attempts to simply have the laws of New Jersey and Florida, and the Settlement Agreement

enforced.

The 4th DCA has issued 3 PCA's in this case with no written explanation. Without a decision explaining the court's reasoning, there is no way to argue that the decision "expressly and directly" conflicts with existing court precedent.

My father worked hard for 60 years building his estate and trusts after fighting for this country in WW2. A manifest injustice has occurred and I, the estate and Florida trust were denied all rights to due process and fairness to ever have the law, statutes or Settlement Agreement enforced.

REASONS WRIT SHOULD BE GRANTED.

1. The PCA with no written opinion was inappropriate because I was denied all due process rights in this case, and the decision conflicts with decisions of other district court of appeals, the Florida Supreme Court and the U.S. Supreme Court on the same questions of law:
 - The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall be ... deprived of life, liberty or property without due process of law...."
 - The Fourteenth Amendment to the United States Constitution provides in relevant part: "No state shall ... deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
 - Under the Florida Constitution: Article 1, SECTION 9, Due process.—No person shall be deprived of life, liberty or property without due process of law.
 - Under SECTION 2 Basic rights.—All natural persons, female and male alike are equal before the law and have inalienable rights, which includes the right to acquire, possess and protect property.
 - Under SECTION 10. Prohibited laws include law impairing the obligation of contracts.
2. The PCA without written opinion was inappropriate because it conflicts with

procedural probate rules and statutes that govern all Florida probate proceedings.

- Probate is a court-supervised process for identifying and gathering the assets of a deceased person, paying the decedent's debts, distributing the decedent's assets to his or her beneficiaries, and properly closing the estate.
- The Florida Probate Code is found in Chapters 731 through 735 of the Florida Statutes, and the rules governing Florida probate proceedings are found in the Florida Probate Rules, Part I and Part II (Rules 5.010-5.530).
 - These statutes and rules were never followed or enforced in this case.
- 3. The PCA without a written opinion is in direct conflict with the Florida Constitution and U.S. Constitution where the due Process Clause entitles a person to an impartial tribunal. No trial or evidentiary hearing was ever held. Instead, the New Jersey Guardian Ad Litem, who had a conflict of interest with my Florida interests, was appointed as special master to decide the disputed Florida assets and discovery matters. This deprived me of the due process guarantees of the right to a neutral unbiased tribunal.
- The PCA also conflicts with *Fleming v. Demps*, 918 So 2d 982,984 (Fla 2d DCA 2005) reiterating that Due process requires that a party be given the opportunity to be heard and to present evidence to determine who the rightful owner of the funds
- 4. The PCA was inappropriate because it conflicts with Florida Statute 733.815: Private contracts between interested persons. Here, Deborah and I agreed to and entered into a written Florida Settlement Agreement. The conditions of the

explicit terms of the Settlement Agreement were completely violated, overlooked and overrode in both New Jersey and Florida. Without a written opinion, there is no explanation as to why the Settlement Agreement was allowed to be violated, instead of being strictly enforced. The PCA conflicts with the Florida Supreme Court decision in General Dynamics Corp. V. Paulucci, 797 So 2d, 18 Fla 5th DCA 2001) where courts are required to enforce Settlement Agreements. The erroneous overpayment on the Promissory Note against its very terms conflicts with Florida Statute 733.812.

5. The Need for Supreme Court Intervention If this Court does not grant writ in this case, probate laws, statutes and Settlement Agreements will not have to be enforced. Estate and trust assets will be able to just be claimed in other states and removed with no notice, trial or evidentiary hearings. Estate and trust cases will be able to be closed without procedural and due process rights, laws and statutes ever being enforced.

CONCLUSION

Without a decision explaining the court's reasoning, there is no way to argue that the decision to prematurely close this estate without allowing it to complete its administration, collect all its rightful assets, or even file a final accounting "expressly and directly" conflicts with existing court precedent.

The estate and trust that my father spent 60 years building after he fought for this country in WW2, is gone. Public policy depends on laws, statutes and contracts being

upheld and "enforced". They were not enforced in this case.

This PCA, and the two previous PCA's prevent the Florida Supreme Court from reviewing the manifest injustice that has occurred in this case resulting in the loss of the Florida estate and Trust without ever getting due process. The PCA also directly conflicts with decisions of other district courts on the same questions of law.

No estate, trust or petitioner's inheritance should be lost like this. This Honorable Court is all that is left to protect my due process rights in the 5th and 14th amendments to the U.S. Constitution. This Court instructs:

"Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U.S. 673, 50 S. Ct. 451, 74 L. Ed. 1107 (1930). at 681-682, 50 S. Ct., at 454-455.

Petitioner, Lynn Weinberg, respectfully petitions for a Writ of Certiorari to review the judgment of the PCA from the Fourth District Court of Appeal.

Respectfully Submitted,



Lynn Weinberg

Date: *October 2, 2020*