

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

TRACY L. CRUZ AND GREGORY W. CATES,

Appellants,

v.

Case No. 5D18-3310

COMMUNITY BANK & TRUST OF FLORIDA,
A FLORIDA BANKING CORPORATION,
AS TRUSTEE OF THE ELMER WAYNE
CATES TRUST DATED APRIL 25, 2016
AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF ELMER, ETC., ET AL.,

Appellees.

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Opinion filed August 9, 2019

Appeal from the Circuit Court
for Marion County,
S. Sue Robbins, Judge.

Alexander Thomas Briggs, of Pankauski
Hauser, PLLC, West Palm Beach, for
Appellants.

Marty Smith and Stacie L. Corbett, of Bond,
Arnett, Phelan, Smith & Carreras, P.A.,
Ocala, for Appellee, Community Bank &
Trust of Florida.

Brian T. Anderson and Samantha S.
Raube, of Schatt & Hesser, P.A., Ocala, for
Appellee, Hospice of Marion County.

No Appearance for Other Appellees.

ORFINGER, J.

Tracy L. Cruz and Gregory W. Cates (collectively, “Appellants”) appeal an order dismissing their breach of trust action against Community Bank and Trust of Florida (“the Bank”) for lack of standing. Appellants assert that they have standing under the Florida Trust Code, chapter 736, Florida Statutes (2016), as “interested persons.” We agree and reverse for further proceedings.

The genesis of this appeal is a pour-over will that Appellants’ late father, Elmer Wayne Cates (“Mr. Cates”), executed shortly before his death in 2016 (“2016 Will”). Upon Mr. Cates’s death, the will placed the majority of his assets into a trust (“the Trust”). The Bank was named as trustee, and the Trust directed that most of the Trust’s assets go to charity—half to Hospice of Marion County and the other half to fund leukemia research. The Trust provided Ms. Cruz with a life estate in a tract of land that included Mr. Cates’s homestead, but made no provision for Gregory Cates.

Following their father’s death, Appellants brought an action to invalidate the 2016 Will and Trust, alleging that Mr. Cates lacked testamentary capacity at the time of its execution.¹ Shortly after the invalidation action was filed, the Bank served Appellants with a trust accounting and monthly account statements for the investment accounts maintained in the Trust. The trust accounting and each statement contained a statutory “limitations notice.” Pursuant to section 736.1008, Florida Statutes, a “limitation notice” is

a written statement of the trustee that an action by a beneficiary against the trustee for breach of trust based on any matter adequately disclosed in a trust disclosure document may be barred unless the action is commenced within 6 months after receipt of the trust disclosure document

¹ The invalidation action remains pending. If it succeeds, Appellants stand to inherit the entire estate under Mr. Cates’s previous will or through intestate succession.

or receipt of a limitation notice that applies to that trust disclosure document, whichever is later.

§ 736.1008(c), Fla. Stat. (2016). Appellants then sued the Bank, alleging mismanagement of the Trust.²

In response, the Bank moved to dismiss the breach of trust complaint, asserting Appellants lacked standing to sue because they were not named beneficiaries of the Trust. Instead, Appellants' alleged basis for standing hinged on them inheriting their father's estate after invalidating the 2016 Will and Trust. This, according to the Bank, represented a hypothetical interest based on "uncertain future events," and such an interest did not establish standing to sue the Bank for its actions as trustee. The trial court granted the motion and dismissed the breach of trust complaint for lack of standing.

We review a dismissal for lack of standing de novo. Wheeler v. Powers, 972 So. 2d 285, 288 (Fla. 5th DCA 2008). Standing is a threshold inquiry that must be addressed before considering the merits of a cause of action. See Olen Props. Corp. v. Moss, 981 So. 2d 515, 517 (Fla. 4th DCA 2008). To have standing, a would-be litigant must show "a direct and articulable interest in the controversy, which will be affected by the outcome of the litigation." Centerstate Bank Cent. Fla., N.A. v. Krause, 87 So. 3d 25, 28 (Fla. 5th DCA 2012). This interest must be legally cognizable and not "conjectural or merely hypothetical." Id. Standing to bring or participate in a particular legal proceeding often depends on the nature of the interest asserted. Hayes v. Guardianship of Thompson, 952 So. 2d 498, 505 (Fla. 2006).

² The complaint also named Hospice of Marion County as a nominal defendant.

The Trust Code provides that a “court may intervene in the administration of a trust to the extent the court’s jurisdiction is invoked by an interested person or as provided by law.” § 736.0201(2), Fla. Stat. (2016). This provision applies to any judicial proceedings that “relate to the validity, administration, or distribution of a trust.” *Id.* § 736.0201(4). Section 731.201(23), Florida Statutes (2016), defines “interested person” under the Trust Code as “any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved.” The meaning of interested person, “as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.” *Id.* § 736.201(23). Thus, for Appellants to have standing as interested persons—those affected by the outcome of the breach of trust action—they must have some cognizable interest in the underlying trust property. As Appellants’ only claim to the trust estate is that they will inherit the entire estate if they succeed in invalidating the 2016 Will and Trust, we must consider whether this potential inheritance is an interest that will be affected by the Bank’s management of the Trust.

Section 736.08165, Florida Statutes (2016), governs the administration of a trust pending the outcome of an invalidation action and outlines the rights of the parties to such an action. It states:

(1) Pending the outcome of a proceeding filed to determine the validity of all or part of a trust or the beneficiaries of all or part of a trust, the trustee shall proceed with the administration of the trust as if no proceeding had been commenced, **except no action may be taken and no distribution may be made to a beneficiary in contravention of the rights of those persons who may be affected by the outcome of the proceeding.**

§ 736.08165(1), Fla. Stat. (2016) (emphasis added). This section requires a trustee to consider the rights of those potentially affected by an invalidation action when making distributions or taking actions concerning assets of the contested trust. In this sense, Appellants, who stand to receive the assets of the contested Trust depending on the outcome of the invalidation action, are certainly affected persons. Their rights as “persons who may be affected by the outcome of the proceeding” under section 736.08165(1) can be understood as recognizing their rights to the assets of the challenged trust itself. As such, we find that Appellants’ potential inheritance is an interest that will be affected by the Bank’s management of the Trust.

This conclusion is supported by the First District Court of Appeal’s decision in Estate of Brock, 695 So. 2d 714 (Fla. 1st DCA 1996), where the court found that a party in similar circumstances had standing. In Brock, the personal representative argued that a disinherited son contesting his father’s will lacked standing to object to compensation the personal representative had paid to professionals from estate funds because the son was not a devisee of the current will. 695 So. 2d at 717. The first district rejected this argument, finding that the disinherited son was an “interested person” according to sections 731.201 and 733.109³—the latter provision of the Probate Code being analogous to section 736.08165 of the Trust Code—and had standing to contest the

³ Section 733.109(2), Florida Statutes (2016), provides:

(2) Pending the determination of any petition for revocation of probate, the personal representative shall proceed with the administration of the estate as if no revocation proceeding had been commenced, except that no distribution may be made to beneficiaries in contravention of the rights of those who, but for the will, would be entitled to the property disposed of.

charges against his father's estate for compensation of professionals. Id.; accord Agee v. Brown, 73 So. 3d 882 (Fla. 4th DCA 2011) (holding beneficiary under prior will had standing to seek revocation of probate of testator's will).

The Bank points out that by filing the invalidation action, Appellants have disclaimed their interests under the current Trust and have renounced any entitlement to their father's estate. It is true that a beneficiary seeking to invalidate a trust or will conditionally renounces any beneficial interest he or she may have under the contested instrument. See Carman v. Gilbert, 641 So. 2d 1323, 1325 (Fla. 1994) (holding that renunciation of beneficial interest is condition to contesting will but such renunciation is qualified rather than absolute). But that principle is irrelevant to the standing inquiry here. Appellants do not claim to have standing based on the Trust. Instead, they claim to have standing as interested persons based on the possibility that they will inherit the estate under a previous will or the law of intestacy.

For these reasons, we conclude Appellants are "interested persons" under section 736.0201 and have standing to sue the Bank for actions taken in administering their late father's trust estate.

REVERSED and REMANDED.

COHEN, J., and CHASE, M., Associate Judge, concur.