

A REVIEW OF HILL V. DAVIS

Real Property Probate & Trust Section

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A person who is not domiciled in Florida is not permitted to serve as personal representative of a Florida estate unless the person meets one of the specifically defined relationships to the decedent set forth in section 733.304, Florida Statutes. Also, Section 733.212(3), Florida Statutes, provides that an interested person must object to the qualifications of a personal representative within three months after service of the notice of administration.

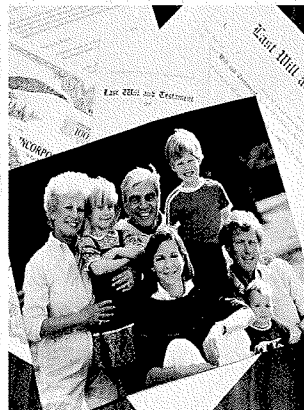
In *Hill v. Davis*, 36 Fla. L. Weekly S487a (Fla. Sept. 1, 2011) the Florida Supreme Court addressed the question of whether an objection to the qualifications of a personal representative is barred by the three-month filing deadline, even when the personal representative was never qualified to serve.

The decedent, Katherine Davis, died in 2007 in Florida. The decedent's stepson, Douglas Davis, a resident of New York, was nominated as personal representative in the decedent's will.¹ After his appointment by the court, Davis served a copy of the notice of administration on Solveig Edna Hill, the decedent's mother. Almost a year later, and after filing several motions challenging the validity of the will, Hill filed a motion challenging

Davis' qualifications to serve as a nonresident personal representative. Hill's motion contended that Davis was unqualified to serve as a nonresident personal representative. Hill alleged that the decedent's husband was not the decedent's spouse at the time of her death because he had predeceased her and, therefore, Davis was not a lineal descendant of the decedent's spouse for purposes of section 733.304.

The probate court found that Davis was qualified to serve as a nonresident personal representative and that Hill's objection was barred because it was not filed within the statutory three-month time frame. On appeal, the First District affirmed the probate court on the grounds that Hill's objection was barred by the statutory three-month time limit in section 733.212(3). The First District did not address the issue of whether Davis was actually qualified to serve. The First District then certified conflict with the Third District's decision in *Angelus v. Pass*, 868 So.2d 571 (Fla. 3d DCA 2004) which held that there was no time limit when the personal representative was never legally qualified to serve as personal representative at any time.

The Florida Supreme Court held that Section 733.212(3) bars an objection to the qualifications of a personal representative, including



733.212(3) provides a 3-month filing deadline to object to the qualifications of a personal representative.

an objection that the personal representative was never qualified to serve, if the objection is not timely filed, 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.

The Supreme Court stated in its opinion that it was significant that nothing was concealed or misrepresented

(as apparently occurred in *Angelus*) and that Hill knew at the beginning of the administration that Davis was the son of the decedent's late husband. Therefore, Hill had no excuse for not objecting within the required time frame.

This case highlights the importance for an estate beneficiary to seek counsel regarding the qualifications of the personal representative within the three-month objection period. Otherwise, a later objection or removal action may be barred.

¹ One of the exceptions under Section 733.304 allowing a nonresident to serve is where the person is a lineal descendant of the decedent's spouse.



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