

RPPTL CURLEY PROBATE & TRUST CASE LAW UPDATE
(September 2026)

September 4, 2026

- ❖ *Gonzalez v. Lagrasse*, [2026 WL 2507857](#) (Fla. 6th DCA 2026) – A trustee cannot represent the trust pro se. The 6th DCA dismissed a petition for cert finding that the petitioning trustee was not an attorney and thus cannot represent the trust because doing so constitutes the unauthorized practice of law.
 - Trustee pro se
- ❖ *Rosenberg v. Estate of Gerson*, [2026 WL 2504740](#) (Fla. 3d DCA 2026) – An order authorizing an agent to file an election to take an elective share on behalf of the principal constitutes a not appealable nonfinal order. The holding finds that until an election is actually filed, there is nothing that finally determines the rights or obligations of interested persons.
 - Appellate jurisdiction; Election to Take Elective Share
- ❖ *In re: Adoption of K.E.*, [2026 WL 2509102](#) (Fla. 4th DCA 2026) – An adoption matter, the question before the court was whether the party seeking to adopt was within the third degree of consanguinity, being the *first cousin once removed* of the minor. The 4th DCA reversed the trial court finding the Appellant within the third degree of consanguinity and holding that Florida utilizes the common law method of calculating consanguinity, not the civil law method. The common law method calculates jumps of descent from a common ancestor and applies only the larger of the two numbers. For instance Grandfather → Parent → child = 2... Grandfather → Uncle → 1st Cousin → 1st Cousin once removed = 3. The civil law method instead adds the two numbers together (making the above example a total of 5).
 - “In the mode of computing the degrees of consanguinity, the civil law . . . begins with the intestate, and descends from that ancestor to the next heir, reckoning for each person, as well in the ascending as descending lines. According to this rule of computation, the father of the intestate stands in the first degree, his brother in the second, and his brother's children in the third. Or, the grandfather stands in the second degree, the uncle in the third, the cousins in the fourth, and so on in a series of genealogical order. In the canon law, which is also the rule of the common law, in tracing title by descent, the common ancestor is the terminus a quo. The several degrees of kinship are deduced from him. By this method, the brother of A is related to him in the first degree instead of being in the second . . . for he is but one degree removed from the common ancestor. The uncle is related to A in the second degree, for though the uncle be but one degree from the common ancestor, yet A is removed two degrees from the grandfather, who is the common ancestor.”
 - Relatives, Intestate, Consanguinity

September 11, 2026

- ❖ *Hunsicker v. KSV Caastle Holdings, L.P.*, [2026 WL 2588891](#) (Fla. 4th DCA 2026) – Plaintiff's counsel was contacted by an attorney for Defendant who confirmed that Defendant intended to defend the action and that the attorney would be filing an appearance. Defendant's deadline to respond to the complaint passed without the attorney appearing or filing a response, despite continued communications with Plaintiff's counsel. Plaintiff sought, and received, a clerk's default against Defendant without notice to Defendant or the attorney. The 4th DCA reversed, holding that Plaintiff was required to give notice to Defendant as a result of the

communications that (a) Defendant was represented and (b) Defendant intended to defend the action – either being independently sufficient to require notice prior to a default being sought. Failure to give notice of the request for default was a due process violation of Rule 1.500.

➤ Default, Notice, Appearance of Counsel

- ❖ *Khteeb v. Helcim USA, Inc.*, [2026 WL 2588570](#) (Fla. 4th DCA 2026) – The Florida Uniform Fraudulent Transfer Act (“FUFTA”) does not provide for joint and several liability against transferees. The 4th DCA reversed judgment against multiple transferees for failure to determine the specific amount transferred to, and to be returned from, each transferee.

➤ FUFTA, Transferee liability, FSA § 726.108

- ❖ *Schmidt v. Taylor*, [2026 WL 2588316](#) (Fla. 1st DCA 2026) – Appellant sought to join out-of-state residents into an adversarial probate matter alleging undue influence against the decedent. The trial court dismissed the Appellees, concluding that they did not exercise any alleged undue influence over the decedent in Florida, committed no tortuous act in Florida, and did not waive or otherwise consent to jurisdiction in Florida. The 1st DCA affirmed the trial court’s determination that it lacked personal jurisdiction over Appellees.

➤ In Personam Jurisdiction, Long arm

- ❖ *Vega v. Jaramillo*, [2026 WL 2617696](#) (Fla. 6th DCA 2026) – A partition action relating to the former marital home. The home was titled solely in the name of husband and had been at all times. The trial court, in the divorce proceeding, determined the home to be “marital property” for purposes of equitable distribution. The trial court granted partition and the 6th DCA reversed. The appellate court held that a partition action can only be filed by “joint tenants, tenants in common, or coparceners.” Fla. Stat. § 64.031. As the property was owned solely by husband, wife lacked standing for a partition action.

➤ Partition, Standing, Joint Property

September 18, 2026

- ❖ *Kelley v. Kelley*, [2026 WL 2648065](#) (Fla. 3d DCA 2026) – After hearing, the probate court entered an order discharging the personal representative. Appellants sought to challenge the order on grounds that there remained unresolved, contested issues. No transcript of the hearing was available. The 3rd DCA affirmed on the grounds that, because there was no transcript of the underlying hearing, the Court was required to affirm as the order was not erroneous on its face.

➤ Discharge, Transcript

- ❖ *Kunke v. Kunke*, [2026 WL 2651592](#) (Fla. 2d DCA 2026) – The probate court does not have discretionary authority to deviate from § 733.707’s order of payment on creditor claims. The 2d DCA reversed the trial court’s direction to pay a creditor claim within thirty days where it was determined that it was not a class 1 claim and payment would supersede the statute’s prioritization. A claim of a lower class should not be paid until all other claims with higher priority have been paid.

➤ “Grant’s claim is not a class 1 claim seeking costs or expenses of administration, personal representative fees, or allowable attorney’s fees. Under section 733.707, Grant should not be paid until all the other claimants with higher priority claims have been paid.”

➤ Creditor Classes, Payment of Creditors

- ❖ *Evgrafova v. Estate of McKeehan*, [2026 WL 2648194](#) (Fla. 3d DCA 2026) – After a six-year estate administration, the Personal Representative sought compensation for her services. The

trial court excluded the PR's expert witness as to amount of compensation, a CPA who provided accounting services to the estate, on the grounds that the expert was not neutral. The PR was also not allowed to testify on the reasonableness due to her being an interested party. The trial court then denied compensation to the PR on the ground that, without expert testimony, she could not prove reasonableness. The 3rd DCA reversed. First, the Appellate Court noted that bias or credibility are not grounds for disqualification of a fact or expert witness – both going to weight and credibility of the testimony. The 3rd further held that, pursuant to § 733.6175(4), expert testimony is not required to determine reasonable compensation. In addition, the Court is required to grant the statutorily presumed reasonable fee absent a determination of mismanagement; such determination requiring an evidentiary hearing. Because no evidence was received by the trial court, it could not have made the required finding to deny compensation.

➤ Personal Representative's fee, § 733.617, Fee disputes

September 25, 2026

❖ *Bell v. Konidaris*, [2026 WL 2727454](#) (Fla. 4th DCA 2026) – A dispute between attorney and client regarding amount of a charging lien, the trial court reduced the attorney's fee lien amount on the basis that the attorney filed a FINRA litigation without client's authorization. Eight months after the hearing, the trial court entered the draft order submitted by the client. The 4th DCA reversed, directing a de novo hearing be held on the grounds that the entered order does not demonstrate independent judicial decision. In particular, the length of time between the hearing and order entry, the typos found in the draft order and entered judgment, and the similarity of language to the draft order submitted by the client both weighed heavily against the Court's independent judgment. The 4th also found that some of the factual findings within the order, helpful to client, were not supported by evidence.

➤ “In determining whether the trial court exercised independent judgment, courts consider: (1) whether the order is consistent with the court's oral rulings; (2) how much time has passed after the hearing; (3) whether the order contains irregularities or conflicts; (4) whether the judge participated in the proceeding; and (5) whether the judge edited or instead signed the proposed order verbatim.

➤ Draft Orders, Verbatim

❖ *McFarlane v. Holness*, [2026 WL 2855212](#) (Fla. 4th DCA 2026) – A petition for homestead was filed by the surviving spouse. The decedent's residence was the subject of a Lady Bird deed executed prior to the time of the marriage. The Petition did not attach or reference the deed. The remaindermen of the Lady Bird deed moved to dismiss the Petition on the grounds that the Decedent only had a life estate at time of death pursuant to the deed. The trial court dismissed the petition finding that decedent had not retained a fee simple interest pursuant to the deed, which was entered as an exhibit at the hearing. The 4th DCA reversed holding that the trial court went beyond the four corners of the Petition on a motion to dismiss. Because the Petition did not attach the deed, the Petition's allegation were sufficient on their face making dismissal improper.

➤ Dismissal, Attachments

Obligatory Joke: I run every day for 10 minutes. If I miss a day, I add 10 minutes to the next day. It's truly a game changer....Tomorrow, I'm supposed to run for 4 months.