

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

August 7, 2026

- ❖ *Nearing v. Rodriguez*, [2026 WL 2176791](#) (Fla. 3d DCA 2026) – Law of the case doctrine applies only to issues decided by the appellate court, so long as the facts on which the decision was based do not change, in the same appellate and trial courts through the subsequent stages of litigation. The 3rd DCA reversed a trial court’s grant of summary judgment based on law of the case on counts against a newly named defendant holding that the defendant was not a party at the time of the prior ruling and the underlying facts had altered.
 - Law of the Case, Subsequent Parties
- ❖ *Servitje-Labarrere v. Quintana*, [2026 WL 2176839](#) (Fla. 3d DCA 2026) – Summary judgment was properly denied where the party opposing the MSJ filed a declaration in opposition which created issues of fact despite contrary, credible deposition testimony by other parties that directly contradicted the declaration. The trial court cannot weigh the conflicting evidence.
 - Summary Judgment, Opposing evidence
- ❖ *Rodriguez v. Gonzalez*, [2026 WL 2176590](#) (Fla. 3d DCA 2026) – Appellant’s counsel withdrew a week before trial and the trial court granted Appellant 30 days to obtain counsel. Nonetheless, the trial court did not move the trial date and required Appellant to self-represent at trial. The 3rd DCA reversed, holding that requiring a litigant to proceed to trial self-represented before the period afforded to obtain counsel lapsed constitutes a violation of due process.
 - Pro Se, Withdrawal, Self-Representation

August 14, 2026

- ❖ *Puett v. Florida Oranges, LLC*, [2026 WL 2274291](#) (Fla. 5th DCA 2026) – Appellant made a joint offer of settlement in conjunction with a codefendant. Summary judgment was entered in favor of Appellant but not the codefendant. The trial court denied fees to Appellant under the offer of judgment because the joint proposal required Appellee to settle with both offerors. The 5th DCA affirmed holding that because only one of the joint offerors obtained a judgment, fees were not appropriate under the offer.
 - Offer of Judgment, Joint-Offerors, Attorneys’ Fees

August 21, 2026

- ❖ *In re: Guardianship of Bandoian*, 2026 WL XXX (Fla. 2d DCA 2026) – A Petition for Determination of Incapacity and a Petition for Appointment of Guardian was set for hearing before a magistrate. A contested proceeding, an objection to the referral to magistrate was filed the day before the hearing. When the parties appeared at the magistrate’s courtroom, the magistrate announced that the hearing would instead be held 90 minutes later at an alternate location before a circuit judge as a result of the objection. That hearing was held and a guardian was ultimately appointed. The 2d DCA reversed holding that § 744.331(5)(a) requires “adjudicatory hearings to be conducted at the time and place specified in the notice of hearing.” The change of time and place violated this statute. Further, the Court noted that the magistrate

had no power to schedule or notice a subsequent hearing once the objection was filed which revoked all authority for the magistrate to act.

➤ Magistrates, Guardianship Hearings, Notice of Hearing

- ❖ *JMOR Properties, LLC v. Artist Alley Townhomes, LLC*, 2026 WL XXX (Fla. 4th DCA 2026) – Appellant’s certiorari petition had a number of false citations and arguments for which the Court referred the filing attorney to the Bar. When counsel filed a revised petition, it failed to include law that is contrary to the argument for certiorari jurisdiction. The Court noted that the failure to disclose this contrary law demonstrated either a lack of candor to the Court or, to the extent it was not discovered by counsel, a lack of competence.
 - Contrary Authority, Failure to disclose, AI Case law

August 28, 2026

- ❖ *Reid v. Amerifund Equity Group*, [2026 WL 2416033](#) (Fla. 4th DCA 2026) – Decedent died intestate with five siblings as the intestate heirs. Three of the siblings executed disclaimers of their interest in the Estate. The sole asset was a condominium owned by Decedent; after foreclosure of the condo there was a surplus amount paid to the Estate. Appellant argued that the surplus should be split only among the non-disclaiming heirs. The trial court found that the disclaimers did not comply with Fla. Stat. § 45.033(3) (Assignment of rights in Surplus Funds) and the proceeds should be split five ways. The 4th DCA reversed holding that the surplus was owed to the Estate and that the disclaimers were in compliance with Fla. Stat. § 739.104(3). The requirements of § 45.033 do not override the requirements of a valid probate disclaimer.
 - Disclaimer, Foreclosure, Surplus Funds
- ❖ *Frank v. Frank*, [2026 WL 2416163](#) (Fla. 4th DCA 2026) – A guardianship matter with an extensive procedural history, the 4th DCA found that an appeal regarding the appointment, and subsequent actions, of a guardian of the property were not mooted by the Ward’s death. Because a guardian of property can affect interests post-death, the death of the ward does not moot appeals regarding appointment of a guardian of property and actions of a guardian of property. Furthermore, the trial court appointed a guardian despite there being pre-existing alternatives to guardianship and without making factual findings as to why the alternatives were not sufficient to address the needs of the ward. The 4th DCA held that failure to rule on less restrictive alternatives prior to appointment of a guardian is reversible error under § 744.331(6)(b). The 4th DCA also noted that court appointed counsel improperly advocated for what the lawyer believed was in the “best interests of the AIP” rather than the express wishes of the AIP. Finally, the appellate court held that because of the improper appointment of the guardian of property, subsequent orders authorizing sale of the Wards’ property and payment of fees were required to be reversed as “derivative consequences of an invalid guardianship appointment.”
 - Guardian of Property, Less restrictive alternatives, Mootness, Court Appointed counsel

Obligatory Joke: Since light travels faster than sound.... People may appear bright before you hear them speak.