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

February 6, 2026

- *Santiago v. Wilmington Trust, N.A.*, 2026 WL 252409 (Fla. 6th DCA 2026) – Summary judgment was granted to Appellee but the order failed to contain the required statement on the record of the Court's basis for summary judgment. The 6th DCA nonetheless affirmed, holding that the required findings can be made in the order or through oral pronouncement at the hearing. Because there was no transcript of the hearing, Appellant was unable to demonstrate that the Court had failed to make an oral pronouncement.
  - Summary Judgment, Required Findings, Oral Ruling

February 13, 2026

- *Pilak v. Reigel*, 2026 WL 317527 (Fla. 5th DCA 2026) – Appellee sought to have a lost will re-established for probate. Appellants initially signed a consent to the lost will petition but subsequently retracted their consent. At trial, no evidence was presented regarding either the will's execution or its location. The only testimony came from a friend of the decedent who was also a beneficiary under the lost document. The trial court admitted the lost will, holding that the presumption of destruction did not apply because there was no evidence that the original will was in the decedent's possession. The trial court further held that the initial consents barred Appellants' objections to the lack of proof of contents. The Fifth DCA reversed, holding that because there was no testimony by a disinterested witness regarding the contents and execution, as required by § 733.207, the lost will could not be admitted as a matter of law. The Court further noted that even if the consents barred objection-a position with which the appellate court did not agree-this did not remove the requirement of disinterested testimony. As to the presumption of destruction, the 5th DCA did not address the issue, finding it moot in light of the insufficient evidence.
  - Lost Will, Disinterested Witnesses
- *Cedrus Ent. v. Jabil, Inc.*, 2026 WL 301835 (Fla. 2d DCA 2026) – Appellant was a guarantor on a payment agreement between Appellee and a third party. The payment agreement contained a venue provision and consent to jurisdiction in Pinellas County, Florida. Appellant did not sign the payment agreement; rather, Appellant signed a one-page joinder and consent indicating that Appellant "joins in and consents" to the agreement. The third party failed to pay, and Appellee brought suit in Florida seeking to enforce the guaranty. Appellant argued that Florida lacked personal jurisdiction and that the case should instead be heard in Delaware. The trial court found proper jurisdiction pursuant to the venue provision, and the Second DCA affirmed. The Court held that by joining and consenting to the underlying payment agreement, Appellant submitted to the venue provision. Additionally, the Court cited § 685.102(1), which provides that a party entering into a choice of law provision designating Florida has minimum contacts under the Florida long-arm statute for purposes of enforcing the contract.
  - Personal Jurisdiction, Venue Clause, Long-arm jurisdiction

February 20, 2026

- *Hannah v. Malkani*, 2026 WL 370276 (Fla. 6th DCA 2026) – The 6th DCA finds that the argument of collateral estoppel was not preserved for appeal because it was first raised on a motion or rehearing of the underlying motion for summary judgment. The Sixth then certified conflict with the 5th DCA *Kawsar v. Alhamdi Grp*. Which held that an argument is preserved by raising it for the first time on rehearing.
  - Preservation of Appellate Issue, Motion for Rehearing
- *Kada 13, LLC v. Georgetown Holdings, Inc.*, 2026 WL 376968 (Fla. 3d DCA 2026) – Husband and wife created a joint, revocable trust naming themselves as cotrustees and sole beneficiaries. The trust wholly owned an LLC that designated the trustee(s) as manager; the LLC owned a heavily mortgaged West Palm Beach property. Both the trust and operating agreement permitted either trustee to act independently. As the marriage deteriorated, husband-without wife's knowledge-transferred the property to the mortgage holder in satisfaction of the loan. Wife challenged the transaction, arguing husband could not act unilaterally and that it constituted a conflict transaction because both spouses personally guaranteed the mortgage. The trial court upheld husband's actions, and the Third DCA affirmed, finding that both governing documents authorized a single trustee to act without the cotrustee's input and that the trust permitted conflict transactions, consistent with § 605.04092(2) of the Florida Revised LLC Act.
  - LLC Managers, Trustees as LLC Managers

February 27, 2026

- *Dorn v. Hatwood*, 2026 WL 467183 (Fla. 4th DCA 2026) – Legal fees incurred in the administration of an estate as a whole cannot be included in a lien on homestead under § 733.608 which is narrowly tailored to allow for a lien to include funds expended to preserve the homestead.
  - Homestead lien, Estate attorneys' fees
- *Hi-Land Properties, LLC v. Gantt*, 2026 WL 467591 (Fla. 4th DCA 2026) – An action for partition, one of the main disputes was whether Appellant owned 75% of the property or only 50%. In the chain of title was a Personal Representative's Release which purported to prove the transfer of the 25% interest to Appellant. Appellee argued, and the trial court held, that the Release was insufficient to prove transfer of title pursuant to the will. Further, the trial court held that because there was not an order approving sale under § 733.613, the conveyance was ineffective. The 4th DCA reversed holding that the transfer was effective and sufficiently proven. A beneficiary's title vests from the date of death and thus a PR is not required to execute a deed conveying property, rather a release is evidence of the distribution from the decedent to the recipient. Additionally, § 733.613 applies only to sales of real property; the statute is inapplicable to a distribution to beneficiary under the will or intestate.
  - PR's Deed, PR's Release, Sale of Real Property
- *Rivera v. Rivera-Chong*, 2026 WL 452013 (Fla. 1st DCA 2026) – Trial court disqualifies counsel for Wife from the entirety of the case without an evidentiary hearing. The basis for the Court's ruling was that counsel is a likely witness at trial to be called by Husband. The 1st DCA reversed, holding that the disqualification was without evidence and overbroad. The appellate court first noted that Rule 4-3.7 only bars a lawyer from acting as an advocate "at a trial in

which the lawyer is likely to be a necessary witness." To disqualify the attorney from the entirety of the case was overbroad. Furthermore, disqualification under 4-3.7 requires evidentiary findings regarding the factors laid out in the rule as to the substance and need for the testimony.

- Lawyer as Witness, Rule 4-3.7

❖ *Chetrit Group, LLC v. Equishares, Inc.*, 2026 WL 452548 (Fla. 3d DCA 2026) – Appellant and Appellee jointly hired a lawyer to assist in the creation of a joint venture agreement. The joint venture agreement was never finalized and a lawsuit was brought. Appellee sought production of communications between the Appellant and the joint lawyer. Appellant argued the communications were not "common interest" because the specific communications were adverse to the Appellee. Trial court ruled that communications between Appellant and its attorney were to be produced as they constituted "common-interest" communications with the lawyer and the Appellee. The Third DCA affirmed, holding that the communications were within the exception of § 90.502(4)(e). "[T]he 'common interest' exception may apply even when the co-clients have interests that are adverse to one another" so long as the communication goes to a common interest relayed to the jointly retained attorney.

- Privilege, Common Interest, Disclosure of privilege

Obligatory Joke: **I planted some bird seed. A bird came up. Now I don't know what to feed it.** – Steven Wright