

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

June 5, 2026

- ❖ *Ceglio v. Womer*, [2026 WL 1475730](#) (Fla. 4th DCA 2026) – The trial court found Appellant to not be a reasonably ascertainable creditor and thus denied an extension of time to file a creditor claim after the 3 month publication period. The 4th DCA affirmed holding that the ruling was based on competent, substantial evidence and a showing that the Personal Representative had performed a “diligent search” to identify “reasonably ascertainable creditors.” Fla. Stat. § 733.2121. Appellant and the decedent had a history of litigation including one pending lawsuit at the time of decedent’s death. The personal representative reviewed the decedent’s financial and personal records, including his mail, bills, and documents maintained in his office. The PR also consulted with an individual familiar with the decedent’s affairs and conducted a search of public records for recorded judgments. These efforts did not reveal any active claim by Appellant and “impracticable and extended searches are not required.”
 - Reasonably Ascertainable Creditors, Creditor Claims, Extension of Time to file claim
- ❖ *Schiro v. Elliott*, [2026 WL 1501045](#) (Fla. 2d DCA 2026) – The trial court determined the decedent’s residence to constitute creditor protected homestead at the time of her death despite it being held in the decedent’s revocable trust. The 2d DCA affirmed, holding that homestead status was preserved even though title was held in a revocable trust because the decedent had the right to revoke the trust. Language requiring property of the trust to be sold to pay debts of the estate did not defeat the homestead status because it was not a specific direction to sell the homestead property.
 - Homestead property, Creditor protection, Revocable Trust
- ❖ *Law v. Williams*, [2026 WL 1500816](#) (Fla. 5th DCA 2026) – Appellant was the personal representative of the estate. The PR entered into a contract to sell real property owned by the estate for \$300,000. The sale was delayed and eventually fell through. The PR was sued for surcharge and the trial court granted the petition in the full amount of the offer, \$300,000. The 5th DCA reversed the amount of damages holding that it did not reflect the actual damage to the estate since the estate still had the real property. “A surcharge award must reflect the actual loss caused by the breach and may not place the estate in a better position than it would have occupied without the breach of fiduciary duty.”
 - Surcharge damages, Sale of Real Property
- ❖ *Weiss v. Abraham*, [2026 WL 1475363](#) (Fla. 4th DCA 2026) – A Petition for Appointment of Emergency Temporary Guardian was filed asking for the appointment of the petitioner. The Court appointed a professional guardian off the wheel, rather than the petitioner. The attorney for petitioner withdrew after the appointment and later sought fees from the ward’s assets pursuant to Florida Statutes § 744.108(1). The trial court denied fees stating the § 744.108(1) applies only to attorneys representing the ward, not the petitioner. The 4th DCA reversed holding that § 744.108 could apply to petitioner’s counsel if it is found that the appointment of a guardian constituted a benefit to the ward.
 - Guardianship Attorneys’ Fees, § 744.108, Benefit to the Ward

June 12, 2026

- ❖ *Yelvington v. Yelvington*, [2026 WL 1615265](#) (Fla. 5th DCA 2026) – A terminating trust provided for a 50/50 distribution of the remaining assets to the two beneficiaries. The trial court directed that the family company held by the trust should be distributed 51%/49%. The 49% beneficiary appealed and the 5th DCA affirmed, holding that the trust’s language required only that the overall distribution amounts be equal, any individual asset could be distributed in unequal proportions.
 - Drafting Language: *The Court held that this provision allowed distribution of an individual asset to one beneficiary so long as a corresponding payment is credited to the other beneficiary*: “The trustee need not satisfy the value of a gift of a share of assets, or of a withdrawal thereof pursuant to a power by distribution of an undivided share in assets. Instead, the value of a share to be distributed and the value of any pecuniary gift may be partially or wholly satisfied in cash or in kind or partly in each, and distributions in kind may be made of entire properties or undivided shares.”
 - Trust Distributions; Asset split

June 19, 2026

- ❖ *Brillium, Inc. v. Oles-Dugre*, [2026 WL 1699566](#) (Fla. 5th DCA 2026) – The Decedent was in possession of tangible items allegedly belonging to the plaintiff company (i.e. computers, data, and office supplies) which the Personal Representative refused to return. Summary judgment was granted to the estate on the basis that plaintiff could not pursue a claim for replevin after Plaintiff had failed to file a creditor claim against the decedent’s estate, barred under § 733.702. The 5th DCA reversed holding that the claim arose from actions taking place post-death (i.e. the refusal to return by the PR) and thus the filing of a creditor claim was not necessary.
 - “Where, as here, the decedent was merely in possession of the property without asserting ownership, and the assertion of ownership is made by the personal representative or heirs for the first time after death, then filing a claim under section 733.702 is not required.”
 - Creditor Claims, Replevin, Trust exception
- ❖ *In re: Amendments to Florida Probate Rules*, [2026 WL 153945](#) (Fla. 2026) – Rule 5.122 (Curators) - Amends 5.122(d) to clarify that orders appointing curators are required to state whether a curator has the authority to control either all or a part of the decedent’s property. Further, the amendment requires the order to address the curator’s power to address creditor claims, and service of notice of administration. Other rules are amended to adjust grammar.
 - Probate Rule amendments, Curators
- ❖ *Sasha Investments, LLC v. Staghorn Development, LLC*, [2026 WL 1673846](#) (Fla. 3d DCA 2026) – Post-judgment discovery regarding assets of the judgment debtor, Appellant sought discovery from the law firm defending the debtor in the underlying action in support of collection. The trial court, without an in camera review, quashed the subpoena holding privilege and work product precluded discovery of a previous clients’ assets and financial transactions. The 3rd DCA reversed and remanded holding that asset-related information in the possession of a law firm is not automatically privileged. The opinion cites a line of cases for the proposition that information on the payment of the law firm (i.e. wire transactions, accounts used for payment, and the history of payments) are not privileged.
 - Attorney-Client privilege, Discovery from law firm, Discovery in aid of execution

June 26, 2026

- ❖ *Riverwalk Tower, LLC v. Riverwalk Tower Investment-Intown, LLC*, [2026 WL 1740601](#) (Fla. 2d DCA 2026) – When there is a dispute as to whether specific documents constitute privileged materials, the Court is required to perform an in camera review prior to ordering production of the materials.
 - Privilege, Cat out of the Bag, In Camera
- ❖ *Sasser v. Sasser*, [2026 WL 1765524](#) (Fla. 6th DCA 2026) – Over objection, a witness was allowed to review notes from her CPA during her testimony under § 90.803(5) (Recorded Recollection). The 6th DCA found error, holding that a recorded recollection must be shown to have been made *by the witness* when the matter was fresh *in the witness's* memory. This hearsay exception cannot be utilized with a record created by someone other than the witness.
 - Hearsay exceptions, Recorded Recollection, Writing, Notes

Obligatory Joke: **Did you know the first French fries weren't actually cooked in France?....**
No, they were cooked in Greece.