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

January 9, 2026

- *Pascalides v. Artico,* 2025 WL 3769364 (Fla. 3d DCA 2025) – Decedent died with a bank account titled "[Decedent] and/or Gabriela Artico as joint tenants with a right of survivorship." The Estate took the position that this was a convenience account. Appellee Artico claimed a right to the funds as the surviving owner of the account. The trial court granted summary judgment to Appellee determining it was not a convenience account. The 3rd DCA affirmed holding that because there was no evidence this was intended to be a convenience account and the account was titled "as joint tenants with right of survivorship." The appellate court cited § 655.79 which creates a presumption that an account in the name of two or more people is to pass to the survivor upon death. This presumption may only be overcome by proof of fraud, undue influence, or a contrary intent. There is no requirement to demonstrate donative intent to raise the presumption.
  - Joint accounts, Convenience accounts, § 655.80, § 655.79
- *Battaglia v. Battaglia*, 2025 WL 3713143 (Fla. 6th DCA 2025) – Appellant was a cotrustee of the trust. The trial court removed Appellant and awarded damages, in favor of the trust, of over $2 million on the basis that he failed to distribute funds from a family company to the trust. The 6th DCA reversed a portion of the damages holding that the family company still held the disputed funds and thus could still make the distribution. Pursuant to § 736.1002(1), damaegs are limited to the greater of (a) the amount required to restore the value of the trust property or (b) appreciation that would have resulted from proper administration. Because the trust's value was not reduced as a result of the breach, the damages were limited only to the lost income on the funds.
  - Breach of trust damages, Calculation of damages
- *Woodman v. Brickell Mar, LLC*, 2025 WL 3769434 (Fla. 3d DCA 2026) – The trial court dismissed the complaint, Appellant having never filed an answer. The trial court then denied the Appellant's request for attorneys' fees on the basis that the Appellant/Defendant had not filed a demand for fees to put Appellee/Plaintiff on notice. The 3d DCA reversed, holding that when Defendant has not yet filed an answer, there is no waiver of the right to fees. Defendnat is required to either demand fees in the motion to dismiss or within thirty days following dismissal of the action.
  - Dismissal attorneys' fees, Demand for fees

January 16, 2026

- *Amendment to Rules of Civil Procedure*, 2026 WL 111355 (Fla. 2026) – Amendment to Rule 1.350 (b)(2) and (b)(4) to require, respectively, that requests for production and responses to requests for production (i.e., the pleading without any of the documents being produced) be served on all parties in a case. And amendment to rule 1.370(a) to require that requests for admissions and responses to requests for admissions be served on all parties in a case. Effective April 1, 2026.
  - Rules of Civil Procedure

- *Dart v. Dart*, 2026 WL 60931 (Fla. 4th DCA 2026) – A divorce proceeding, the parties entered into an agreed pretrial stipulation that addressed a number of issues including the payment of child support. After trial, the trial court denied retroactive child support despite the agreement. The 4th DCA reversed holding that the parties and Court are bound by an agreed stipulation or order. When the Court enters an order which is agreed to by the parties, the Court is bound to enforce it when it is "clear, positive, definitive and unambiguous."
  - Agreed Orders, Court deviation
- *Shriberg v. Florida Flooring, Inc.*, 2026 WL 60973 (Fla. 4th DCA 2026) – Plaintiffs have new flooring put in their home and subsequently sued claiming defects in the flooring. Prior to bringing suit, plaintiffs transferred the home into a revocable trust of which they were the cotrustees and sole beneficiaries. The trial court dismissed the complaint finding that, because they were not suing "as trustees" they could not maintain the lawsuit. The 4th DCA reversed, holding that a trustee is not required to specifically allege that they were suiing in their trustee capacity under Rule 1.210(a). Additionally, the plaintiffs status as sole beneficiaries gave them another independent basis for standing.
  - Standing, Trustee litigation, Sole Beneficiary standing

January 23, 2026

- *Kapson v. Homeowners Choice Prop. Ins.*, 2026 WL 98050 (Fla. 3d DCA 2026) – Homeowner brought suit against wind insurance company stemming from hurricane damage to the home. At trial, the trial court allowed, over objection, evidence that the Homeowner had previously received payment on his flood insurance from the same hurricane incident on the grounds that it was relevant to the loss being caused by an excluded peril. The 3rd DCA affirmed, holding that the evidence was not violative of Fla. Stat. § 90.408. First, the payment of the flood insurance was not a settlement or compromise because the flood insurance proceeds were paid without dispute in fulfillment of the flood insurance contract. Additionally, the evidence was being allowed not to show liability or value, but rather to show causation.
  - Settlement Communication, § 90.408

January 30, 2026 *No Cases*