

**RPPTL CURLEY PROBATE & TRUST CASE LAW UPDATE**  
**(May 2026)**

May 1, 2026

No Cases this Week

May 8, 2026

- ❖ *Dunham Trust Company v. Surrey*, [2026 WL 1154328](#) (Fla. 4<sup>th</sup> DCA 2026) –A beneficiary living in Florida sued a Nevada trust company for breach of trust and the company moved to dismiss arguing lack of jurisdiction due to a lack of minimum contacts. The beneficiary argued contacts were established through the NV Trust Company (1) agreeing to serve as co-trustee of a trust created by a Florida resident and containing a Florida choice-of-law provision, and (2) sending trust-related communications to Lewis after he moved to Florida. The trial court denied the motion to dismiss holding sufficient connection established by acting as co-trustee of the Florida trust. The 4<sup>th</sup> DCA reversed with directions to dismiss for lack of personal jurisdiction holding the NV Trust company did not purposely avail itself of the privilege of conducting business in Florida because it was not a party to the trust instrument and it did not seek the relationship. Further the Court found the trust’s choice of law provision immaterial for analysis of personal jurisdiction. Finally, the sending of trust-related communications to a Florida resident does not constitute a contact between the trust company and the forum state – rather it is a contact between the company and a Florida resident. The Court relied heavily on *Hanson v. Denckla*, 357 U.S. 235 (1958).
  - Personal Jurisdiction, Jurisdiction over trustee, Breach of trust, venue
- ❖ *Afriyie v. Friend*, [2026 WL 1154737](#) (Fla. 3d DCA 2026) – A final default judgment was entered against Appellant for unliquidated damages. A month later, the trial court entered an order allowing discovery in the main case and compelling Appellant (a New York resident) to appear for deposition in Florida. The 3<sup>rd</sup> DCA reversed the discovery order noting that after judgment is entered, the trial court loses jurisdiction to compel discovery on the case in chief. Other than exceptions in Rule 1.560 (discovery in aid of execution) and Rule 1.290 (preservation of testimony), discovery under the Rules of Civil Procedure is limited only to pending actions.
  - Discovery timing, Lapse of Jurisdiction
- ❖ *Winegar v. Winegar*, [2026 WL 1154279](#) (Fla. 4<sup>th</sup> DCA 2026) – A nonmarital account was not considered comingled for purposes of making it a marital asset when the account was pledged as collateral for a marital debt. Furthermore, the payment of the debt from that nonmarital account and the subsequent repayment from marital assets did not constitute comingling.
  - Marital assets, Comingling of accounts, Promissory Note

May 15, 2026

- ❖ *Camacho v. Camacho*, [2026 WL 1236060](#) (Fla. 3d DCA 2026) – Appellee challenged a will’s proper execution. The trial court found that the will was not self-proving due to technical violations of the notary statute, FSA § 117.05. The Appellants then had the burden of proving execution under § 733.107(1). The sole witness at trial was the drafting attorney who

supervised the execution, but his memory of the events was so diminished that it undermined reliability and the trial court rejected the witness's testimony as a result. The trial court thus refused probate of the will due to insufficient proof of execution. The 3<sup>rd</sup> DCA affirmed holding that the trial court, as the trier of fact, was in its right to disregard the testimony and, without alternative proof, there was insufficient evidence to carry the Appellant's burden.

➤ Self-Proving Affidavit, Burden of Proof, Notary Technicalities

- ❖ *Ontario Wound Mgmt, LLC v. Legacy Medical*, [2026 WL 1236612](#) (Fla. 3d DCA 2026) – A case involving alleged misappropriation and theft, a subpoena was issued to JP Morgan for records relating to Appellant's accounts and transfers from those accounts under the guise of tracing the flow of alleged misappropriated funds. The trial court overruled objections and the 3<sup>rd</sup> DCA affirmed holding that the financial records were relevant to the matters framed and thus discoverable. While financial records are confidential and protected by the Florida Constitution, they are discoverable when relevant to the underlying action. § 655.059(1)(e); Fla. Const. Art. I § 23.

➤ Financial Discovery

- ❖ *Musser v. Wilmington Savings Fund*, [2026 WL 1235932](#) (Fla. 1<sup>st</sup> DCA 2026) – The 1<sup>st</sup> DCA remanded the trial court's determination that the amount of fees to be awarded were reasonable because it was done without holding an evidentiary hearing. “[A]bsent a stipulation or a waiver, the reasonableness of attorney's fees must be determined at an evidentiary hearing”

➤ Attorneys' Fees, Amount of Fees, Evidentiary Hearing

May 22, 2026

- ❖ *de Oliveira v. de Oliveira*, [2026 WL 1317885](#) (Fla. 3d DCA 2026) – A domicile dispute, the probate estate was opened initially in Florida and the Appellants sought to have domicile probate established in Brazil. The 5th DCA affirmed the trial court's determination of Florida domicile holding that the totality of the circumstances established that the decedent had previously established Florida domicile and that there was not sufficient evidence of a change to Brazil despite numerous contacts. The 5th DCA noted that “residence” and “domicile” are not historically synonymous despite the Probate Code definition. Once domicile is established, it continues until there is a showing of a change of residence coupled with an absence of present intention of not residing permanently in the new abode. Change of domicile requires (1) intent to acquire a new domicile and (2) actual removal.

➤ Domicile, Residence, Change of domicile

- ❖ *Dolphin Pointe Health Care, LLC v. Moravia*, [2026 WL 1283563](#) (Fla. 5<sup>th</sup> DCA 2026) – Appellee sought review of the trial court's denial of its motion to compel arbitration based on a contract signed at the time of admission to the assisted living facility. The trial court heard evidence that at the time of signing, the same day as admission, the signor was determined to be suffering from severe dementia and unable to concentrate or focus, rendering the contract unenforceable. The 5<sup>th</sup> DCA affirmed, holding that an arbitration provision is unenforceable when the signatory is incompetent to sign. While there is a presumption that a contracting person is competent, the presumption can be overcome when a preponderance demonstrates the signer “was incapable of comprehending the nature and effect of the agreement.”

➤ Competence, Contracting party, Arbitration, Assisted Living

May 29, 2026

- ❖ *In re: Amendments to Florida Rule of Judicial Administration 2.515*, [2026 WL 1487646](#) (Fla. 2026) – Rule 2.515(d)(2) is amended to require the signer of a filing to represent that “the legal authorities identified in the filing exist and are accurately cited.” Rule 2.515(d)(2) designates that the signature placed on a filing automatically represents the signer has (A) read the document, (B) there are good grounds to support the document, (C) the document is not interposed for delay, and (D) the legal authorities identified exist and are accurately cited.
  - Fla. AOSC26-12 – Administrative Order that bars circuit courts from creating certification requirements regarding the use of artificial intelligence and the accuracy of information in court filings. Rule 2.515(d)(2)(D) obviates the need for circuit-by-circuit certifications.
  - Artificial Intelligence, AI Usage, AI Certifications
- ❖ *Ferguson v. Republic of Trinidad and Tobago*, [2026 WL 1408010](#) (Fla. 3d DCA 2026) – In proving amount for prevailing party fees, Appellee admitted into evidence over objection the billing records of its attorney. The 3<sup>rd</sup> DCA affirmed holding that the billing records constituted business records under § 90.803(6) and, in order to be admitted into evidence, require testimony of a qualified witness or certification consistent with § 90.803(6)(c). The Court affirmed that the testimony of the supervising attorney was sufficient.
  - Business Records elements: (1) that the record was made at or near the time of the event, (2) that it was made by or from information transmitted by a person with knowledge, (3) that it was kept in the ordinary course of a regularly conducted business activity, and (4) that it was a regular practice of that business to make such a record.
  - Business Records, Attorneys’ fees, Billing records
- ❖ *Thomas-McDonald v. Silva*, [2026 WL 1407882](#) (Fla. 3d DCA 2026) -Court appointed counsel in a guardianship proceeding petitions for payment of her fees. After objection, interrogatories were sent to the Appellee/attorney requesting information on her medical background, including psychotherapy history and medications. The trial court sustained objection and the 3<sup>rd</sup> DCA affirmed holding the Florida Constitutional right to privacy bars discovery on the medical records unless they are materially relevant to the proceedings. Further, the Appellee did not put her mental or emotional condition at issue.
  - Medical discovery, Right to Privacy

**Obligatory Joke:** Cinderella got cut from the soccer team... She kept running away from the ball.