

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

EARL W. KUNKE, as personal representative of the Estate of Elizabeth R.
Kunke, deceased,

Appellant,

v.

ESTATE OF ELIZABETH R. KUNKE, deceased, and GEOFFREY GRANT,

Appellees.

No. 2D2025-2553

September 9, 2026

Appeal from the Circuit Court for Pinellas County; Pamela A.M.
Campbell, Judge.

Russell R. Winer, St. Petersburg, for Appellant.

Geoffrey Grant, pro se.

No appearance for remaining Appellee.

GUARD, Judge.

The personal representative of the Estate of Elizabeth R. Kunke, Earl Kunke, appeals an order from the circuit court requiring him to pay Geoffrey Grant's probate claim within thirty days. We reverse because the circuit court's order violated the priority scheme of section 733.707, Florida Statutes (2022).

This is the second time that these parties have been before this court. *See Grant v. Kunke (Kunke I)*, 397 So. 3d 758 (Fla. 2d DCA 2024).

The facts surrounding Grant's claim are set out in *Kunke I*. *Id.* at 760–61. In *Kunke I*, we determined that Grant was a reasonably ascertainable creditor of the estate and remanded the matter to the circuit court to reinstate his claim. *Id.* at 762–63.

Now, on appeal, we have the circuit court's order after remand directing payment of Grant's claim within thirty days. From the transcript, the circuit court did so to bring this estate and the acrimony between the various interested parties to an end. While well intentioned, the circuit court's order violated the priority scheme of section 733.707. Section 733.707(1) states that "[t]he personal representative shall pay the expenses of the administration and obligations of the decedent's estate in the following order." § 733.707(1). The remainder of that section then classifies various claims and prioritizes each class. *Id.* The plain and unambiguous language in section 733.707 does not grant a trial court discretion to deviate from that priority scheme. We and all the other district courts to have reached this question have reversed under similar circumstances. *See Geezil v. Savage*, 127 So. 3d 867, 869 (Fla. 2d DCA 2013) ("On remand, the probate court will need to comply with the order in which assets abate under section 733.805 as well as the order of the payment of expenses and obligations under section 733.707 when ordering the payment of claims prior to the distribution of estate property."); *Copeland v. Buswell*, 20 So. 3d 867, 870 (Fla. 2d DCA 2009) ("Tampa General's class 4 claim for medical expenses improperly took precedence over class 1 claims for costs of administration and class 2 claims for funeral expenses, in contravention of the priorities established in section 733.707."); *Lehman v. Lucom*, 78 So. 3d 592, 595 (Fla. 4th DCA 2011), *as modified on denial of reh'g* (Feb. 8, 2012) ("[T]he disbursement of the ancillary estate did not conform to the payment

order of priority provided in the Florida Statutes."); *Lauritsen v. Wallace*, 67 So. 3d 285, 287 (Fla. 5th DCA 2011) ("The ruling by the lower court elevates the gift of forgiveness of an obligation to a superior status over the rights of legitimate creditors of the decedent, contrary to the priorities established in the Probate Code."); *Sessoms v. Johnson*, 378 So. 2d 1260, 1263 (Fla. 5th DCA 1979) (reversing an order requiring a personal representative to pay a lower priority claimant without regard to the order of priority in section 733.707).

Grant's claim is not a class 1 claim seeking costs or expenses of administration, personal representative fees, or allowable attorney's fees. Under section 733.707, Grant should not be paid until all the other claimants with higher priority claims have been paid. Therefore, we reverse the trial court's order.

We write briefly to emphasize that our ruling should not be construed by any interested party as an endorsement of their litigation positions. Continued litigation among these various parties threatens recovery by all claimants. Jennifer and Geoffrey Grant's claims are not class 1 claims. As explained in the previous paragraph, they cannot and should not be paid until after all class 1 claims and any other claims with a higher priority than theirs are paid. Their continued litigation could result in insufficient funds for them to receive any monies out of the estate. But the effect of section 733.707 should not encourage the personal representative or any other interested parties to continue to needlessly litigate with the Grants. The trial court has discretion not to award attorney's fees out of the estate. *See, e.g., Davis v. Estate of Davis*, 77 So. 3d 703, 704–05 (Fla. 3d DCA 2011) (denying fee petition because services were not necessary or beneficial to the estate); *In re Estate of Brock*, 695 So. 2d 714, 718 (Fla. 1st DCA 1996) ("[I]n deciding upon the

amount to be awarded as attorney's fees, a probate court should consider the nature of the services rendered and the necessity for their performance, together with the reasonableness of the charges."); *Dew v. Nerreter*, 664 So. 2d 1179, 1180 (Fla. 5th DCA 1995) (reversing an award and stating "[w]here the services tend to break down, subtract from or dissipate the estate (*i.e.*, prolonged litigation and delay in administration), there can be no compensation"). We agree with the trial court's sentiments that this administration should be brought to a swift conclusion.

Reversed and remanded for further proceedings consistent with this opinion.

KELLY and BLACK, JJ., Concur.

Opinion subject to revision before official publication.