

Estate And Trust Litigation Update [Florida] by Norman Fleisher, Esq.*

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A newly published opinion arising out of the Probate Division of the Broward Courts illustrates, yet again, how important it is to strictly adhere to the terms of estate planning documents. In *Jervis v. Tucker* the settlor of a trust was adjudicated incompetent and her brother was appointed to be her limited guardian. After she was declared incompetent the settlor executed an amendment to her trust which adjusted the dispositive scheme. By its terms, the trust was revocable and amendable, but it contained a provision which suspended the settlor's right to amend or revoke the trust if she was adjudicated to be incapacitated. However, the trust provided that the right to amend or revoke could be reinstated if the settlor was restored by the court, or if the trustee received written opinions from two "licensed physicians" indicating that the settlor was competent. In this case two letters were obtained, but only one letter came from a "licensed" physician. The second letter came from "Dr. Strang, a nursing home administrator with expert experience and medical schooling - but without a physician's license." After the settlor died there was a trust contest concerning the validity of the amendment. The court ruled that the amendment was invalid because the letter from Dr. Strang failed to comply with the strict wording of the trust instrument. The appellate court affirmed the lower court's decision. The lessons are obvious but worth repeating: be careful about the manner in which rights and procedures are created and described in estate planning documents, and be sure that clients strictly follow the terms of the instruments.

[Jervis v. Tucker](#), 4th DCA (2012)

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