

In re Irving Brand, Debtor.
No. 00-30869-BKC-SHF
(Cite as: 251 B.R. 912)

The issue before the Court was whether a bankruptcy trustee may exercise a debtor's right of election to take an elective share in a decedent's estate, in place of the debtor (surviving spouse), for the benefit of the bankruptcy estate. The right of election is not a property interest arising from the provisions of a will; instead, it is a right to choose to take a share of the decedent's estate against the express provisions of the will. The Court found, based on Florida law, that the right of election is personal in nature and can only be exercised by those expressly authorized under Fla.Stat. § 732.2125. Even though electing to take an elective share interest results in the creation of a property interest of the debtor, the right of election, itself, is not a property interest of the debtor, and thus, not property of the estate. Since the right of election is not property of the estate, § 541 does not immunize the Trustee from the limitations set forth in Florida Statutes § 732.2125.