IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,968

PUBLIC HEALTH TRUST OF DADE COUNTY,

Petitioner,

-vs-

JORGE LOPEZ,

Respondent.

On Discretionary Review of a Decision of the Third District Court of Appeal

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RESPONDENT'S BRIEF

GERALD FORMAN, P.A.
Attorney for Respondent
3000 Biscayne Boulevard
Miami, Florida 33137
(305) 573-6361

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
EXECUTIVE PLAZA
3000 BISCAYNE BLVD.
MIAMI, FLORIDA 33137
573-6361

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GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
EXECUTIVE PLAZA
3000 BISCAYNE BLVD.
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GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
EXECUTIVE PLAZA
3000 BISCAYNE BLVD.
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STATEMENT OF THE CASE

This matter is before this Court by virtue of a certified question from the District Court of Appeal, Third District, which overruled a decision of the Circuit Court of the Eleventh Judicial Circuit.

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
EXECUTIVE PLAZA
3000 BISCAYNE BLVD.
MIAMI, FLORIDA 33137
—
573-6361

STATEMENT OF THE FACTS

Since the Petitioner accepted the Statement of Facts set forth in the Repondent's Brief to the District Court, it is repeated herein without change or alteration.

> "The Decedent, NEREIDA LOPEZ, died on July 30, 1985, a resident of Dade County, Florida. At the time of her death, she was single and the owner, in fee simple, of property commonly known as 3380 S.W. 109th Avenue, Miami, Florida, and legally described as follows:
>
> > Lot 2, Block 1, JIM ACRES, according to the Plat thereof, recorded in Plat Book 99, at Page 99 of the Public Records of Dade County, Florida.
>
> The said premises were occupied by the Decedent as her home and sole residence. The property is located outside the boundaries of any municipality and is less than 160 acres in size. The Decedent-mother was survived by three sons, all of whom had reached the age of majority prior to her death. One or all of them occupied the premises with her and one was dependent upon her for support. (TR 27)
>
> Prior to her death, this mother incurred substantial indebtedness with the Public Health Trust

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
EXECUTIVE PLAZA
3000 BISCAYNE BLVD.
MIAMI, FLORIDA 33137
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which operates the Jackson Memorial Hospital (TR 14). The Trust resisted the efforts of the children to have her home set aside as homestead. The trial court ruled in favor of the Trust, denying the petition to set aside the mother's home as a homestead although the Court indicated it would not permit the property to be sold to satisfy the indebtedness due the Trust (TR 59).

The basis and rational for the Trial Court's decision was the finding that the decedent-mother was not the head of the family at the time of her death. No suggestion was made to the Court by the children's attorney that the Florida Constitution concerning homestead had been amended effective January 8, 1985. This amendment extends to any natural person the right of homestead, thereby eliminating the necessity for the homesteader to be the head of a family."

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
EXECUTIVE PLAZA
3000 BISCAYNE BLVD.
MIAMI, FLORIDA 33137
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ISSUE ON APPEAL

The Respondent has reframed the issue on appeal to quote the question certified to this Court by the District Court as being one of importance, to-wit:

> "Whether Article X, §4 of the Constitution of Florida, as amended, serves to exempt a decedent's homestead property from forced sale for the benefit of the decedent's creditors, where the decedent is not survived by a dependent spouse or children?"

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
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SUMMARY OF ARGUMENT

The Respondent submits that there is no financial or dependency test in order for the benefit of a homestead exemption to inure to a Decedent's spouse or heirs. No dependency test exists in the Constitution and none should be inferred by this Court.

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
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3000 BISCAYNE BLVD.
MI[illegible] FLORIDA 33137
[illegible]573-6361

ARGUMENT

No question exists as to whether or not the property involved constituted the homestead of the Decedent. This is accepted in the question certified to this Court.

The question is whether or not property which was the homestead of the Decedent passed to her adult children, who were not dependents, free from forced sale for the benefit of the Decedent's creditors, under the provisions of Article X, §4(b) of the Constitution.

This question has previously been considered by this Court in CUMBERLAND & LIBERTY MILLS v KEGGIN, 139 Fla. 133, 190 So 492 (1939), and it was answered in the affirmative. In the CUMBERLAND CASE, supra, the debtor, a widower and a father, was survived by two adults sons and this Court in interpreting the Constitution, found that the exemption of the father inured to his adult heirs who were not dependents. This Court stated:

> "The provision of Section 2, Article X, of the Constitution that the homestead exemptions 'shall inure to the widow and heirs of the party entitled to such exemption, and shall apply to all debts, except as specified in' section I, does not limit the exemption to the 'heirs' who are minors or dependents; but such exempt property 'inures to the * * * heirs of the' father where the mother predeceased the father."

A similar decision was reached by this Court in MILLER v FINEGAN, 26 Fla 29, 7 So 140 (1890), where this Court stated:

GERALD FORMAN, P.A.
ATTORNEY AT LAW
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"The language of the third section of the ninth article of the constitution is that 'the exemptions provided for in sections one and two shall accrue to the heirs of the party having enjoyed or taken the benefit of such exemption.' The meaning of this is that those who inherit the property shall take with it, and as incident to the inheritance, the same exemption from the debts of the deceased head of the family who owned it as he enjoyed it at his death. The meaning of this is that those who inherit the property shall take with it, and as incident to the iheritance, the same exemption from the debts of the deceased head of the family who owned it as he enjoyed at his death. This exemption is from liability for the debts of the ancestor, and it is given to whoever may be heirs, without reference to whether they be infants or adults. No such condition is to be found in the constitution, but, according to its plain language and meaning, the heirs, if they be all adults, take the exemption with the land in the same way that infant heirs do; and, if some heirs are adult and some infant, the constitution has provided that the title to the homestead vests in the former freed from liability for the ancestor's debts, just as it does in the latter. Legislation seeking to make infancy a test among heirs of the right to the enjoyment of the exemption is hostile to the constitution, in that it adds a requirement for such enjoyment not to be found in that instrument. We are not required nor do we mean to say that the constitution inhibits all changes of the statute of descents , but, in our opinion, the purpose and effect of that instrument was that the exemption should follow the land or other property to whomsoever it might descent by inheritance, independent of the consideration of the age of such person or persons.

It may be said, however, that to permit adult heirs to enjoy the benefit of the exemption is inconsistent with the general idea or purpose of a homestead, and that this is more prominently so when such adults have not lived under the home roof, and been a part of the family it protects. The answer to this is found in the very provision of the constitution that the exemption shall accrue to the heirs of the party having enjoyed it. That property which creditors could not take from the head of the family when he was living they cannot take from his heirs after his death. This is what the constitution plainly said to any one who might become a creditor. It required that a person should be an heir,

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
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3000 BISCAYNE BLVD.
MIAMI, FLORIDA 33137
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> and nothing else, to successfully claim the exemption against the debts of the ancestor who, at his death, was the head of a family residing in this state. No residence upon the land, or abiding with the parent or ancestor, was made a condition to such heirship or consequent right of exemption; nor is the heirs' right of exemption from the ancestor's debts dependent upon a use by them of the land as a homestead."
>
> (See also, SCULL v BEATTY, 27 Fla. 426, 9 So.4 (1891).

The Petitioner states that it has no objection to the homestead provision passing to a surviving spouse regardless of wealth or dependency (See Petitioner's Brief §III at Page 3). The Petitioner makes no distinction whether the surviving spouse is male or female, poor, wealthy, dependent or rich, but simply suggests that it has no objection to the homestead provision passing on to the spouse. The Respondent suggests that if the surviving spouse is entitled to the benefit of the homestead exemption without a test of dependency, and the Constitution is to be so interpreted as suggested by the Petitioner, then there is no basis in fact or law for finding such a test with regard to heirs of the homesteader.

Prior to the passage of the 1984 amendment, in order to reach the conclusion that an owner's property was homestead it was was first necessary to determine whether or not the owner was the head of the family. This was determined by whether or not (a) the owner had a legal duty to support arising out of the family relationship; or (b) there was con-

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
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tinuing communal living by at least two individuals under such circumstances that one was regarded as being in charge. HOLDING v ESTATE OF GARDNER, (Fla 1982) 420 So.2d 1082.

The first test set forth in the HOLDING CASE, suppra, concerned itself with the duty to support. An owner in order to be a homesteader under that test, had to have a duty to support and concomitant with that there was the necessity for persons to be dependent for support upon the owner. As a result of this test, a long series of cases developed concerning the obligations of support and the need for monetary dependency, many of which are cited by the Petitioner in this Brief. It is submitted, however, that none of these cases have application at this time since the head of the family requirement has been totally eliminated by the 1984 Amendemnt.

The second test mentioned in the HOLDING CASE, suppra, supports the Respondent's argument that under the homestead provisions of the Constitution prior to the 1984 Amendment, it was possible for one to be homesteader without having persons financially dependent upon him for support. The second test in the HOLDING CASE, supra, establishes that an owner and his heirs can have the benefit of the exemption if there is family communal living upon property under circumstances where it is established that the owner is in charge of the family unit. The

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ATTORNEY AT LAW
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owner could be male or female, rich or poor, but it was only necessary to establish that the owner was "in charge".

The Constitution clearly states that the exemption of the homesteader inures to the surviving spouse or heirs of such homesteader. There are no words in the Constituiton suggesting that the heirs or surviving spouse had to be dependent upon the owner to enjoy this protection. The Petitioner seeks, however, for this Court to reword the Constitution to so provide.

The term heir is defined by Florida Statute 731.201(18) as being those persons who are entitled under the statutes of intestate succesion to the property of the decedent. This clearly included the sons of the Decedent and obviously there is no indication in the definition of heirs that they must be dependents.

The purpose of the exemption is to protect homestead property from debts, just or otherwise. Indeed, it is foolish for the Petitioner to suggest that the homestead exemption protects the owner only from unjust debts since no protection is required as to that character of debt. Such an obligation would not be enforceable in any event. The decision in HOSPITAL AFFILIATES OF FLORIDA v McELROY (Fla 3 DCA 1981) 393 So.2d 25, which seems to support this contention is clearly erroneous.

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
EXECUTIVE PLAZA
3000 BISCAYNE BLVD.
MIAMI, FLORIDA 33137
573-6361

In reaching that decision the Court relied upon the opinion in FRASE v BRANCH (Fla 2DCA 1978) 362 So.2d 317, but the Court in that case clearly reached an opposite and correct conclusion when it stated:

> "Homestead rights have long been enbodied in the organic law of this State....The purpose of these protections is to preserve a home for the family even at the sacrifice of just demands, and to protect the family from destitution and want."

The Petitioner suggests that the exemption was not intended to be a windfall for wealthy heirs and that such a determiation should be made in answering the question submitted to this Court. However, the value of the homestead has never been a criteria to determine whether or not an owner was entitled to the exemption. The homestead could be a mansion or a humble shack. The owner could be a millionaire or a pauper. The exemption was available to all qualified owners regardless of their affluence.

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
EXECUTIVE PLAZA
3000 BISCAYNE BLVD.
MIAMI, FLORIDA 33137
573-6381

CONCLUSION

The property of the Decedent was homestead at the time of her death. She was indebted to the Petitioner at the time of her death but her homestead was not subject to execution by the Petitioner. The Respondent inherited Decedent's property as heirs, free of the debts of the Decedent. The homestead exemption of the Decedent enured to the benefit of the Respondent.

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
EXECUTIVE PLAZA
3000 BISCAYNE BLVD.
MI[illegible], FLORIDA 33137
573-6361

CERTIFICATE OF MAILING

I CERTIFY that a true copy of the foregoing was mailed this 7 day of October, 1987, to counsel of record, to-wit:

ROBERT A. GINSBURG
Dade County Attorney
ATTENTION: SHEPARD J. NEVEL
Assistant County Attorney
Metro Dade Center - Suite 2800
111 N.W. 1st Street
Miami, Florida 33128

Respectfully Submitted,

GERALD FORMAN, P.A.
Attorney for Respondent

BY: ________________________
Gerald Forman

GERALD FORMAN, P.A.
ATTORNEY AT LAW
SUITE 402
EXECUTIVE PLAZA
3000 BISCAYNE BLVD.
MIAMI, FLORIDA 33137
573-6361