

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,968

DCA CASE NO. 86-2432

PUBLIC HEALTH TRUST OF  
DADE COUNTY,

Petitioner,

vs.

JORGE LOPEZ,

Respondent.

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

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PETITIONER'S REPLY BRIEF  
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I.

STATEMENT OF THE FACTS

The statement of the facts in the Personal Representative's answer brief is inaccurate as described hereinbelow.

The Personal Representative, at page 3 of his answer brief, states incorrectly that the "basis and rational [sic] 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."

The trial court did not base its decision on the rigid "head of a family" requirement that was eliminated by the 1984 amendment of article X, section 4(a), but rather based its decision on the narrower, more appropriate factual determination that Julio Lopez was not dependent upon Nereida Lopez for support at the time of her death.<sup>1</sup>

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<sup>1</sup> Two hearings were held in the trial court on the Personal Representative's Petition to Determine and Set Aside Exempt Property. The first hearing was held on March 3, 1986 and the second was on July 7, 1986. (R. 50-62; Vol. II, 1-29). At these hearings in the trial court, the Personal Representative conceded that the decedent had no minor children at the time of her death, but argued that "she still supported one of them because the reason being one was chronically unemployed" and disabled. (R. Vol. II, 3).

The nature of Julio Lopez's disability was described as problems relating with people and difficulty holding a job resulting from distress over his parents' divorce. (R. 54; Vol. II, 15-16).

The court requested and reviewed the income tax returns of the decedent as well as other financial information. (R. 56; Vol. II, 25). The court concluded that Julio Lopez was not a dependent of the decedent, Nereida Lopez, at the time of her death, ("...I look at the figures and it seems to me that he [Julio Lopez] was almost supporting himself. So I am not going to find a Homestead"). (R. 56).

II.

ARGUMENT

THE PERSONAL REPRESENTATIVE MISCHARACTERIZED THIS COURT'S OPINIONS IN CUMBERLAND AND MILLER, AND NEGLECTED THE ESSENTIAL FACT THAT THE DEFINITION OF "HOMESTEAD" FOR PURPOSES OF PROTECTION FROM CREDITORS' CLAIMS WAS MODIFIED, NOT ELIMINATED, BY THE 1984 AMENDMENT.

The Personal Representative in his answer brief fails to respond to the Public Health Trust's primary argument that the definition of "homestead" as it is used in subsection (1) of article X, section 4(a), for protection from creditors' claims in the probate context, requires a showing of dependency by adult children.<sup>2</sup> Nor does the Personal Representative even address

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<sup>2</sup> Only two brief portions of the Personal Representative's answer brief address the existence of homestead at the time of decedent's death. On page one, the Personal Representative simply states: "No question exists as to whether or not the property involved constituted the homestead of the Decedent." The question certainly exists, and was argued throughout the Public Health Trust's entire initial brief.

On page 8 of his answer brief, the Personal Representative argues: "The Petitioner states that it has no objection to the homestead provision passing to a surviving spouse regardless of wealth or dependency...[I]f the surviving spouse is entitled to the benefit of the homestead exemption without a test of dependency..., then there is no basis in fact or law for finding such a test with regard to heirs of the homesteader."

Again, the Personal Representative states a conclusion - "no basis in fact or law" - without any explanation or citation. The Public Health Trust's initial brief provides ample basis in law (e.g., subsection (1) of article X, section 4, and the list of cases cited in footnote 1, page 7 of the initial brief, as well as the cases concerning construction of constitutional language cited and described on pages 8 - 11 of the brief) and ample basis in fact (e.g., the legislative history cited and described on pages 11 - 14 of the initial brief).

(Footnote Continued)

the Public Health Trust's analysis, on pages 8 - 13 of its initial brief, concerning the appropriate construction of the constitutional language at issue and the clear purpose of said language.

Instead, the Personal Representative limits his argument to the narrow issue of what constitutes an "heir" for purposes of probate, which is of relevance only if this Court determines that no question remains concerning the status of homestead at the time of decedent's death.

The Personal Representative bases his analysis of the meaning of heir, as that word is used in article X, section 4, subsection (b) of the Florida Constitution, on selective excerpts from two early decisions of this Court in Cumberland and Liberty Mills v. Keggin, 139 Fla. 133, 190 So. 492 (1939), and Miller v. Finegan, 26 Fla. 29, 7 So. 140 (1890). In citing

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(Footnote Continued)

The Personal Representative suggests that if surviving spouses enjoy the homestead protection from creditors' claims, so should all heirs, regardless of their financial status and relationship with the decedent. This argument confuses the matter at bar - adult, financially independent children of the decedent - with the question of whether surviving spouses should be afforded the homestead protection, which is not at issue in this case. The legislative history cited on pages 11 - 14 of the Public Health Trust's initial brief makes clear that surviving spouses were intended to be protected by the 1984 amendment; no such intent exists with regard to financially independent, adult heirs. Moreover, the unique relationship between husband and wife is clearly distinguishable from the instant matter when defining "homestead" for the purpose of "sheltering the family." In Miller v. Finegan, 26 Fla. 29, 7 So. 140 (1890), which was cited and quoted by the Personal Representative in his answer brief, this Court concluded that a husband and wife living together constituted a family because such a conclusion was "within the spirit and intent of homestead legislation, whether it be in the form of organic or of more mutable law." 7 So. 140.

these two cases, the Personal Representative simply reiterates what the Public Health Trust argues in its initial brief - to wit, that the definition of heirs in this context has always included a requirement that there have been a "family relationship" with the decedent,<sup>3</sup> (and, when the heirs are adult children, the requirement of a family relationship includes a showing of dependency at the time of the decedent's death).<sup>4</sup>

As the Public Health Trust argues through its initial brief, this definitional requirement of homestead, for protection from creditors' claims, has been modified, not eliminated by the 1984 amendment. The "head of a household" requirement, imposed in section 4(a), has been deleted, eliminating the anomalous and undesirable exclusion of surviving widows and divorced parents from protection from creditors' claims. The 1984 amendment was enacted to enhance the longstanding purpose of the homestead protection, "to shelter

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<sup>3</sup> This Court in Cumberland emphasized that the existence of a family relationship at the time of the decedent's death was critical to its decision: "...such continued living together of the father and his son and heir and the son's family after the death of the mother, will be regarded as constituting a continuing family relation which preserved the homestead character of the real estate, so that at the father's death such homestead inured to the two sons under the constitution, exempt from debts of the father..." 190 So. 492, 493. The Cumberland court distinguished two earlier Florida Supreme Court cases - Whidden v. Abbott, 124 Fla. 293, 168 So. 253 (1936) and Dania Bank v. Wilson and Toomer Fert. Co., 127 Fla. 45, 172 So. 476 (1937) - in which the heirs had not shown the appropriate family relationship at the time of the decedent's death.

<sup>4</sup> See footnote 1 and accompanying text of Public Health Trust's initial brief.

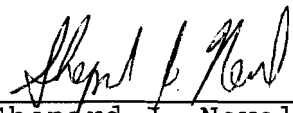
the family"<sup>5</sup> and to modify language that was inconsistent with that purpose. It did not eliminate the definitional requirements of "homestead" in article X, section 4(a), subsection (1), enunciated and clarified by a long line of cases, that are consistent with the purpose of "sheltering the family," such as the requirement at issue, that adult children of the decedent must have been dependents at the time of the decedent's death. The Personal Representative's interpretation would inappropriately and unnecessarily expunge a substantial body of case law, far beyond that which is required by the 1984 amendment.

#### CONCLUSION

Based on the foregoing reasons and authorities, the Petitioner, the Public Health Trust of Dade County, respectfully urges this Court to reverse the decision of the Third District Court of Appeal with appropriate instructions to deny the Personal Representative's Petition to Determine and Set Aside Exempt Property.

Respectfully submitted,

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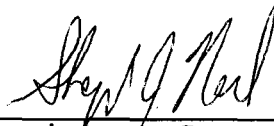
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<sup>5</sup> See page 8 of Public Health Trust's initial brief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Reply Brief was mailed this 30 day of October, 1987, to: GERALD FORMAN, P.A., Attorney for Respondent, 3000 Biscayne Blvd., Miami, FL 33137.



Assistant County Attorney