

IN THE SUPREME COURT OF FLORIDA

IN RE: THE ESTATE OF HELEN V. TAYLOR, DECEASED

MARY HELEN HINES and CYNTHIA WHIDDEN
as personal representatives of the
Estate of Helen V. Taylor, Deceased,

Petitioners,

vs.

GESSLER CLINIC, P.A., and WINTER HAVEN HOSPITAL,

Respondents.

Supreme Court Case No. 71,618

ON PETITION FOR DISCRETIONARY REVIEW
OF THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL

PETITIONERS' BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

This cause presents itself upon Petitioners' Petition for Discretionary Review of the decision of the Second District Court of Appeal.¹ In that December 9, 1987 decision, the Second District affirmed by way of a five page opinion the Trial Court's denial of Petitioners' Petition To Set Aside Homestead And To Declare It Exempt From Creditors. A.1.² In so holding, the Second District expressly and directly disagreed with the only other decision in the State of Florida as to the subject question - whether the homestead exemption set forth in Article X, §IV, of the Florida Constitution (as amended in 1985) inures to the benefit of a decedent's heirs who are not dependent on the decedent. Lopez v. Public Health Trust of Dade County, 509 So.2d 1286 (Fla. 3rd DCA 1987) (Nesbitt, J., dissenting). A.2.

On December 15, 1987, Petitioners timely filed their Notice To Invoke Discretionary Jurisdiction Of Supreme Court pursuant to the "conflict jurisdiction" provision found in Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure, and Article V, §III(b)(3), Florida Constitution. A.3. Additionally, this Court has jurisdiction of this cause pursuant to the constitutional construction provision of Rule 9.030(a)(2)(A)(ii), Florida Rules of Appellate Procedure, and Article V, §III(b)(3),

¹ Petitioners/Appellants below, Mary Helen Hines and Cynthia Whidden, as Personal Representatives of the Estate of Helen V. Taylor, Deceased, will be referred to as Petitioners. Respondents/Appellees below, Gessler Clinic, P.A. and Winter Haven Hospital, will be referred to as Respondents.

² All references to the appendix of this brief will be indicated by the symbol "A." followed by the appropriate number from the appendix.

Florida Constitution. As such, this Court may and should accept discretionary jurisdiction to review the decision below based upon both the express construction by the Second District of a provision of the State Constitution as well as the express conflict of that construction with the Third District's decision in Lopez, supra.

The facts of the case are as simple and straight-forward as they are in Lopez, supra. On April 15, 1986, Helen V. Taylor died intestate. The decedent was a single woman and lived alone in her homestead where she had lived since 1957. Two of the decedent's four adult children, Petitioners herein, were named co-personal representatives of her estate. None of the four adult children were dependent on the decedent. As a result of the filing and publication of the "Notice of Administration", four creditors, including Respondents, filed claims in the estate.

On July 28, 1986, the co-personal representatives filed a "Petition To Set Aside Homestead And To Declare It Exempt From Creditors." A.4. The property sought to be set aside as homestead had been owned by the decedent at her death and had been resided in by the decedent for nearly thirty years. The Petition To Set Aside Homestead was grounded on Article X, §IV of the Florida Constitution (as amended in 1985) which provides:

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted

for the purchase, improvement or repair thereof, or obligations contracted from house, field or other labor performed on the realty, the following property owned by a natural person:

(1) A homestead... upon which the exemption shall be limited to the residence of the owner or his family;

. . .

(b) These exemptions shall inure to the surviving spouse or heirs of the owner...

Id. (emphasis added).

At the hearing on Appellants' Petition To Set Aside Homestead, the testimony and evidence conclusively established that the decedent was the owner of the property, had continuously resided on the property for nearly thirty years, and had never abandoned nor alienated the property. However, both the Trial and District Courts below held that Decedent's lineal descendants were not entitled to the homestead exemption given their lack of dependency on the decedent at the time of her death. A.5, A.1.

ARGUMENT

- I. THE OPINION BELOW AFFIRMING THE DENIAL OF THE PETITION TO SET ASIDE HOMESTEAD AND TO DECLARE IT EXEMPT FROM CREDITORS EXPRESSLY CONSTRUES A PROVISION OF THE FLORIDA CONSTITUTION AND DIRECTLY AND EXPRESSLY CONFLICTS WITH THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN LOPEZ v. PUBLIC HEALTH TRUST OF DADE COUNTY.

The Second District's decision below expressly construed a provision of the Florida Constitution and created direct and express decisional conflict such as to give rise to this Court's jurisdiction pursuant to Rule 9.030(a)(2)(A)(ii) and (iv), Florida Rules of Appellate Procedure, and Article V, §III(b)(3), Florida Constitution. The decision conflicts with the majority decision in Lopez, supra, wherein the Third District held that whether a decedent had dependent heirs at the time of her death is immaterial as to whether the benefit of the homestead exemption shall inure to the benefit of the estate or the heirs thereof pursuant to Article X, §IV, Florida Constitution (1985). This Court has previously accepted jurisdiction in Lopez and oral arguments are presently scheduled for March 3, 1988. Public Health Trust of Dade County v. Jorge Lopez, Supreme Court Case No. 70,968.

The express conflict reflected in the Second District's decision below is not merely "express" as an announcement or application of a rule of law which conflicts or produces a different result from another decision involving substantially the same controlling facts. To the contrary, the express conflict herein is an acknowledged contradiction of the rule of

law announced in the virtually identical factual setting of Lopez, supra. As the Second District conceded:

We acknowledge our decision is in conflict with the decision in Lopez...

A.1, p.5.

The acceptance of jurisdiction in this cause and resolution of the existing conflict between the Second and Third Districts is extremely important given the Second District's holding with regard to the effect or lack thereof of the 1985 Amendment to Article X, §IV of the Florida Constitution which specifically abolished the "head of a family" requirement in relation to the homestead exemption. Despite that abolition of the "head of a family" requirement at the recommendation of the Legislature and by the decision of the citizens of this State, the Trial Court below held that the intent of the amendment was "solely to broaden the ownership identity qualification" without effecting any other existing condition of the law and despite the reasonable argument, as noted in the Trial Court's Order, that the intent of the amendment was to broaden the exemption to include the homes of single persons.

That holding included the opinion, notwithstanding the plain meaning of the amended provision, that the definition of "homestead" included a family requirement notwithstanding the abolition of the "head of a family" provision. Thus, the Trial Court went beyond the necessary ruling with regard to the issue of whether nondependent heirs enjoy the protection of the homestead exemption and held that said exemption, notwithstanding

the 1985 amendment, cannot be claimed by single persons either during their lifetime or by their heirs after death given their lack of a family.

Such a decision is patent and fundamental error given the fact that the pre-amendment requirement that homestead necessitated a family unit was inextricably intertwined with the "head of a family" requirement. Thus, the abolition of the "head of a family" requirement likewise abolished a family requirement arising by way of the use of the term "homestead."

The decision of the Trial Court in defining "homestead" as requiring a family was fundamental error in that there is no financial or dependency test in order for the benefit of a homestead exemption to inure to a claimant pursuant to the 1985 amendment. The language and intent of the homestead exemption is extremely clear and must not be amended, interpreted or modified by judicial fiat to add a dependency test when none exists or can be inferred in the Constitution.

SUMMARY OF ARGUMENT

In January of 1985, Article X, §IV of the Florida Constitution was drastically amended and the "head of a family" requirement in order to claim the "homestead" exemption was specifically abolished. Despite the abolition of the "head of a family" requirement and its necessary change as to the definition and availability of the "homestead" exemption, the Trial Court, in apparent disagreement with the extent and effect of the change, held that the only effect of the amendment was to broaden the ownership identity qualification without effecting any other existing condition of the law. That holding and constitutional construction by the Trial Court was fundamental error and its affirmance by the Second District below directly and expressly conflicts with the decision of the Third District Court of appeal in Lopez v. Public Health Trust of Dade County, 509 So.2d 1286 (Fla. 3rd DCA 1987) (Nesbitt, J. dissenting), now pending before this Court. Supreme Court Case No. 70,968. This Court therefore can and should accept jurisdiction of this cause pursuant to Rule 9.030(a)(2)(A)(ii) and (iv), Florida Rules of Appellate Procedure and Article V, §III(b)(3), Florida Constitution.

CONCLUSION

Given the above-noted decisional conflict in the construction of the Florida Constitution, this Court has and should accept jurisdiction to resolve that conflict created by the Second District's decision below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to REX P. COWAN, ESQUIRE, Kalogridis & Cowan, P. O. Box 1378, Winter Haven, FL 33880 this 28th day of December, 1987.



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