O/A 3-3-88

71,618

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 Consolidated Case No. 70-968

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

PETITIONERS' REPLY BRIEF ON THE MERITS

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ARGUMENT

I. THE 1985 AMENDMENT TO THE HOMESTEAD EXEMPTION PROVISION IN ARTICLE X, SECTION 4 OF THE FLORIDA CONSTITUTION ABOLISHED THE "HEAD OF A FAMILY" REQUIREMENT THEREBY ABOLISHING THE NECESSITY OF A FAMILY IN ORDER TO CLAIM THE HOMESTEAD EXEMPTION.

Initially, it must be noted that Respondents' Statement of the Case and of the Facts in their Answer Brief blatantly violates Rule 9.210, Florida Rules of Appellate Procedure, in that said rule mandates that an Answer Brief omit the Statement of the Case and of the Facts unless there are areas of disagreement with the case and facts contained in the initial brief which are to be clearly specified. Respondents have failed to specify, clearly or otherwise, any areas of disagreement but merely purport to state Respondents' version of the facts in areas totally unrelated to the issue on appeal. See, generally, Dania Jai-Alai Palace Inc. v. Sykes, 450 So.2d 114 (Fla. 1984); Metropolitan Life and Travelers Insurance Co. v. Antonucci, 469 So.2d 952 (Fla. 1st DCA 1985); Silvershores Inc. v. Department of Revenue, 336 So.2d 382 (Fla. 1st DCA 1976).

Additionally, while Petitioners have no basic argument in contravention of Respondents' framing of the issue on appeal (to wit - whether [the homestead] exemption inures to the benefit of a decedent's heirs who are not dependent on the decedent), Petitioners must submit that Respondents' attempted whitewashing of the additional finding, in dicta, by the Trial Court that the homestead exemption, notwithstanding its amendment in 1984, has not been expanded to include all single persons, is not in total

candor. The Trial Court specifically included said finding in its order given its erroneous attempt at logically explaining away, for purposes of its ruling, the pivotal and dispositive constitutional provision that the homestead exemption, if available to a single person at that person's death, "inure(s) to the (benefit of the) surviving spouse or heirs of the owner." Article X,§4(b), Florida Constitution (1984) (emphasis added). In other words, the issue, pursuant to the very plain meaning of Subsection (b), is easily disposed of if the subject property was in fact the homestead of the decedent at the time of her death. If so, and it is apparently conceded in the case at bar that the property was the homestead of the decedent at the time of her death, then that exemption inures to the benefit of her heirs - Petitioners herein.

The Trial Court's error below in erroneously attempting, albeit logically given its ruling, to find, despite the patently clear legislative history cited by all parties hereto, that the homestead exemption did not broaden the availability of the homestead exemption to single persons, was a necessary prerequisite, given Subsection(b), to its holding that the decedent's heirs did not enjoy the benefits of the exemption subsequent to the decedent's demise. Such a finding, although clearly erroneous in light of the legislative history submitted and the plain meaning of the amendment, was at least logical.

Respondents' position, however, is both erroneous and illogical, in that Respondents submit that while the '84 amendment clearly expanded the availability of the homestead

exemption to single persons, said exemption is lost at death in the absence of a spouse or dependent heir. Respondents have completely failed to cite to this Court a single constitutional section, statute or relevant case in support of this untenable position. Nowhere in any of the constitutional amendments or statutes which address this issue is there a single requirement that the heirs, as a condition precedent to their being entitled to the homestead exemption, be dependent on the deceased owner. Without question, the relative constitutional sections, statutes and case law which dictate the outcome of this appeal do not require that there be dependent heirs and in fact the relevant constitutional sections, statutes and cases are totally absent of any requirement other than that the individuals taking be the heirs of the deceased. Subsection(b) is perfectly clear on its face and does not state that the heirs, in order to benefit from the homestead exemption, must be dependent upon the owner. Without question, if that was the intent of the drafters of this section, they could have clearly and very simply made dependence a condition precedent to the heirs benefitting from the homestead exemption. This was not placed in the Constitution and there is no listed discrimination in the Constitution with respect to the heirs based on their dependency or non-dependency on the deceased.

The Trial and District Courts, without any support whatsoever, inserted by judicial fiat in Subsection(b) the term "dependents" with the term "heirs." Respondents' Answer Brief provides ample evidence of the reversible error committed by the

Trial and District Courts in that Article X, §4(b) states unequivocally that the homestead exemption shall inure to the surviving spouse or heirs of the owner, and not to the surviving spouse or dependents relying on her for support and shelter. This is the fundamental error based on a mistaken reliance upon inapplicable pre-amendment case law which required, given the former "head of the family" provision, that there exist a family dependency. The deceased was a "natural person" and therefore was entitled to the homestead exemption at the time of her death, which, as the cases have consistently held, is the time when the homestead determination is made. The requirement that there be dependents only existed pursuant to the "head of a family" requirement as that language was defined. Again, there is no longer a "head of a family" requirement as conceded by Respondents, and therefore, there is no requirement that there be dependents at the deceased's death before the property can be classified as "homestead."

The fundamental errors inherent in the Respondents' argument are first, their failure to follow the clear and unambiguous language of the amended Article X, §4, as well as the Florida statutes which specifically address the decent of homestead property; secondly, their failure to acknowledge the change which accompanied the Amendment to Article X, §4; and thirdly, and most importantly, their attempt to insert into the Florida Constitution and Florida Statutes a requirement that does not exist, that being that the heirs, in order to benefit by the homestead exemption, be dependent on the deceased owner.

Respondents place substantial emphasis upon the case of Hospital Affiliates of Florida vs. McElroy, 393 So.2d 25 (Fla. 3d DCA 1981) and contend that this Court should follow McElroy in rendering its decision in the instant case. Petitioners submit that to follow the court's ruling in McElroy would be erroneous in that it is clear that McElroy based much of its decision on the unique nature of the now repealed §222.19 Florida Statutes. Specifically, the Court stated,

> Notwithstanding the fact that debts may not be charged against homestead property, that homestead property is not subject to testamentary distribution, and is not an asset in the hands of executives, trustees, or administrators, this estate is not within the protection conferred by the legislature in §222.19 upon dependent family members.

Id. at 27 (emphasis added). The Court also recognized that,

> Loss of the homestead character upon death of the family head is a natural consequence of the legislative purpose of §222.19 to shelter the dependent family and surviving spouse.

Id. (emphasis added). Again, Florida Statutes §222.19 (1980) has been specifically repealed and is not support for the resolution of this case. In fact, and as further evidence that dependency is not required, the note accompanying the repeal of §222.19 provides for the repeal at the time of the enactment of the amendment to the Constitution which abolished the "head of a family" requirement.

As is clear from the language of the court in McElroy, the "head of a family" requirement was inextricably tied to the court's decision. Inherent in the "head of a family" requirement was the now abolished requirement that those enjoying the

homestead exemption be dependent family members. McElroy is not relevant to the resolution of the instant case in that it was decided under a now-repealed statute and inextricably tied to the "head of a family" requirement which has now been clearly and specifically abolished.

Nor is Petitioners' position without substantial and dispositive case law support prior to the 1984 Amendment. In Cumberland and Liberty Mills, et al. vs. Keggin, 190 So. 492 (Fla. 1939), this Court addressed the exact issue submitted by Respondents as dispositive of the resolution of this case. In Cumberland, this Court set, in its interpretation of Article X, §2, as it then existed:

> The provision of §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" §1, 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.

Id. at 493-494 (emphasis added). In Cumberland, the court specifically declined to adopt the proposition put forth by Respondents that the heirs, despite absolutely no mention of it, must be dependent. While the Constitution has changed since the resolution of the Cumberland case, the wording of the two sections is not fundamentally different and the relevant terms remain the same. Cumberland clearly reflects the error inherent in the Respondents' argument in their attempt to read and insert into the Constitution a requirement which does not exist.

In addition to Cumberland, this Court, in Miller vs. Finnigan, 7 So. 140 (Fla. 1890), specifically addressed the homestead exemption in a remarkably similar factual context. There, in response to the contention that the exemption depended upon whether the heir was a minor or adult, this Court held:

> The language of the third section of the ninth Article of the Constitution is that "the exemptions provided for in §§1 and 2 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 at his death. This exemption is from the liability for the debts of the ancestor, and it is given to whoever may be heirs, without reference to whether they may 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 descend by inheritance independent of the consideration of the age of such person or persons.

Id. at 142. In Cumberland and Miller, it is abundantly clear that the homestead exemption inures to the "heirs" of the decedent without reference to the age or dependency of the heirs.

Finally, in the case of State of Florida, Department of Health and Rehabilitative Services vs. Bessy Trammell, Personal Representative of the Estate of Lee Warren, Deceased, 12 Fla. L. Weekly 1212 (Fla. 1st DCA 1987), the court has recently addressed a question substantially similar to the one now under consideration. Specifically, in Trammell, the Department of Health and Rehabilitative Services appealed an order of the circuit court holding that a non-heir of a decedent was entitled to homestead protection under the Florida Constitution. The deceased, unmarried and apparently without any other surviving heirs, died devising his entire estate to his "good friend" Bessy Trammell. HRS filed a lien against the estate asset, a house and lot valued at approximately $9,000, in the amount expended on behalf of the decedent for his care at a nursing home, direct assistance and medical services. HRS filed a petition for declaratory judgment to determine whether Bessy Trammell was an heir entitled to homestead protection under the Florida Constitution. The circuit court had ruled that she was so entitled, stating that Bessy Trammell "is a testamentary heir of Lee Warren and as such is entitled to homestead protection based on Article X, §4 of the Florida Constitution as amended."

On appeal, the Appellate Court reversed the decision of the trial court holding that there was no legal support for the conclusion that Bessy Trammell, a good friend of the deceased, was an "heir" entitled to the homestead protection. Id. The court specifically recognized that,

> The Florida Supreme Court, while never interpreting the word "heirs" as used in Article X, §4, Florida Constitution, since its most recent amendment, has interpreted the word as used in §2 of Article X of the Florida Constitution of 1885, containing language very similar to the current provision, to mean "those who may under the laws of the state inherit from the owner of the homestead." Shone vs. Bellmore, 75 Fla. 515, 78 So. 605, 607 (Fla. 1918). Heirs are defined in §731.201(18) Florida Statutes, as "those persons, including the surviving spouse who are entitled under the statutes of intestate succession to the property of a decedent. Among the heirs listed in §732.103, Florida Statutes, are lineal descendants, fathers and mothers, brothers and sisters, and grandmothers and grandfathers. Bessy Trammell, who was decedent's "good friend," is not recognized as an heir under Florida law, and is therefore not entitled to the protection of the constitutional homestead provisions that exempt the decedent's property from forced sale.

Id. (emphasis added). In the instant case, unlike the situation in Trammell, Petitioners are among the heirs listed in §732.103 Florida Statutes in that they are lineal descendants of the deceased. Since Petitioners are in fact recognized heirs under Florida law, they are entitled to the protection of the constitutional homestead provisions that exempt the decedent's property from forced sale.

CONCLUSION

Because the decedent's property was her homestead at the time of her death, Petitioners, as the legal heirs of the deceased, are entitled to the homestead exemption pursuant to the clear and unambiguous language of the constitution as well as the Florida statutes. The decision of the Trial and District Court which held that the Petitioners were not entitled to the homestead exemption was fundamental error mandating reversal.