

SUPREME COURT OF FLORIDA
CASE NO. 67,059

IN RE: ESTATE OF)
RANDOLPH A. SKURO,)
Deceased.)

FILED
SID J. WHITE
JUN 19 1985
CLERK, SUPREME COURT
By Chief Deputy Clerk

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA
CASE NO. 84-1321

* * *

MAIN BRIEF OF APPELLANT

* * *

RICHARD G. COKER, JR.
Attorney for Appellant
1107 Southeast Fourth Avenue
Fort Lauderdale, Florida 33316
Telephone No. 761-1400

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On or about March 27, 1984, Appellee filed a Petition to Set Aside the Property as Homestead. A response to the Petition was filed by the attorney for the estate on behalf of the Personal Representative and on behalf of Amanda L. Skuro, one of the minor children. Thereafter, upon petition by the attorney for the Appellee, a Guardian Ad Litem was appointed for both Amanda L. Skuro and Randolph A. Skuro, Jr.

On May 16, 1984, a hearing on the Petition to Set Aside the Property as Homestead was held before a circuit court judge. On July 26, 1984, the Circuit Court entered an order setting aside as homestead the house in Coral Springs. The estate filed a Notice of Appeal on August 6, 1984, and, in an opinion filed May 1, 1985, the appellate court upheld the Circuit Court's granting of the petition to set aside the property as homestead. The appellate court, in its opinion, certified the following question as one of great public importance:

Does the doctrine of equitable conversion
apply to contracts for sale of homestead
real property?

Accordingly, pursuant to Rule 9.030(a)(2)(A)(V), Fla.R.App., Appellant has filed this appeal to the Supreme Court of the State of Florida.

ARGUMENT

ISSUE:

DOES THE DOCTRINE OF EQUITABLE CONVERSION APPLY TO CONTRACTS FOR THE SALE OF HOMESTEAD PROPERTY?

Under the doctrine of equitable conversion, Randolph A. Skuro did not own a real property interest after the execution of the Contract for Sale. At the time of his death, Mr. Skuro's interest in the property, after the execution of the Contract for Sale, was in the nature of personalty, and he retained legal title only as trustee for the vendee since he was obligated to convey that legal title upon delivery of the purchase price. Upon Mr. Skuro's death,

Mr. Skuro's estate was likewise obligated to complete conveyance in accordance with the terms of the contract.

In the case of In re; Estate of Sweet, 254 So.2d 562 (Fla.2d DCA 1971), the issue was whether the testator owned real property upon her death where such property was the subject of a contract for sale and purchase. The court determined that the testator did not own real property and commented as follows:

"...the vendee becomes the beneficial owner and the vendor retains only naked legal title in trust for the vendee and as security for the vendee's performance. Under this doctrine the vendor's interest is considered personalty and passes accordingly upon the vendor's death..."

In the present case, the former home of Randolph A. Skuro is not to be considered real property for the purposes of the distribution of Mr. Skuro's estate, and the interest in the property is to be distributed as an interest in personalty included in the residuary estate.

In Buck v. McNab, 139 So.2d 734 (Fla.2d DCA 1962) the court determined that a contract for sale is subject to specific performance even after the vendor's death. Accordingly, if legal title is not transferred to the purchaser by the estate in accordance with the terms of the contract, the estate is exposed to liability from the vendee and the real estate broker.

In Arko Enterprises, Inc. v. Wood, 185 So.2d 734 (Fla.1 DCA 1966), the court again discusses the beneficial interest of the vendee in a contract for purchase and sale and goes on to enumerate the vendee's rights in the subject property as follows:

"From the foregoing authorities it appears irrefragable that upon execution of the contract by Arko and Jackson the latter became seized of the beneficial title to the property, and in question and thereby became obligated to pay Arko the full purchase price agreed upon after Arko had made the improvements on the property in accordance with the terms and provisions of the agreement. Jackson's interest in the land thus acquired was subject to sale

on execution; could have been mortgaged or made the subject of a trust; would have been sufficient to sustain a claim for homestead; constituted an estate of inheritance which, upon his death, would have descended to his heirs and not passed into his estate; would have entitled him to recover damages for any trespass to the land, and requires that he bear any losses due to fortuitous events. Arko thereby became the holder of the naked legal title which it held in trust as security for the payment of the balance of the purchase price agreed upon between the parties. It appears equally clear that any enhancement in the value of the land after execution of the contract would rebound to the benefit of the purchaser Jackson, and any loss which thereafter occurred would be borne by Jackson." (Page 737,738).

It is important to note that the court in Arko determined that a contract vendee's interest in the property "would have been sufficient to sustain a claim for homestead". This is a recognition of the real property interest of the contract vendee as it relates to homestead status.

The Appellee and the court below rely on Beensen v. Burgess, 218 So.2d 517 (Fla. 4 DCA 1969) and Brown v. Lewis, 520 F.Supp. 1114 (M.D. Fla. 1981) for the proposition that a contract to sell property does cause the loss of the constitutional protection against forced sale. These cases, however, deal solely with the issue of the abandonment of homestead property, with the holding of each case being that the execution of a Contract for Sale does not constitute abandonment. Neither case deals with the devise of homestead property or the principle of equitable conversion. Likewise, M.O. Logue Sod Service, Inc. v. Logue, 422 So.2d 71 (Fla. 2d DCA 1982) deals solely with the issue of the abandonment of homestead.

Homestead property is protected against the claims of creditors and the execution of a contract for sale does not destroy that protection. Appellant does not argue against this proposition. The purpose of the constitutional provision relating to homestead is clearly to protect the family unit, and any interpretation of this provision which would allow creditors to levy against a family's home during the time between the execution of a contract for sale and

closing would be erroneous and detrimental to the family unit. The constitutional protection of homestead property is an effective shield against forces which may attack the family unit.

As the dissent points out, however, there are no creditors involved in the present case. The only issue is whether the two minor children who lived in the home with the Decedent are to receive the entire proceeds of the sale of the property, or whether the proceeds must be shared with two adult children who did not live in the home. Both the concurring opinion by Judge Glickstein and the dissent by Judge Letts characterize this case as one of "sibling rivalry", and Judge Glickstein comments that to allow the minor children to take under the Will "would only expand on the practice of fathers in Florida to disregard their first families in favor the current objects of their affection". This ignores, however, the obvious concern of the father that his minor children would need much more support and protection than his adult children. This is a practical consideration that could have nothing to do with affection or the lack thereof. An adult child is not dependent on the father for his support and education, while a minor child is totally dependent. This is less an issue of "sibling rivalry" and more a recognition by the father of this total dependence.

The constitutional protection of homestead property has always been used as a shield and it is in this context that it must be viewed. It protects the property, the home, for the family unit against creditors and against a devise which would defeat the purpose of the constitutional protection. The court below, however, has used the constitutional provision as a sword to partially disenfranchise the minor children and to defeat the provision of the Decedent's Will. If the closing on the property had taken place one day prior to the father's death, the minor children would have received the proceeds of

the sale, but because the contract provided for a closing one week after the father's death, the court below would have the proceeds shared with two other adult children. This result does not protect the family unit, but rather destroys it. Obviously, it was the Decedent's intent to move from the property because he contracted to sell it, and it was likewise his intent to provide for the protection and support of his minor children through the provisions in his Will.

The prohibition against the devise of homestead property contained in the constitution is clearly intended to protect those family members residing in the "home" and dependent upon the head of the household for support. This provision, however, is being used to defeat the underlying purpose of the constitution by reducing the protection of the family unit in favor of awarding shares of the "home" to non-dependent adults.

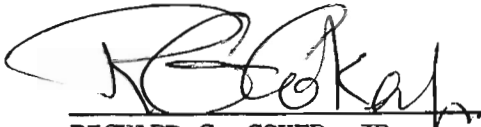
This case involves an unchartered area of the law that is dependent on policy as much as precedent. The policy to be established is one that will protect the family unit in a manner consistent with the constitution, while upholding the intent of the testator, which, in the words of Judge Letts, is "a proposition so often followed approvingly that it needs no citation". This court should uphold the provision of the Will in recognition that the doctrine of equitable conversion had transferred all real property rights to the contract vendee, leaving only an interest in personalty to be included in the Decedent's estate and distributed accordingly.

CONCLUSION

Based on the foregoing, Appellant respectfully submits that the decision of the court below should be vacated and the proceeds of the sale of the property to be distributed in accordance with the terms of the Will.

I HEREBY CERTIFY that a true and correct copy of the foregoing was

furnished, by mail, this 17th day of June, 1985, to MICHAEL L. TROP, ESQ.,
CAPP, REINSTEIN, KOPELOWITZ & ATLAS, 700 Southeast Third Avenue, Suite 300,
Fort Lauderdale, Florida, 33316, and HANS FEIGE, ESQ., Guardian Ad Litem,
FEIGE & CRANMER, 10191 West Sample Road, Suite 211, Coral Springs, Florida
33065.



RICHARD G. COKER, JR.
Attorney for Personal Representative
1107 Southeast Fourth Avenue
Fort Lauderdale, Florida 33316
(305) 761-1400