

SUPREME COURT OF FLORIDA
CASE NO. 67,059

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

FILED
SID J. WHITE
JUL 29 1985
CLERK, SUPREME COURT
By *[Signature]*
Chief Deputy Clerk

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

* * *

REPLY BRIEF OF APPELLANT

* * *

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STATEMENT OF THE CASE AND FACTS

Appellee, in his discussion of the facts, leaves this Court with the impression that there is a true unresolved issue of fact with respect to whether or not the Decedent entered into a Contract for Sale prior to his death. This is not the case. The only outstanding issue of fact is whether the date on the Contract for Sale executed by Decedent included the wrong month, thereby indicating that the contract was signed approximately three (3) weeks subsequent to the Decedent's death. There appeared to be no point in introducing any further testimony relating to the execution of the Contract by Decedent unless the property was declared not to be homestead property, and, therefore, these matters were left unresolved pending the resolution of the homestead question.

A R G U M E N T

ISSUE:

APPELLEE'S ARGUMENT DOES NOT RECONCILE THE CONFLICT BETWEEN THE
LOWER COURT'S OPINION AND THE DOCTRINE OF EQUITABLE CONVERSION.

Appellee attempts to dismiss the legal argument contained in Appellant's Main Brief by stating that the cases cited relating to Equitable Conversion do not involve homestead property, and, therefore, are not applicable to the present case. Appellant recognizes that the cases cited generally do not refer to homestead property, but neither do the cases cited by Appellee

relating to Homestead deal with the Doctrine of Equitable Conversion. The case before the Court is one of first impression, and the task before the Court is to reconcile the statutory and constitutional limitations on the devise of homestead property with the well established legal principle of Equitable Conversion. The lower Court's opinion, as indicated by Judge Lett's dissent, chooses to ignore the effect that the Doctrine of Equitable Conversion would have on homestead property, and Appellee's Answer Brief does little more than point out that a conflict does, in fact, exist.

The fact remains that the purpose of the constitutional and statutory provisions relating to homestead is to protect the homestead property from creditors and to protect against the head of the household devising the property in such a manner as to disenfranchise dependent members of the household. The intent of the constitutional and statutory provisions would not be served by utilizing the concept of homestead to defeat rights in real property and to destroy the testator's intent to devise his estate to the minor dependent children.

On page 9 of Appellee's Answer Brief, Holden v. Estate of Garden, 420 So.2d 1082 (Fla. 1982), is cited for the proposition that since the concept of homestead rights did not arise at common law, but rather is a creation of constitutional and statutory law, that the common law concept of Equitable Conversion should not be allowed to override the constitutional and statutory law. In the same paragraph as cited by Appellee, this Court in Holden states as follows:

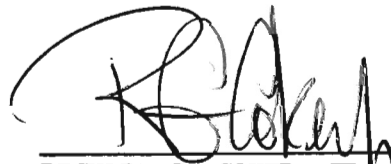
"We reject the construction asserted by petitioner that any real property owned by either spouse, if used as the marital home, cannot be devised regardless of whether the owner was the head of the family because that construction would substantially broaden the restraint on the alienation of property separately owned by a spouse." At Page 1084.

In Holden, this Court establishes a policy of restraint with respect to encumbering the alienation of homestead property. If Appellee's argument is accepted by this Court, this policy of limiting the restraint on the alienation of homestead property will be altered. The concept of homestead would then be broadened to nullify the long established legal principle of Equitable Conversion and to limit the alienation of homestead property beyond the level which was contemplated by the drafters of the constitutional and statutory provisions.

CONCLUSION

At the time of his death, the interest of the Decedent was not homestead based upon the principles of Equitable Conversion, and the proceeds of the sale of the real property should 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 26th day of July, 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.



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