IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,968

DCA CASE NO. 86-2432

PUBLIC HEALTH TRUST OF DADE COUNTY,

Petitioner,

v.

JORGE LOPEZ,

Respondent.

_____/

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

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PETITIONER'S BRIEF

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I. PRELIMINARY STATEMENT

For purposes of clarity, the Third District Court of Appeal's decision in the instant case will be referred to in this brief as Lopez. This decision is set out in the appendix.

Portions of the appendix will be cited as (A.), followed by the applicable page number.

II. INTRODUCTION

Petitioner, the Public Health Trust, an agency and instrumentality of Dade County which owns, operates, and maintains Jackson Memorial Hospital, was a claimant against the Estate in the lower court and the Appellee at the District Court level. The Respondent, Jorge Lopez, was the Personal Representative of the Estate in the trial court and the Appellant in the District Court. In this brief, the Public Health Trust will be referred to as Petitioner and, alternatively, by name; and Jorge Lopez will be referred to as Respondent, or as Personal Representative, or by name.

The Record on Appeal shall be hereinafter cited as (R.) followed by the applicable page number.

III. STATEMENT OF THE CASE AND FACTS

The opinion this Court seeks to review is Jorge Lopez v. Public Health Trust of Dade County, 12 F.L.W. 1719 (Fla. 3d DCA July 14, 1987). The salient facts and conclusion are capsulized in the opinion as follows:

> Nereida Lopez's estate appeals from the probate court's order denying its petition to have the decedent's real property set aside as homestead property. We reverse.
>
> The decedent died on July 30, 1985, owing a large debt to the Public Health Trust (Trust). At the time of her death, decedent owned and resided on the real property which is the subject of this case. Decedent's personal representative filed a petition to have the property set aside as homestead property. The Trust opposed the petition. The personal representative alleged that the decedent's three adult children had resided with her and that one of them was dependent upon her for support. After a hearing, the probate court determined that the decedent's children were not dependent upon her at the time of her death. The trial court denied the petition, and the estate appeals. (A. 1)

In a 2-1 vote, the Third District Court of Appeal ("Third District") reversed the probate court's order, Judge Nesbitt dissenting. The Third District also certified the question to this Court, holding that the facts and issues in this case passed upon a question of great public importance: "Whether article X, section 4 of the Constitution of Florida, as amended, serves to exempt a decedent's homestead property from forced sale for the benefit of the decedent's creditors, where the decedent is not survived by a dependent spouse or children?" (A. 4)

The Public Health Trust filed notice to invoke the discretionary jurisdiction of this Court, and this appeal ensued.

The Third District framed the certified question more broadly than the facts in the instant case require, addressing circumstances "where the decedent is not survived by a dependent spouse or children." The status of surviving spouses, dependent or otherwise, is not at issue in the instant matter (although the Public Health Trust does not object to any surviving spouse enjoying the exemption provided in article X, section 4). Accordingly, the Public Health Trust, as indicated in its question on appeal, has limited its argument to the circumstance at issue, namely, "where the decedent is survived only by financially independent, adult children."

IV. QUESTION ON APPEAL

WHETHER ARTICLE X, SECTION 4 OF THE CONSTITUTION OF FLORIDA, AS AMENDED, SERVES TO EXEMPT A DECEDENT'S HOMESTEAD PROPERTY FROM FORCED SALE FOR THE BENEFIT OF THE DECEDENT'S CREDITORS, WHERE THE DECEDENT IS SURVIVED ONLY BY FINANCIALLY INDEPENDENT, ADULT CHILDREN?

V. SUMMARY OF ARGUMENT

1. The 1984 amendment to article X, section 4 of the Florida Constitution, substituting "natural person" for "head of a family" in section(a), did not eliminate, nor was it intended to eliminate, the requirement in subsection (1) of section 4 that property must be "homestead" before it can be exempt from creditor's claims.

2. The purpose of the homestead exemption in article X, section 4 of the Florida Constitution has always been to "shelter the family." Consistent with this purpose, probate cases hold that the property of the decedent is exempt from creditors' claims for the benefit of adult children only if the children were dependents of the decedent at the time of death. This issue of the dependency of adult children is critical in determining whether there existed a relationship for which the "shelter" of the homestead exemption is warranted.

3. The 1984 amendment to the Florida Constitution eliminated specific problems created by the "head of family" requirement in article X, section 4(a). The elimination of the words "head of a family" in section 4(a) affected only those cases in which the courts felt obligated to apply those words literally with regard to surviving widows and divorced parents.

4. The legislative history of the 1984 amendment makes clear that its purpose was to avoid these anomalous applications of the "head of family" language. The legislative history reveals no intent to retreat from the line of probate cases that have carefully defined "homestead", as it is used in subsection (1) of section 4, for probate purposes.

5. Assuming, arguendo, the 1984 amendment of article X, section 4 is ambiguous, and does give rise to conflicting interpretations of its meaning, the majority decision in Lopez is inconsistent with the intent evidenced

by the legislative history, and would lead to an absurd and undesirable result - a windfall for financially independent heirs at the expense of the estate's creditors.

The rules of construction of constitutional provisions provide that, in the event of ambiguity, the court has the function to consider reasonableness and the intent underlying the provision. Clearly, the purpose of the 1984 amendment was to correct particular inequities in determining what constitutes "homestead" for probate purposes. The interpretation of the probate court and dissent in Lopez is far more reasonable and consistent with the purpose of the Amendment than is the overly broad, unrealistic view of the Personal Representative.

VI. ARGUMENT

A. THE 1984 AMENDMENT OF ARTICLE X, SECTION 4(a) OF THE FLORIDA CONSTITUTION, SUBSTITUTING "NATURAL PERSON" FOR "HEAD OF A FAMILY" DID NOT, AND WAS NOT INTENDED TO, EXTINGUISH THE REQUIREMENT IN PROBATE THAT THE PROPERTY OF THE DECEDENT IS EXEMPT FROM CREDITORS' CLAIMS FOR THE BENEFIT OF THE ADULT CHILDREN ONLY IF THE CHILDREN WERE DEPENDENTS OF THE DECEDENT AT THE TIME OF DEATH

A long line of case law holds that the homestead exemption, in the probate context, is intended as a protection for a decedent's dependents and not as a means for escaping honest debts. Hospital Affiliates of Florida, Inc. v. McElroy, 393 So.2d 25 (Fla. 3d DCA 1981); In Re Noble's Estate, 73 So.2d 873 (Fla. 1954). The amendment of

article X, section 4 did not change the basic purpose of the homestead exemption. While the 1984 amendment eliminated the "head of family" language in section (a) of article X, section 4, what constitutes a "homestead" remains at issue. Section (a) merely states that the "following property owned by a natural person" shall be exempt from forced sale. (A. 5) (Emphasis added.)

The property referred to in section (a) as "the following property" is described in subsection (1) as "a homestead...upon which the exemption shall be limited to the residence of the owner or his family." (A. 1-2) (Emphasis added.)

The language in subsection (1) requiring that the property be a "homestead" was not modified. The 1984 amendment eliminated only the additional and specific requirement that a "head of family" must exist in order to qualify for the homestead exemption. It did not eliminate the requirement, carefully clarified by the courts in furtherance of the longstanding purpose of sheltering the family, that adult children must have been "dependent" on

the decedent in order to enjoy the homestead exemption.[1/]

1/ In the leading case of Brown v. Hutch, 156 So.2d 683 (Fla. 2d DCA 1963), the court denied a daughter's request to have her deceased father's home declared exempt homestead property, where she was found to be gainfully employed, married and not dependent on her father for her support. In the case of Brady v. Brady, 55 So.2d 907 (Fla. 1950), the Supreme Court denied a son's request to have his deceased father's residence declared exempt homestead property, where it was found that "the son was capable and industrious...earned his own living, supported his wife and children." 55 So.2d at 909. See also, In Re: Estate of Wilder, 240 So.2d 514 (Fla. 1st DCA 1970) (Grandson, who was gainfully employed and not dependent on his deceased grandmother, was properly denied his request to have her home declared exempt homestead property); Whidden v. Abbott, 165 So. 253 (Fla. 1936) (Son, who was financially independent of father, was properly denied his petition to have his father's residence declared homestead property). Accord: Shambow v. Shambow, 15 So.2d 836 (Fla. 1943); In Re: Estate of Kionka, 113 So.2d 603 (Fla. 2d DCA 1959); Hospital Affiliates of Florida, Inc. v. McElroy, 393 So.2d 25 (Fla. 3rd DCA 1981).

As Judge Nesbitt stated below in his dissent:

> The amendment to article X, section 4 of the Florida Constitution does not, and was not intended to, affect the underlying purpose of the homestead exemption laws. The purpose of homestead exemption is to protect a decedent owner's dependent family from the forced sale of the homestead for the debts of the decedent. (A. 3) (Citations deleted.)

B. ASSUMING, ARGUENDO, THE 1984 AMENDMENT DOES GIVE RISE TO CONFLICTING INTERPRETATIONS, THE CONSTRUCTION BY THE DISSENT IN LOPEZ IS MORE REASONABLE AND CONSISTENT WITH THE PURPOSE OF THE AMENDMENT

Assuming, arguendo, that a legitimate ambiguity in the constitutional language exists, the language as amended does not have, and should not be given, the meaning ascribed to it by the majority in Lopez .

To confer upon a decedent's heirs the power to exempt real property from the reach of legitimate creditors, irrespective of the financial independence of the heirs, would distort the intent of the constitutional provision to protect dependents in need of shelter. Hospital Affiliates Inc. v. McElroy, 393 So.2d 25 (Fla. 3d DCA), review denied, 402 So.2d 611 (Fla. 1981); In Re Noble's Estate, 73 So.2d 837 (Fla. 1954).

The lower court's interpretation of article X, section 4 would spawn unintended and unfavorable consequences. Creditors and taxpayers would be unjustly deprived of adequate compensation in favor of even wealthy

distant relatives asserting the homestead protection. The creditors' rights would be impaired without any justification of "protecting the family." Many times, as in the instant case, the creditor is a public institution, and so, the burden would fall ultimately to the taxpayers.

Moreover, elderly widows and widowers whose primary asset is their home would face serious obstacles in obtaining essential services, such as medical care. Potential creditors would know that its claims, in the event of the person's death, would be barred by the existence of any heir, regardless of the circumstances.

Where a literal interpretation of a constitutional provision would lead to an unreasonable conclusion or purpose not designated by the Legislature that framed it or the people who adopted it, it is the court's duty to interpret the statute in accordance with the clear purpose and intent underlying the provision. Gallant v. Stephens, 358 So.2d 536 (Fla. 1978); Plante v. Smathers, 372 So.3d 933 (Fla. 1979).[2]

2/ In interpreting the "Sunshine Amendment" (Section 8, Article II) of the Florida Constitution, the Florida Supreme Court explained:

> ...it is our duty to discern and effectuate the intent and objective of the people. The spirit of the constitution is as obligatory as the written word. The objective to be accomplished and the evils to be remedied by the constitutional provision must be constantly kept in view, and the provision must be interpreted to accomplish rather than to defeat them. A constitutional provision is to be construed in such a manner as to make it meaningful. A construction that nullifies a specific clause will not be given unless absolutely required by the context. 372 So.2d 933, 936. [citations omitted]

Where the meaning of the constitutional provision is at all doubtful, the law favors a rational, sensible construction. Plante v. Smathers, supra; State, Com'n on Ethis v. Sullivan, 449 So.2d 315 (Fla. 1st DCA 1984).

There is clear precedent for the court to go beyond a literal interpretation of the constitutional provision on homestead, and to construe the language in accordance with common sense and the purpose underlying the provision. For instance, the courts took a practical approach to the state constitutional requirement that both the husband and wife execute the transfer of homestead. (The Constitution of 1885 required the deed or mortgage to be "duly executed by...husband and wife, if such relation exists, Fla. Const. Art. X, Section 4 [1885].) Rejecting a strict interpretation of the Constitution, the Courts allowed transfers of homestead to one spouse, even if the transfer had been executed by the other spouse alone. Rawling v. Dade Lumber Company, 86 So. 334 (1920); Church v. Lee, 136 So. 242 (1931); Hunt v. Covington, 200 So. 76 (1941). In Church, the court examined the intent of the restrictions on alienation of homestead, and found that a strict application of the provision, in disregard of its intent, would be "absurd." Church, supra, at 247. And, in Hunt, the court cited "logic and reason" in going beyond the literal meaning of the constitutional provision regarding alienation of homestead. Hunt, supra, at 77.

More recently, in Wescott v. Wescott, 487 So.2d 1099, 1101 (Fla. 5th DCA), review denied, 494 So.2d 1154 (Fla. 1986), a divorced woman challenged her former husband's

attempt to petition and sell their former marital residence, arguing that the property was her homestead, and the sale of the property was barred by article X, section 4 as amended in 1984.

Citing Tullis v. Tullis, 360 So.2d 375 (Fla. 1978), which addressed a substantially similar issue before the 1984 amendment, the court in Wescott concluded that the "expansion of the homestead exemption to all natural persons in 1984 does not effect the basic principles of Tullis...The unilateral act of the wife in taking possession and claiming the homestead exemption should not affect the substantial rights of the husband." Wescott, at 1101. (Emphasis added.)

In reasoning that is, by analogy, essential to the matter at bar, the Wescott and Tullis courts did not reject the argument that the property at issue was homestead, but, instead, looked beyond a literal interpretation of the constitutional language to glean its purpose: "...the homestead provision was never intended to preclude a forced sale following a suit for partition by and owner in common." Wescott, at 1100. (Emphasis added.)

It can be stated with equal certainty that the homestead provision was never intended to provide a windfall for financially independent heirs at the expense of the estate's creditors.

The history of this constitutional provision supports this view. Previous constitutional language had been applied unfairly, denying a decedent's family homestead exemption

protection in two important instances. A surviving widow, for example, could not establish head of family status, vis a vis her own or joint debts, for property she and her deceased husband lived on and which passed to her at his death. Creditors of the surviving spouse were thus favored over the creditors of the deceased spouse, and the exemption was unavailable to protect the decedent's property for the benefit of those who had been dependent upon him during his life. (See, Section 222.19, Fla. Stat., which remedied this problem by conferring head of family status on a surviving spouse.) Similarly, head of family status was denied a divorced custodial parent who received child support from the other parent. "There can be only one head of family for each household; the status enures to a surviving spouse [by statute] but not a divorced spouse...." Staff Analysis of Joint House Resolution 40, House Judiciary Committee, February 8, 1983. (A. 9-10).

The constitutional amendment to article X that changed the head of family language to "natural person" was intended to remedy these inequities. Thus, Florida Statute Section 222.19, conferring head of family status on the surviving spouse, was "[r]epealed effective 'on the effective date of the amendment to section 4 of article X of the State Constitution proposed by House Joint Resolution 40, provided that such constitutional amendment is approved by the electorate at the general election held in November, 1984.'" Similarly, the legislative history of House Joint Resolution 40, which placed that amendment on the ballot, reveals the

legislative intent to confer head of family status on a divorced spouse. A staff analysis, which examined the "Present Situation" of the law, focused on the problem:

> Article X, Section 4 of the Florida Constitution exempts homestead property, as defined therein, from forced sale (with limited exceptions) where the property is owned by the "head of a family..." Head of family status is a question of fact which must be determined in each individual case. There can only be one head of family for each household; the status enures to a surviving spouse of a homestead owner, but not to a divorced spouse. A divorced parent who still supports a child or children, where the other parent has custody, can maintain head of family status as long as that parent actually supports the child or children.

Staff Analysis, House Joint Resolution 40, supra, House Judiciary Committee, supra. (A. 9).

The "Probable Effect of Proposed Change" to the constitutional language would eliminate this problem and "allow any owner of homestead property to have this protection, if the owner is a natural person." Staff Analysis, supra. The "before and after" snapshot of the legislative end sought by the proposed amendment evinces the intent to remedy the anomalies resulting from a too narrow "head of family" definition. Nothing in this history reveals the intent to effect the probate consequences proposed by the majority in Lopez.

As Judge Nesbitt stated below, the amendment was:

> not intended to provide the decedent's independent heirs with a windfall at the expense of the decedent's creditors. See McElroy, 393 So.2d at 28. The amendment to the section was designed merely to remedy anamolous sitations where certain home owners, such as divorced spouses, did not qualify as heads of households. (A. 3)

Even if, arguendo, the constitutional amendment could have been intended to eliminate a discriminatory effect and afford even single persons head of family status during their lifetimes,[3/] nothing permits the abrogation of the homestead

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3/ If this Court extends this protection to all single persons during their lifetimes, then the Court's focus should be on clarifying, in light of the amendment, the meaning of subsection (b) of Article X, Section 4: "These exemptions shall inure to the benefit of the surviving spouse or heirs of the owner." Before the 1984 amendment, this language was hardly an issue. Any circumstances that satisfied the rigid "head of household" standard would involve, in the event of the demise of the head of household, surviving dependents appropriately shielded from the decedent's creditors' claims. But now subsection (b) of Section 4, unless properly clarified, has the potential of being misapplied to achieve an unintended consequence, that is, to enable all "heirs", regardless of the circumstances, to assert the exemption from the decedent's creditors. Heirs in this section should be clarified to mean "appropriate" heirs, namely, dependent heirs.

exemption test, developed in probate case law, that requires adult children or other heirs seeking homestead exemption protection to establish the existence of dependency to be sheltered by the decedent's property.[4/] The reasoning of these decisions is still the only practical test for determinations of exempt homestead property in the probate context. Otherwise, the homestead exemption will be stretched beyond its original purpose, as a protection for the family unit, and instead become a device that provides a windfall for financially independent heirs and beneficiaries at the expense of an estate's creditors.

4/ See text accompanying note 2, supra.

CONCLUSION

Based on the foregoing reasons and authorities, the Appellee, 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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief and attached Appendix was mailed to: Gerald Forman, P.A., Attorney for Respondent, at 3000 Biscayne Boulevard, Miami, Florida 33137, this 4th day of September, 1987.

Respectfully submitted,

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