OA 3-3-88

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, INC.,

Respondents.

Case No. 71,618
Consolidated No. 70,968
DCA-2 No. 87-463

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

ANSWER BRIEF OF RESPONDENTS ON THE MERITS

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STATEMENT OF THE CASE and OF THE FACTS

I. Preliminary Statement--

MARY HELEN HINES and CYNTHIA WHIDDEN, in their capacity as Co-Personal Representatives of the Estate of Helen V. Taylor, deceased, will be referred to as "Petitioners" in this Brief. GESSLER CLINIC, P.A., a Florida professional association and WINTER HAVEN HOSPITAL, INC., a Florida not-for-profit corporation, will be referred to as "Respondents".

The original Trial Court hearing transcript and the record on appeal, before the Second District Court, will be

designated by the symbols "HT" and "R", respectively, followed by appropriate page numbers. Material appearing in the Appendix hereto will be designated by the symbol "APP". The symbol "PBM" indicates material appearing in Petitioners' Brief on the Merits.

II. Statement of the Case--

Helen V. Taylor died intestate on April 15, 1986. In due course, administration of her estate was commenced in the Circuit Court of Polk County, Florida - Probate Division and an appropriate Notice to Creditors published. [R 1 & 11] In response thereto, Respondent, WINTER HAVEN HOSPITAL, INC., timely filed its Statement of Claim for Fifteen Thousand Seven Hundred Four and 27/100s Dollars ($15,704.27) in medical expenses incurred during the decedent's last illness, on June 4, 1986. [R 10] Approximately one month later Respondent, GESSLER CLINIC, P.A., filed its claim for related medical services, in the sum of Six Thousand Three Hundred Thirty Eight and No/100s Dollars ($6,338.00). [R 14-21]

Petitioners did not object to the validity of Respondents' claims, but, alternatively, filed a "Petition to Set Aside [Helen V. Taylor's] Homestead and to declare it Exempt from Creditors" on August 20, 1986. [R 24-25] Hearing was held with regard to the Petition on October 2, 1986, before the Honorable John H. Dewell, Circuit Judge. The

Court's "Order Denying Petition to Set Aside Homestead" was issued on January 13, 1987. [R 41-45 (App. "A")] Petitioners' Notice of Appeal relating thereto was filed on February 10. [R 65] The Trial Court's Order was affirmed by the Second District Court of Appeal on December 9. [In Re: Estate of Helen V. Taylor, 516 So.2d 322, 324 (Fla. 2d DCA 1987)]

III. **Statement of the Facts--**

Petitioners' Statement of the Facts in their Brief on the Merits is accepted, insofar as it relates that Helen V. Taylor died intestate on April 15, 1986, leaving four adult children, two of whom are acting as Co-Personal Representatives of her Estate. Respondents further agree that Helen V. Taylor was, at the time of her death, owner of the property sought to be set aside by her Co-Personal Representatives as homestead.

Additional facts, deemed by Respondents to be pertinent but omitted from Petitioners' Statement, are that: The property in question was deeded to Helen V. Taylor by her divorced husband in December of 1984 [HT 7]; Helen V. Taylor resided in the home located on the property until January 16, 1986, at which time she removed therefrom to live with her daughter, Cynthia Whidden [HT 9 & 16]; subsequent to March 16, 1986, Helen V. Taylor was moved to the health care facilities of Respondent, Winter Haven Hospital, until the date of her death on April 15. [HT 20]

Although Respondents have never claimed an intentional abandonment of the real property herein discussed by Helen V. Taylor, it is essential to note that, at the time of her death, all of the decedent's children were self-supporting adults residing at locations other than that of her residence. [HT 13-14. See also, PBM v]

Based on the foregoing, the Trial Court below viewed the actual issue presented for its consideration as being "whether the home of a deceased woman who was single and resided thereon alone descends to her adult lineal descendants as homestead exempt from the claims of the decedent's creditors". [APP. "A" at p. 1] Following due consideration of the facts and law, the Court responded to this question in the negative. [Id.] Its decision was thereafter affirmed by the Second District, the Second District noting that it did not perceive any intent by Florida's legislature to have broadened Florida's constitutional homestead exemption to include the residence of a deceased individual "not survived by a spouse or dependent family members". [In Re: Estate of Helen V. Taylor, 516 So.2d 322, 324 (Fla. 2d DCA 1987)]

ISSUE PRESENTED ON APPEAL

LOSS OF THE HOMESTEAD CHARACTER OF A RESIDENCE OWNED BY A SINGLE PERSON, SURVIVED ONLY BY ADULT LINEAL DESCENDENTS NOT DEPENDENT ON SUCH INDIVIDUAL TO PROVIDE FOR THEIR SHELTER AND SUPPORT, IS A NATURAL CONSEQUENCE OF THE LEGISLATIVE PURPOSE OF ARTICLE X, SECTION 4 OF THE FLORIDA CONSTITUTION.

SUMMARY OF

ARGUMENT ON ISSUE PRESENTED

Petitioners maintain that the question on appeal should be "whether the definition of 'homestead' subsequent to the 1985 amendment to Article X, Section IV [sic] continues to require the presence of a family". This is incorrect. As was noted by the Trial Court below, the actual issue presented for its consideration was "whether the home of a deceased woman who was single and resided thereon alone descends to her adult lineal descendents as homestead exempt from the claims of decedent's creditors". In affirming the Trial Court's decision, the District Court concurred and phrased its perception of the issue presented similarly, that is: "whether [the homestead] exemption inures to the benefit of a decedent's heirs who are not dependent on the decedent".

Although Respondents have no difficulty with the statement contained in Petitioner's Brief on the Merits, that the head of family requirement relating to individuals residing alone has been abolished by the 1984 amendment to Article X, Section 4 of Florida's Constitution, it is quite apparent from the comments of the Trial Court that it was not totally convinced that all single owners of residences are always entitled to claim the homestead exemption. His Honor, Judge Dewell's, comments in this regard, however,

were merely gratuitous and consequently represent a nonissue as pertains to the instant appeal. The Second District, in ruling below, made clear that its affirmation of the Trial Court's decision was not based on the acceptance of any such gratuitous language appearing in His Honor, Judge Dewell's, Order.

Petitioners have previously acknowledged that the interpretation of Article X, Section 4 of Florida's Constitution which they currently advance in their Brief on the Merits (to the effect that homestead protection extends to the self-supporting adult heirs of an unmarried decedent) is "broader than what the legislature intended". A review of the legislative history surrounding the 1984 amendment of Article X, Section 4 provides no basis on which to conclude otherwise.

Case law prior to the amendment's effective date makes it abundantly clear that the protection of Florida's homestead provisions has not historically been extended to self-supporting adult heirs of a decedent: it being the intent of such provisions to protect legal dependents who are in need of shelter, and not as a means by which a decedent's estate may escape honest debts. The vast majority of those judges who have decided cases subsequent to the effective date of the amendment are in agreement that it does not provide any basis upon which to depart from this analysis of the rationale behind, and effect of Florida's

homestead laws.

His Honor, Judge Dewell's, Order, refusing to extend homestead protection to the self-supporting adult heirs of Helen V. Taylor, and the Second District Court of Appeals' decision affirming same, should be upheld.

ARGUMENT ON ISSUE PRESENTED

LOSS OF THE HOMESTEAD CHARACTER OF A RESIDENCE OWNED BY A SINGLE PERSON, SURVIVED ONLY BY ADULT LINEAL DESCENDANTS NOT DEPENDENT ON SUCH INDIVIDUAL TO PROVIDE FOR THEIR SHELTER AND SUPPORT, IS A NATURAL CONSEQUENCE OF THE LEGISLATIVE PURPOSE OF ARTICLE X, SECTION 4 OF THE FLORIDA CONSTITUTION.

I. Issue Presented, and Relevant Constitutional Provision--

The issue presented and ruled on by the Trial Court below was "whether the home of a deceased woman who was single and resided thereon alone descends to her adult lineal descendants as homestead exempt from claims of the decedent's creditors". [Order Denying Petition to Set Aside Homestead, dated January 13, 1987 (emphasis added) (APP. "A" at p. 1)] On Petitioners' appeal of the Trial Court's ruling the Second District affirmed, restating the issue presented for its consideration as being "whether the homestead exemption inures to the benefit of a decedent's heirs who are not dependent on the decedent". [In Re: Estate of Helen V. Taylor, 516 So.2d 322 (Fla. 2d DCA 1987) (emphasis added)] Florida's constitutional provision, relevant to determination of the legal issue dealt with by both the Trial Court and Second District herein, is found in Article X, Section 4, which provides as follows:

> SECTION 4. **Homestead Exemptions.**
> (a) There shall be exempt from forced sale under process of any court . . . the following property owned by a natural person:

(1) a homestead . . . ;

* * *

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

[Art. X, §4, Fla. Const. (1984) (emphasis added)]

Florida's constitutional homestead provision was amended, to read in its present form, by vote of the State's electorate on November 6, 1984 and became effective January 8, 1985. The nature of the 1984 amendment was such that the last five words of Article X, Section 4 (a), referring to homestead as necessarily belonging to "the head of a family", were stricken and were replaced by the words "a natural person". [House Joint Resolution 40, Florida State Legislature Regular Session (1983) (original document located in the Florida State Archives: Record Group 920, Series 19, Box 1111) (APP. "B")]

II. Background of 1984 Amendment to Article X, Section 4 of Florida's Constitution--

A. Legislative History-- A brief synopsis of the legislative history behind the 1984 amendment to Article X, Section 4 of Florida's Constitution is as follows:

> December 13, 1982: Representative Mary Ellen Hawkins prefiles House Joint Resolution 40 [hereinafter, "HJR 40"], for hearing during the 1983 Regular Session of the Florida Legislature.
>
> February 28, 1983: Senate Joint Resolution 79 [hereinafter, "SJR 79"] (the Senate equivalent of HJR 40, for which HJR 40 was eventually

substituted) is considered at a Senate Judiciary-- Civil Full Committee Workshop. [Transcript of Senate Judiciary-- Civil Full Committee Workshop, February 28, 1983 (produced from certified copy of tape, the original of which is located in the Florida State Archives: Record Group 900, Series No. 625 Carton 306) (APP. "C", pp. 2-5)]

March 2, 1983: HJR 40 is heard by the House of Representatives-- Judiciary Committee's Subcommittee on Court Systems and Miscellaneous, where it is voted favorably, with the recommendation that an amendment be adopted striking Subsection 4(b) of Article X.

March 29, 1983: HRJ 40 is considered by the House of Representatives-- Judiciary Full Committee, which votes HJR 40 favorably, but declines to strike Section 4(b) of Article X. [Transcript of House of Representatives-- Judiciary Full Committee Meeting, March 29, 1983 (produced from certified copy of tape, the original of which is located in the Florida State Archives: Record Group 920, Series No. 414, Carton 421) (APP. "D")]

April 7, 1983: The Senate Judiciary-- Civil Full Committee meets and adopts the language appearing in HJR 40 as a committee substitute for former SJR 79. [Transcript of Senate Judiciary-- Civil Full Committee Meeting, April 7, 1983 (produced from certified copy of tape, the original of which is located in the Florida State Archives: Record Group 900, Series No. 625, Carton 306) (APP. "C", pp. 6-7)]

April 21, 1983: HJR 40 read before the Florida House for first time. [Transcript of Floor Debate before the Florida House of Representatives, April 21, 1983 (produced from courtesy copy of tape, the original of which is maintained in the offices of the Clerk of the Florida House of Representatives) (APP. "E", p. 1. It should be noted that the April 21, 1983 date reflected herein for this proceeding, is a corrected date from that which appeared on the courtesy copy of the tape previously supplied Respondents and which, therefore, was used by Respondents in submitting their Answer Brief at the District Court level)]

April 25, 1983: HJR 40 debated before the House, and, on reconsideration, narrowly passed by the required 3/5ths majority vote, 74 to 44.

[Transcript of Floor Debate before the Florida House of Representatives, April 25, 1983 (produced from courtesy copy of tape, the original of which is maintained in the offices of the Clerk of the Florida House of Representatives) (APP. "E", pp. 1-13. It should be noted that the April 25, 1983 date reflected herein for the Floor Debate, is a corrected date from that which appeared on the courtesy copy of the tape previously supplied Respondents and which, therefore, was used by Respondents in submitting their Answer Brief at the District Court level)]

May 5, 1983: SJR 79 is read before the Florida Senate for the first time.

May 11, 1983: SJR 79 passed by Senate.

[Joint Legislative Management Committee-- Division of Legislative Information, History of Legislation, 1983 Regular Session pp. 12-13 (HJR 40) & 28 (SJR 79)]

The foregoing synopsis is useful in that it serves to highlight those portions of the legislative process where significant discussion concerning the proposed amendment of Article X, Section 4 took place. This provides important insight as to the intended meaning of the legislation which was thereby being considered. [See, The Search for Intent: Aids to Statutory Construction in Florida -- An Update, 13 Fla. St. U. L. Rev. 485 (1985) (analyzing the value of "extrinsic" aids, including committee reports, statements of sponsors and other legislators, transcripts of committee hearings and floor debates, and legislative journals, in the interpretation of Florida law)]. Although it is recognized that the Florida Supreme Court has consistently affirmed its

commitment to the plain meaning rule as it relates to legislative interpretation:

> Florida Courts have [nevertheless] used extrinsic aids to corroborate their construction of an "unambiguous" statute, or to construe a statute to "give effect to the evident legislative intent, regardless of whether such construction varies from the statute's literal meaning". This practice comports with the Florida Supreme Court's mandate: "It is a fundamental rule of statutory construction that legislative intent is the polestar by which the court must be guided, and this intent must be given effect even though it may contradict the strict letter of the statute."

[Id. at pp. 487-488 (citations omitted)]

Reviewing the legislative history referenced hereinabove, one finds that the most detailed discussion of the proposed amendment took place, at the Senate level, on two occasions: First, during the Senate Judiciary-- Civil Full Committee Workshop of February 28, 1983; and then on April 7, 1983, before a meeting of the Senate Judiciary-- Civil Full Committee. At the House level, major discussion took place during the House of Representatives-- Judiciary Full Committee Meeting of March 29, 1983, and then before the House of Representatives during its floor debate of April 25, 1983.

The majority of states now record legislative committee hearings and many state courts have relied on statements during such hearings to clarify legislative intent. Florida Courts follow this trend. [Id. at 502, citing, E. M. Watkins & Co. vs. Board of Regents, 414 So.2d 583, 587 (Fla. 1st DCA

1982); and Baxley v. State, 411 So.2d 194, 196 (Fla. 5th DCA 1981)] Although the content of legislative floor debates has, in the past, been subject to question by some courts:

> Decisions in the federal courts since 1950 reveal an increasing relaxation of the rule excluding reliance on legislative debates. Explanatory statements by the sponsor of a bill have been considered as well as those of a member in charge of presenting the bill to the legislature. These remarks are regarded as supplemental committee reports.

[13 Fla. St. U. L. Rev. at p. 504 (emphasis added, citations omitted)]

B. **Expressions of Legislative Intent**-- During the February 28, 1983 Senate Judiciary-- Civil Full Committee Workshop, the Senate sponsor of SJR 79, Harry A. Johnston, II, stated that:

> [W]hat this bill does is provide . . . that the homestead of any natural person . . . will be exempt from forced sale . . .
>
> * * *
>
> There's a little propaganda law review article, which sets forth some of the reasons for this bill, and for having the homestead of any natural person exempt elderly people, divorced spouses, etc.

[APP. "C" at p. 2 (emphasis added)]

The law review article referred to by Senator Johnston is an excerpt from Maines and Maines, Our Legal Chameleon Revisited: Florida's Homestead Exemption, 30 U. Fla. L. Rev. 227 (1978) [APP. "F"] wherein a change in Florida's constitutional homestead provision was recommended and the following reason for the proposed change

was given:

> Florida's concept of family headship is not a necessary or desirable method of protecting debtors and their dependents.
>
> * * *
>
> The family headship requirement is an indirect method of extending homestead debtor exemption to people who support dependents. [T]he exemption should be extended to all debtors who actually provide for the support and maintenance of persons who do not have assets sufficient to support themselves or are unable to do so. Such a provision in the Florida law would allow a child supporting an elderly or disabled parent to assert the homestead exemption when it is impractical for them to reside together. If extended to single persons it would also protect the aged or infirmed who live alone.

[Id. at p. 246 (emphasis added) (a copy of this document is attached to the Bill of Action Report of the Senate Judiciary-- Civil Committee: Record Group 900, Series No. 18, Box 1412)]

During the House of Representatives-- Judiciary Full Committee Meeting of March 29, 1983, the House sponsor of HJR 40, Mary Ellen Hawkins, related that:

> What I am trying to do with House Joint Resolution 40 and the implementing legislation, House Bill 78, is to give protection against forced sale for the homestead of a single person, a divorced person, any person who has a homestead, rather than just the head of a family . . . . I think when you take a person's home, you are increasing the risk of having them become a public trust-- a public trust burden, and therefore, it is just a matter of philosophy.

[APP. "D" p. 3 (emphasis added)]

Also of interest, in searching for the legislative intent behind the 1984 Amendment to Article X, Section 4 of Florida's Constitution, is the debate which occurred during the House of Representatives-- Judiciary Full Committee Meeting of March 29, 1983, over a recommendation by the House of Representatives-- Judiciary Subcommittee, to amend HJR 40 so as to strike the language appearing in Article X, Section 4(b), relating to the inurement of the homestead exemption to the surviving spouse or heirs of a decedent. The debate over the subcommittee recommendation proceeded as follows:

> REPRESENTATIVE COSGROVE: Yes, sir. The amendment that the Subcommittee [recommended] . . . corrected what I thought was a . . . constitutional deficiency in the bill where it said "these exemptions shall inure to the surviving spouse or heirs of the owner". It just didn't appear to be legally correct.
>
> * * *
>
> REPRESENTATIVE EASLEY: Mr. Chairman, . . . that [proposed amendment] absolutely destroys the children of a divorced couple in being able to maintain their residence with these exemptions.
>
> * * *
>
> [R]emoval of this section from the Constitution removes the children from the protection of that exemption.
>
> * * *
>
> REPRESENTATIVE DRAGE(?): Mr. Chairman, if I may? Mr. Chairman-- apparently at the subcommittee level, because this amendment passed unanimously at the subcommittee-- this is not understood correctly, ...

* * *

REPRESENTATIVE DRAGE: It appears to me that if we accept what is proposed and we have a natural person, then you don't need it to inure to the surviving spouse or heirs--

REPRESENTATIVE COSGROVE:-- That's exactly what the subcommittee--

REPRESENTATIVE DRAGE:-- Because they have the same exemption that was provided here, so that's simply to clarify the Constitution.

CHAIR: Ms. Hawkins?

REPRESENTATIVE HAWKINS: It was my idea to do this-- I thought that the bill drafting simply overlooked taking that out, because any natural person would be a minor child or surviving spouse, or anyone else who happened to inherit the house and if it was the homestead.

* * *

REPRESENTATIVE PAJCIC: [I] would suggest . . . that we do not adopt this amendment and pass the bill. If we have the amendment on there then people are going to think you are taking something away from them and the dadgum-- the resolution's not going to pass. If the purpose of the amendment is to eliminate an apparent redundancy, I would advocate leaving the redundancy in place, if there is one.

[APP. "D", pp. 9-12 (emphasis added)] The proposed amendment was later withdrawn from consideration. [Id. at p. 15]

During the Floor Debate which took place in Florida's House of Representatives on April 25, 1983, the following descriptive statements were made by Representative Hawkins, in her capacity as sponsor of HJR 40, and other legislative supporters thereof, concerning the bill, who it was intended to benefit, and the philosophy behind same.

SPEAKER OF THE HOUSE: Who is handling the bill? Representative Hawkins.

REPRESENTATIVE HAWKINS: Mr. Speaker and ladies and gentlemen, this bill . . . allows the people of Florida to decide whether or not they want to extend the protection of a homestead against a forced sale for any natural person rather than just the head of the family as it is now.

* * *

REPRESENTATIVE PAJCIC: [T]his is a bill that is for the confirmed bachelor, the old maid, the widower, the widow and the divorced person, and . . . I hope you will support Representative Hawkins in voting for it.

* * *

REPRESENTATIVE THOMPSON: [I] think that it is a very simple, philosophical question as Mr. Upchurch says, he is on one side of it, and I am on the other side of it, but not without some questions in each of our minds. But my philosophy is that unless you put a mortgage on <u>your home</u> in the State of Florida, you ought to have a right to keep <u>your home</u>. It is just that simple.

[APP. "E", pp. 1 (Hawkins), 4 (Pajcic), & 8 (Thompson) (emphasis added)]

III. Court Interpretation of Article X, Section 4 of Florida Constitution under Factual Circumstances Similar to Those Represented by the Instant Appeal--

Petitioners initiate their attack on both the Trial and District Courts' rulings below, by presenting the question on appeal as "whether the definition of 'homestead' subsequent to the 1985 amendment to Article X, Section IV

[sic] continues to require the presence of a family". [PBM 1]

The major portion of Petitioners' Brief devoted to their Argument, is then expended on advancing the proposition that "the availability of homestead status has been expanded to include property owned by any natural person, whether or not that individual is the 'head of a family' or whether that person ever has a family". [PBM 11] Although there is a great deal of language appearing in the Trial Court's January 13, 1987 Order Denying Petition to Set Aside Homestead indicating that it would not necessarily concur with Petitioners' proposition in its entirety, such portion of the Court's Order is purely dicta. As was stated by the Honorable John H. Dewell in the Order at issue:

> It can be reasonably argued that the intent [of the Florida Legislature] was to broaden the [homestead] exemption to include the homes of single persons [not occupied by a family] during their lifetimes. This Court thinks not [but] . . . [i]n any event, this is not the situation [being considered] here.

[APP. "A" at p. 3 (emphasis added)] The Second District Court of Appeal, in its ruling below, made clear that its affirmation of the Trial Court's decision was not based on any acceptance of the gratuitous language appearing in his Honor Judge Dewell's Order when it said:

> We agree with appellants that inclusion of the words "natural person" expands the class of individuals who may now validly claim their homeplace to be exempt from forced sale under the Florida Constitution. See, e.g. Steinbrecher v. Cannon, 501 So.2d 659 (Fla. 1st DCA 1987). Nevertheless, we do not perceive the legislative

> intent to have broadened the exemption from forced sale of property to include the residence of a single person who is not survived by a spouse or dependent family members. Nothing in either the amendment or the staff analysis indicates any intention of the legislature to create a windfall for the benefit of adult heirs not dependent on the decedent.

[516 So.2d at 324 (emphasis added)]

The issue which was under consideration by both the Trial and District Courts below, and the actual issue on this appeal, is as stated at page one (1) of this Answer Brief and by the Second District Court itself, that is: "whether [the homestead] exemption inures to the benefit of a decedent's heirs who are not dependent on the decedent." [Id. at p. 323 (emphasis added)] Petitioners acknowledge this when they advance the proposition in their Brief that:

> If the decedent was entitled, as a single, "natural person", to claim the exemption, then her heirs likewise enjoy that protection given the plain meaning and import of subsection (b) [of Article X, §4].

[PBM at p. 3. See also, id. at p. 14 (where Petitioners argue that "given the fact that the decedent enjoyed the homestead status of a . . . natural person without dependents, then [her] heirs . . . likewise enjoyed that exemption")]

A review of the case law, both prior to and following the 1984 Amendment of Article X, Section 4 of Florida's Constitution, reflects that the Trial and District Courts' decisions denying homestead status to the adult heirs of

Helen V. Taylor (who neither resided with nor were supported by the decedent at the time of her death) are absolutely correct.

A. Case Law Prior to 1984 Amendment-- Prior to the 1984 amendment of Article X, Section 4 of Florida's Constitution, there extends a long line of cases holding that a decedent's residence will not be recognized as homestead, the status of which will inure to his or her heirs and beneficiaries, unless the individual seeking homestead protection can establish the existence of a legal dependency to be supported during the decedent's lifetime. [See, Brady v. Brady, 55 So.2d 907 (Fla. 1950) (son's request that deceased father's residence be declared exempt denied, where it was established that the son was capable, industrious, and earned his own living); Whidden v. Abbott, 165 So. 153 (Fla. 1936) (son's Petition to have father's residence declared exempt properly denied, where son was financially independent of father); In Re: Estate of Wilder, 240 So.2d 514 (Fla. 1st DCA 1970) (grandson's request to have grandmother's property declared exempt denied, where grandson was gainfully employed and not dependent on his grandmother); and Brown v. Hutch, 156 So.2d 683 (Fla. 2d DCA 1963) (daughter's request that father's home be declared exempt denied, where daughter was gainfully employed, married and not dependent on father for her support)]

The most recent pre-amendment decision, interpreting the extent of the homestead exemption under factual

circumstances comparable to those presented by the instant appeal, is Hospital Affiliates of Florida, Inc. v. McElroy, 393 So.2d 25 (Fla. 3d DCA, 1981), review denied, 402 So.2d 611 (Fla. 1981). In McElroy, the daughter of a deceased widow successfully petitioned, at the trial court level, to have her mother's residence set aside as homestead under former Section 222.19, Florida Statutes (1976, repealed 1984). This statute provided head-of-family status for surviving tenants by the entirety or spouses of deceased residence owners. [393 So.2d at pp. 26-27] On appeal, the lower court's ruling was reversed, and it was held that the homestead character of the decedent's property terminated on the widow's death. In so holding, the Third District relied heavily on the authority of Frase vs. Branch, 362 So.2d 317 (Fla. 2d DCA 1978) wherein the following discussion of the historical purpose and effect of Florida's constitutional homestead provision appears:

> Homestead rights have long been embodied in the organic law of this state. [See, Baker v. State, 17 Fla. 406 (1879) interpreting the homestead provision of the Florida Constitution of 1868] The purpose of these protections is to preserve a home for the family, even at the sacrifice of just demands, and to protect the family from destitution and want. Hill v. First National Bank of Mariana, 79 Fla. 391, 84 So. 190 (1920). The provisions of homestead laws should be carried out in the liberal beneficent spirit in which they are enacted. Milton v. Milton, 63 Fla. 533, 58 So. 718 (1912); Jetton Lumber Co. v. Hall, 67 Fla. 61, 64 So. 440 (1914). Nevertheless, great care should be taken to prevent homestead laws from becoming instruments of fraud, an imposition on creditors, or a means to escape honest debts. Id.; see also Vandiver v. Vincent, 139 So.2d 704 (Fla. 2d DCA 1962).

[Id. at pp. 318-319 (emphasis added)]

B. Case Law Subsequent to 1984 Amendment-- A review of decisions, interpreting Florida's newly amended constitutional homestead provision in circumstances similar to those presented by the case at hand, evidences that an absolute majority of the judges responsible for making these decisions have found that the reasoning followed in the pre-amendment cases discussed hereinabove is still applicable.

Such was the result in In Re: Estate of Leslie Stone, Case No. 85-6147(02) (Fla. 11th Cir. Ct. 1985). In Stone, a Petition to Set Aside Homestead was filed by the brother of a decedent, seeking to avoid charges for hospital expenses incurred by the deceased prior to his death. [Order Denying Petition to Set Aide (sic) Homestead, dated November 22, 1985 (APP. "G". at p. 1)] The decedent's only relatives at the time of his demise were his mother and brother, neither of whom were dependents of the decedent nor living in his home at the time of his death. [Id.] Citing McElroy as authority for its ruling, the trial Court proceeded to deny the brother's Petition stating that:

> Although head of the family is no longer necessary to be established to set aside homestead, all of the . . . reasonings of the Appellate Court [in McElroy] appears [sic] to apply to this case in which there are no dependent family members and there was no reason why the Estate should not bear the expense of the Hopsital [sic] services rendered to the decedent before his death which otherwise would have to be absorbed by the Hospital and probably the taxpayers of Dade County, Florida . . . .

[Id. at pp. 1-2]

An identical ruling was made later, under similar circumstances, in the case of In Re: Estate of Ana M. Alonso, Case No. 85-4285 (Fla. 11th Cir. Ct. 1986). In Alonso, a Petition to Set Aside Homestead was filed by the Personal Representative of a decedent, seeking to avoid a claim for hospital expenses. [Order Denying Petition to Determine Homestead Real Property, dated May 20, 1986 (APP. "H" at p. 1)] The decedent's only surviving relatives were her son, daughter, and four granddaughters, none of whom were either dependents of, or living with, the decedent at the time of her death. [Id.] Once again McElroy was cited as controlling, and the Petition was denied. [Id. at pp. 1-2]

The most recent case which considers the question presented by the instant appeal, under a slightly different factual situation, is In Re: Estate of Nereida Lopez, Case No. 85-16907(02) (Fla. 11th Cir. Ct. 1986), rev'd, 509 So.2d 1286 (Fla. 3d DCA 1987) (Nesbitt, J. dissenting). In Lopez a woman passed away while the owner of a residence, in which both she and her three adult sons lived. [509 So.2d 1268] Based on these facts, the Personal Representative for the estate of the deceased filed his Petition to Set Aside Homestead thereby seeking protection from a substantial indebtedness incurred by the decedent with Jackson Memorial Hospital. [Id.] Finding that none of the decedent's sons was a dependent of the deceased, the trial court denied the Petition. [Id.]

Although the trial court decision in Lopez was reversed on appeal to the Third District, an objective perusal of Third District's split decision evidences that the better reasoned analysis of the legislative intent behind and legal meaning of, the 1984 amendment to Article X, Section 4, was made by the Honorable Judge Nesbitt in this dissent. There, his Honor incisively concluded that:

> 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. See Fla. HJR 40 (1983)(proposed); Ch. 83-40, §4, Laws of Fla.; Fla. HJR 40, Committee on Judiciary, Staff Analysis, (February 8, 1983); see also Wescott v. Wescott, 487 So.2d 1099, 1101 (Fla. 5th DCA), review denied, 494 So.2d 1154 (Fla. 1986). 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. Tullis v. Tullis, 360 So.2d 375 (Fla. 1978); In re Noble's Estate, 73 So. 2d 873 (Fla. 1954); Hospital Affiliates, Inc. v. McElroy, 393 So.2d 25 (Fla. 3d DCA), review denied, 402 So.2d 611 (Fla. 1981). It is not intended to provide the decedent's independent adult 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 anomalous situations where certain home owners, such as divorced spouses, did not qualify as heads of households. See Staff Analysis supra, at 1.

[509 So.2d at p. 1287]

IV. Analysis of Petitioners' Argument in Light of Legislative Background of and Case Law Interpreting, Article X, Section 4, Florida Constitution (1984)--

Respondents have no difficulty with Petitioners' statement that the head of family requirement, relating to the homes of individuals residing alone, has been abolished

by the 1984 Amendment to Article X, Section 4 of Florida's Constitution. In fact, Respondents have previously stated as much before the Trial Court below. Consider the following statement made by counsel for Respondents:

> MR. COWAN: [Your Honor] I do want to comment on two items in Mr. Trakas' memo. At page 3 he indicates a legislative minutes dealing with the adoption of this Constitutional amendment [to Article X, §4], it was stated that it does appear that there would be an impact upon the private sector and that an additional class of debtors would have their property protected. We have no problem with that statement, but we feel Your Honor . . . that it does not deal with what the holding was in McElroy. Yes, people no longer have to be a head of a household in order to claim homestead exemption during their lifetime. The issue is however, as pointed out with McElroy, what happens upon their death? . . . Clearly the Legislature was aware of McElroy and the holding there, and our statement is that this does not do anything to show that that class of "debtors" is protected, and therefore, the law remains the same.

[HT 29-30 (emphasis added)] Based on His Honor, Judge Dewell's, comments during the hearing on Petitioners' Petition below and as contained in the Order appealed from, it would appear that the Trial Court did not find itself in total agreement with Petitioners' expressed position: that all single owners of residences are always entitled to claim the homestead exemption under current law. His Honor's comments in this regard, however, were purely gratuitous and, therefore, represent a nonissue as pertains to this appeal. This is especially so when the Second District in affirming the Trial Court's decision has stated absolutely that, although it agrees with Petitioners that the words

"natural persons" expand the class of individuals who can now claim homestead, nevertheless it does not perceive that the legislature's intent was to have included in this expanded class "the residence of a single person who is not survived by a spouse or dependent family members". [516 So.2d at p. 324]

The bottom line meaning of the Trial and District Courts' decisions below is that even assuming, arguendo, Ms. Taylor's residence constituted a constitutional homestead during her lifetime, it lost such status upon her death: since she was not survived by a spouse or dependents relying on her for support and shelter. Petitioners' brief summarily deals with this point, that constitutes the sole relevant part of the Trial and District Courts' decisions which is in contention between the parties, only twice. [See, supra at p. 12 citing PBM 3 & 14]

Petitioners, in the segments of their Brief referred to, do not cite any case law whatsoever interpreting Article X, Section 4 of Florida's Constitution, either prior to or following its amendment in 1984, under factual circumstances similar to those represented by the instant appeal. Instead, Petitioners simply conclude their Brief by arguing that, pursuant to the provisions of Sections 733.608 & .677, Florida Statutes (1985), a Personal Representative may not sell the former homestead of a decedent for the benefit of his or her creditors in such event. [PBM 17-18] McElroy and its forebears, clearly establish this argument to be in

error. [See, supra at pp. 13-14] Thus, Petitioners' argument fails on its face insofar as case law interpreting Florida's homestead provisions, both constitutional and statutory, prior to 1984 is concerned.

This leaves the Honorable Supreme Court with the task of determining whether the line of cases represented by McElroy and its predecessors has in some manner been overturned by the 1984 Amendment to Article X, Section 4 of Florida's Constitution. Although arguing throughout their Brief that the subject amendment is "clear and unambiguous", in its intention to extend homestead protection to any and all "natural persons", Petitioners quite properly stop short of arguing that the amendment is equally clear in any supposed intent to protect the adult heirs of a decedent not dependent on him or her for support and shelter.

Petitioners have already acknowledged, during the Trial Court proceedings below, that the interpretation of Article X, Section 4, Florida Constitution (1984) which they presently advance in their Brief is beyond the intention of the legislature. Consider the following exchange between counsel for Appellants and the Court:

> THE COURT: Will you give me one reason why grown adult heirs living somewhere else should have the benefit of a homestead instead of the creditors?
>
> MR. TRAKAS: Yes, Your Honor. Because the intent and purpose of the Constitution as upheld by our Courts for over 100 years prior to this time, even under the old law, has been to establish the stability of the family--

THE COURT: Alright, sir. That's what I'm talking about. So now you are saying the family has nothing to do with it.

MR. TRAKAS: That is correct . . .

THE COURT: Then . . . why should the grown children benefit?

MR. TRAKAS: Because the consequences that the legislature intended were one thing, but the ultimate consequences are even broader than what the legislature intended.

[HT 24-25 (emphasis added)] Respondents agree. The interpretation of Article X, Section 4, advanced by Petitioners, is "broader than what the legislature intended". Respondents' review of the expressions of intent, made at various stages in the legislative process, confirm that the Amendment was proposed: 1) to "provide for the support and maintenance of persons who do not have assets sufficient to support themselves or are unable to do so" [Supra, at p.7]; 2) "to give protection against forced sale for the homestead of a single person, a divorced person [or], any person who has a homestead" [Id.]; and, 3) for the protection of the "confirmed bachelor, the widower, the widow and the divorced person". [Supra, at p. 10] At no point in the legislative history of the amendment does it state or imply that it was being proposed as a device by which adult heirs of a decedent, not dependent upon the deceased for their shelter or support, might reap a windfall by avoiding those honest debts which their loved ones incurred during life.

Further, the exchange which took place between the

various legislators attending the House of Representatives--Judiciary Full Committee Meeting of March 29, 1983, affirmatively evidences that the only reason a recommended amendment striking Article X, Section 4(b) (providing that the homestead exemption shall inure to the surviving spouse of heirs of an owner) failed was not due to any intention of the legislators supporting HJR 40 to extend homestead protection to adult heirs of a decedent not dependent on him or her for support and shelter; but alternatively, because if the amendment was adopted, HJR 40 might not pass due to the potential for a misimpression by the electorate that the legislature was thereby trying to "take something away" from it. [See, supra at pp. 8-9] The sponsor of HJR 40, Representative Hawkins, made it quite clear, during the referenced committee meeting, that the "any natural person" language appearing in HJR 40 was there to protect a minor child, surviving spouse or other person inheriting a decedent's residence who was dependent on such deceased individual to provide them shelter. [See, supra at p. 9]

Although Petitioners would argue that the Honorable Supreme Court is limited only to a consideration of the "clear and unambiguous" meaning of Article X, Section 4, as amended, and that the legal analysis appearing in prior case law which interprets this provision of Florida's Constitution is "totally obsolete and meaningless", one of the very cases cited by them in their brief proves otherwise. In Wescott vs. Wescott, 487 So.2d 1099 (Fla. 5th

DCA 1986), review denied, 494 So.2d 1154 (Fla. 1986) Florida's Fifth District Court considered the argument of a divorced wife that a jointly owned former marital residence (into which she had moved after her divorced husband had left it to reside elsewhere) could not be partitioned at her husband's request, because it was homestead. [487 So.2d at p. 1100] Faced with this issue, the Court turned to pre-amendment case law for guidance and reviewed the basic principles applied there. [See, Tullis v. Tullis, 360 So.2d 375 (Fla. 1978)] Based on its analysis of the reasoning contained therein, the Fifth District concluded that "the expansion of the homestead exemption to all natural persons in 1984 does not affect the basic principles of Tullis". [487 So.2d at p. 1101]

Respondents would respectfully suggest to the Honorable Supreme Court of Florida that Wescott points the way for the manner in which the issue presented by the instant appeal should be analyzed. If this is done, Respondents are confident the Court will agree with them that the only conclusion which may properly be reached, on the basis of the facts presented, is that which has already been expressed by three separate 11th Circuit Court Judges in Stone, Alonso, and Lopez [See, supra at pp. 15-16], and in the Tenth Judicial Circuit by His Honor, Judge Dewell-- as later affirmed by the Honorable District Court Judges in and for the Second District Court of Appeal, Danahy, Sheb and Schoonover. [See, In re: Estate of Taylor, 516 So.2d 322 (Fla. 2d DCA 1987)]

CONCLUSION

The Second District Court's affirmation of the decision made by the Honorable John H. Dewell, Circuit Judge, that the homestead exemption provided the residence of Helen V. Taylor pursuant to Article X, Section 4, Florida Constitution (1984) did not extend beyond the death of such individual, where she was not survived by a spouse or dependent family members, should be upheld.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to John W. Frost, II, Esquire and Hank B. Campbell, Esquire, FROST & PURCELL, P.A., 395 South Central Avenue, Bartow, Florida 33830; Gerald Forman, Esquire, Suite 402 - Executive Plaza, 3000 Biscayne Boulevard, Miami, Florida 33137; and Robert A. Ginsburg, Esquire and Shepard J. Nevel, Esquire, Dade County Attorney's Office, Suite 2800, Metro Dade Center, 111 N.W. 1st Street, Miami, Florida 33128, this the 19th day of February, 1988.

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