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IN THE SUPREME COURT OF FLORIDA

IN RE: THE ESTATE OF HELEN V.
TAYLOR, DECEASED

FILED
JAN 20 1988

MARY HELEN HINES and CYNTHIA
WHIDDEN, as Personal Repre-
sentatives of the Estate of
Helen V. Taylor, Deceased,

JAN 20 1988
CLERK OF THE COURT
By *[Signature]*
Deputy Clerk

Petitioners,

Supreme Court Case No.
71,618

vs.

GESSLER CLINIC, P.A. and
WINTER HAVEN HOSPITAL, INC.,

Respondents.

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

ANSWER BRIEF OF RESPONDENTS
ON JURISDICTION

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APPELLEES' ANSWER BRIEF ON JURISDICTION

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,

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followed by appropriate page numbers. The symbol "PBJ" indicates material appearing in Petitioners' Brief on Jurisdiction, whereas the symbol "PBJ-A" refers to documents appearing in the Appendix thereto. Material appearing in the Appendix to this Answer Brief of Respondents will be designated by the symbol "APP".

II. Statement of the Case--

Respondents accept the Statement of the Case contained in Petitioner's Brief on Jurisdiction with the following exceptions:

a. Petitioners' reference to Lopez v. Public Health Trust of Dade County, 509 So.2d 1286 (Fla. 3rd DCA 1987) (Nesbitt, J. dissenting), as being "the only other decision [than Taylor] in the State of Florida as to the subject question [on appeal]", is in error. [PBJ 1] There are, in fact, two other case decisions directly on point which support the Second District Court of Appeal's holding in Taylor. These are, In Re: Estate of Ana M. Alonso, Case No. 85-4285 (Fla. 11th Cir. Ct. 1986) and In Re: Estate of Leslie Stone, Case No. 85-6147(02) (Fla. 11th Cir. Ct. 1985). [See, APP. 1 (Alonso) and 2 (Stone), respectively. See also, In Re: Estate of Margarett Price, 12 F.L.W. 2374 (Fla. 1st DCA October 7, 1987) (proceeds from sale of deceased widow's residence possessed no homestead character and were, therefore, available to satisfy the claims of the

decedent's creditors prior to any distribution thereof to her adult son and daughter) APP. 3]

b. Respondents "Petition to Set Aside Homestead and to Declare it Exempt from Creditors", as submitted to the Trial Court below, was dated July 28, but filed August 20, 1986. [See, PBJ-A.4 and R 24-25]

III. Statement of the Facts--

Petitioners' Statement of the Facts in their Brief on Jurisdiction 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 Appellants to be pertinent but omitted from Petitioner's 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 do not claim 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 adults residing at locations other than that of her residence. [HT 13-14]

Based on the foregoing facts, the Trial Court below stated the actual issue presented for its consideration as "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". [PBJ-A.5] Following due consideration of the facts and law, the Court responded to this question in the negative. [Id.]

SUMMARY OF ARGUMENT

Petitioners are correct in the position, taken within their Brief on Jurisdiction, that there currently exists a conflict of case law pertaining to the construction of Article X, Sec. 4, Florida Constitution (1984). The Supreme Court of Florida has, and is urged to accept, jurisdiction to resolve the existing conflict between the Honorable Second and Third District Courts of Appeal.

Respondents call to the Florida Supreme Court's attention, however, the fact that there are certain errors in the manner in which the conflict of law has been presented to the Court by the Petitioners' Jurisdictional Brief: the nature of which errors Respondents identify and correct in the Argument portion of this Answer Brief.

ARGUMENT

THE OPINION BELOW, AFFIRMING THE DENIAL OF PETITIONER'S REQUEST TO SET ASIDE HOMESTEAD AND TO DECLARE IT EXEMPT FROM CREDITORS, EXPRESSLY CONSTRUES A PROVISION OF THE FLORIDA CONSTITUTION AND DIRECTLY AND EXPRESSLY CONFLICTS WITH LOPEZ V. PUBLIC HEALTH TRUST OF DADE COUNTY, 509 So.2d 1286 (Fla. 3rd DCA 1987).

Respondents concur that there currently exists a conflict of case law, pertaining to the construction of Article X, Sec. 4, Florida Constitution (1984) and that such conflict is subject to resolution pursuant to the Constitutional jurisdiction of Florida's Supreme Court. It is Respondents' position, however, that there are certain errors in the manner in which such conflict of law has been presented to this Honorable Court by the Petitioners' Jurisdictional Brief, the nature of which require immediate correction. Briefly, the areas of Respondents' disagreement with Petitioners are as follows:

a. Petitioners state that the factual settings of Taylor and Lopez are "virtually identical". [PBJ 4-5] This statement is in error. In Lopez, it was necessary to resolve a question of fact, prior to arriving at the Constitutional issue presented by the instant appeal. The factual issue necessary to be resolved in Lopez was whether or not certain adult children of a decedent, living in the decedent's home at the time of her death, were dependent on the decedent for their shelter and support. [PBJ-A.2] In Taylor no such

factual issue existed. All of Mrs. Taylor's children were conceded to be self supporting adults, residing at locations other than that of the decedent's residence, at the time of her death. [See, PBJ 2]

b. Petitioners further state, in their Brief on Jurisdiction, that:

The Trial Court [in Taylor] went beyond the necessary ruling with regard to the issue of whether nondependent heirs enjoy the protection of the homestead exemption and held that said exemption, notwithstanding the 1985 amendment, cannot be claimed by single persons either during their lifetime or by their heirs after death given their lack of a family.

[PBJ 5-6]

Examination of the Trial Court's "Order Denying Petition to Set Aside Homestead" of January 13, 1987, proves this statement to be absolutely incorrect. As was set forth 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.

[PBJ-A.5 (emphasis added)]

The issue which was under consideration by the Trial Court below, and the actual issue ruled upon, and then taken by Petitioners on appeal before the Second District Court, 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 claims of the decedent's creditors". [PGJ-A.5 (emphasis added)] Petitioners have previously acknowledged this at page eighteen (18) of their Initial Brief, filed before the Second District Court of Appeal below.

c. In the closing portion of their Jurisdictional Brief, Petitioners argue the merits of their case in stating that:

The language and intent of the homestead exemption is extremely clear and must not be amended, interpreted or modified by judicial fiat to add a dependency test when none exists or can be inferred in the Constitution.

[PBJ 6 (emphasis added)] This argument, however, is contrary to Petitioners' acknowledgement, before the Trial Court below, that the interpretation of Article X, Sec. 4, Florida's Constitution (1984) for which they currently argue is beyond the intent of Florida's Legislature. Consider the following exchange between counsel for Petitioners and the Trial 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)].

CONCLUSION

The Supreme Court of Florida has, and is urged to accept, jurisdiction to resolve the existing conflict between the Honorable Second and Third District Courts of Appeal, pertaining to their interpretation of Article X, Sec. 4, Florida Constitution (1984).

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, this the 12th day of January, 1988.

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