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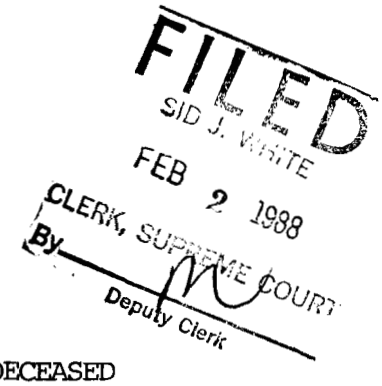

IN THE SUPREME COURT OF FLORIDA

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,

71618

Petitioners,

vs.

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

Respondents.

Supreme Court Consolidated Case No. 70-968

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

PETITIONERS' BRIEF ON THE MERITS

Submitted by:

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CITATION OF AUTHORITIES

STATEMENT OF THE CASE AND FACTS

This is an appeal by Petitioners/Appellants below, Mary Helen Hines and Cynthia Whidden, as Personal Representatives of the Estate of Helen V. Taylor, Deceased, of an opinion filed by the Second District Court of Appeal on December 9, 1987.[1] Therein, the Second District affirmed an Order Denying a Petition to Set Aside Homestead wherein Petitioners sought to have the decedent's former residence declared homestead and therefore exempt from the claims of creditors. Said decision below conceded its conflict with the decision of the Third District Court of Appeal's decision in Lopez v. Public Health Trust of Dade County, 509 So.2d 1286 (Fla. 3rd DCA 1987). On January 14, 1988, this Court accepted jurisdiction of the case and consolidated same with Public Health Trust of Dade County v. Jorge Lopez, Case No. 70968.

On April 15, 1986, Helen V. Taylor died intestate. R.2.[2] The decedent was a single woman and lived alone in her homestead where she and her family, while growing up, had lived since 1957. T.R.5-7. Two of the decedent's four adult children,

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[1] Petitioners/Appellants below, Mary Helen Hines and Cynthia Whidden, as Personal Representatives of the Estate of Helen V. Taylor, Deceased, will be referred to as Petitioners. Respondents/Appellees below, Gessler Clinic, P.A. and Winter Haven Hospital, will be referred to as Respondents.

[2] All references to the record on appeal will be indicated by the symbol "R." followed by the appropriate page number from the record on appeal. All references to the transcript of the hearing on the Petition to Set Aside Homestead and to Declare it Exempt from Creditors will be indicated by the symbol "H.T." followed by the appropriate page number from the hearing transcript. All references to the Appendix of Respondents' Answer Brief will be referred to by "Ap.," followed by the appropriate letter (e.g."A."), followed by the page number from the appended document.

Petitioners herein, were named Co-personal Representatives of her Estate. None of the four children were dependent on the decedent. Upon Petitioners' filing and publishing of the "Notice of Administration," four creditors filed claims, including Respondents. R.11.

On August 20, 1986, Petitioners filed a "Petition To Set Aside Homestead And To Declare It Exempt From Creditors." R.24-25. The property sought to be set aside as homestead was owned by the decedent at her death and the decedent had continuously resided upon the property from 1957 to 1986, during which time the home had been the "family home." T.R.5-7. H.T.6-7. The property, located outside of any municipality consisted of less than one-half acre. H.T.4-8.

The Petition to Set Aside Homestead relied upon the clear and plain language of Article X, Section IV of the Florida Constitution as amended in 1985, which provides in pertinent part:

> There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:
>
> (1) a homestead... upon which the exemption shall be limited to the residence of the owner or his family;
>
> (b) Those exemptions shall inure to the surviving spouse or heirs of the owner.

Id. (emphasis added).

At the hearing on Appellant's Petition to Set Aside Homestead, the testimony and evidence conclusively showed that the decedent was the owner of the property, H.T., pg.7. had continuously resided on the property from 1957 to 1986, H.T. 6-7, and had never abandoned nor alienated the property. However, both the Trial and District Courts held that the decedent's lineal descendants were not entitled to claim the homestead exemption because the decedent's property did not constitute her "homestead" given their lack of dependency upon the decedent at the time of her death. R.59. Specifically, the Trial Court concluded that the amendment to Article X, Section IV wherein the requirement that the property owner be the "head of a family" was abolished and replaced with the requirement that the property owner be a "natural person," did not intend to change the definition of "homestead" which, under pre-amendment case law, required the existence of a family. R.56-59.

SUMMARY OF ARGUMENT

On January 8, 1985, Article X, Section IV the Florida Constitution dealing with the "homestead" exemption was drastically amended, specifically abolishing the "head of a family" requirement in favor of a virtually all encompassing "natural person" requirement. Despite the abolition of the "head of a family" requirement, the Trial Court below held that the only effect of the change to the Florida Constitution adopted by the citizens of this State concerned the qualifying ownership requirements and that the legislature never intended to redefine the word "homestead" and thereby eliminate the family requirement. The Trial Court thus relied upon pre-amendment case law for its definition of "homestead" and held that the decedent's property herein, despite the fact that the decedent was a "natural person," was not homestead. The affirmation by the Second District Court of Appeal of the Trial Court decision was fundamental error in that, without question, the abolition of the "head of a family" requirement clearly and specifically was intended to redefine the nature of "homestead" property and enlarge the class of homestead claimants.

As it currently reads and as it read at the time of the Trial Court's decision below, the homestead exemption merely requires that the property be owned by a "natural person." Nowhere in the Constitution does it require the existence of a family, nor does the term family appear anywhere within the confines of Article X, Section IV. In fact, as the bulk of the

debate in committee and on the floor of the Legislature established, under the amended Article X, Section IV single persons can clearly claim their property as "homestead" and therefore exempt the property from forced sale by creditors. The decision of the Trial Court in relying upon pre-amendment definitions of "homestead" was error in that it failed to properly consider and effectuate the fundamental change in the Constitution and the intent of the Legislature and citizens of the State of Florida.

The homestead exemption is today absolutely clear and unambiguous. The Trial Court therefore erred in looking beyond the clear and plain meaning of the exemption in its attempt to interpret the intent of the exemption beyond its clear and plain meaning in light of now irrelevant case law. Additionally, the legislative history which accompanied the amendment shows conclusively that it was the intent of the legislature, as well as the People of this State, to allow single persons to validly claim their property as homestead, thus exempting their property from forced sale by creditors.

The Trial and District Courts, by interpreting the word "homestead" as requiring the existence of a family, has nullified the clear and specific intent of the legislature and the People of this State in their apparent attempt at reamending, by judicial fiat, the effect of the amendment and extent of the exemption. The Trial and District Courts' decisions constitute fundamental error, which, in order to effectuate the clear intent

of the legislature and the People of this State, must be reversed.

Because the Deceased was a "natural person" at the time of her death, she was clearly entitled to claim homestead status and as such, her property was validly exempt from forced sale by creditors. Since the property was homestead at the time of her death, it passed directly to the decedent's lineal descendants with the exemption inuring to the benefit of her lineal descendants ("heirs"). The Trial and District Courts' decisions, by holding that the property of the decedent was not homestead, are in direct conflict with the clear and unambiguous language of the Constitution as well as its legislative history.

ARGUMENT

I. THE 1985 AMENDMENT TO THE HOMESTEAD EXEMPTION PROVISION IN ARTICLE X, SECTION IV OF THE FLORIDA CONSTITUTION ABOLISHED THE "HEAD OF A FAMILY" REQUIREMENT THEREBY ABOLISHING THE NECESSITY OF A FAMILY IN ORDER TO CLAIM THE HOMESTEAD EXEMPTION.

The question of law presented by this Appeal is: Whether the definition of "homestead" subsequent to the 1985 amendment to Article X, Section IV continues to require the presence of a family. The actual issue at hand is much broader: Did the amendment to Article X, Section IV enlarge the class of claimants to include single people without families?

The Trial and District Courts held that, despite the abolition of the "head of family" requirement, the legislature did not re-define "homestead" and, therefore, the family requirement for homestead still exists. Petitioners strongly submit that the Trial and District Court decisions were in error given the clear and plain meaning of the language now contained in the exemption and the abolition of the "head of the family" requirement. Additionally, the clear legislative history accompanying the amendment supports that clear and plain language in that the amendment was specifically intended and sold to the citizens of this state, both young and old, as inuring to the benefit of single persons.

Based upon the clear language of the Constitution and the legislative history, it is absolutely clear the "homestead" as now defined does not require a family, but that any "natural person" may validly claim their property as "homestead" exempt

from forced sale by creditors, including single persons. The property upon which the decedent had resided from the date of the amendment to her death was, without question, her "homestead" as that term is now defined in the Constitution. Therefore the property was and is exempt from forced sale by her creditors.

Prior to January 8, 1985, Article X, Section IV exempted homestead property from forced sale where the property was owned by the "head of a family." On January 8, 1985, Article X, Section IV was amended and the "head of a family" requirement specifically and clearly abolished. In its place was inserted the requirement that the homestead property, in order to be exempt from forced sale, be owned by a "natural person." Despite this fundamental change in the language and intent of Article X, Section IV, the Trial and District Courts in the case at bar ignored the clear import of that change and applied the definition of homestead as it existed prior to the amendment. However, those prior definitions of homestead which included a family requirement were inextricably tied to the requirement that the homestead claimant be the "head of (a) family."

The decisions of the Trial and District Courts in defining "homestead" as requiring a family were fundamental error in that they directly conflict with the clear intent of the legislature and the People of this State in adopting the amendment to Article X, Section IV. The Appellants strongly contend that this Court, in order to further the clear and unambiguous intention of the legislature and the People of this State, must reverse the decisions below.

Article X, Section IV of the Florida Constitution, amended in January of 1985, specifically provides,

> There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:
>
> (1) A homestead upon which the exemption shall be limited to the residence of the owner or his family; Id.
>
> (b) These exemptions shall inure to the surviving spouse or heirs of the owner ...

Id. (emphasis added).

At the time of decedent's death, Article X, Section IV, as set forth above, specifically provided for the subject property's entitlement to exemption status. From January 8, 1985, until the date of her death, the decedent was, as a single, "natural person," entitled to claim her property as homestead and thereby preclude forced sale by creditors. 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).

The Trial Court's decision in holding that the decedent's property was not homestead is specifically and explicitly against the clear and unambiguous language of the Constitutional provision as amended and is in derogation to the intent of the drafters of the amendment. The Trial Court's decision, if upheld, would improperly serve to judicially nullify the clear intent of the legislature as well as the people of this

State in amending the constitution to remove the requirement that the homestead property be owned by the "head of a family."

In its Order Denying Petition to Set Aside Homestead, the Trial Court recognized that the amendment to the Constitution changed the requirement that exempt property be owned by the "head of a family" to the requirement that the exempt property be owned by a "natural person." R.56. The Trial Court thereby recognized that the amendment changed the qualifying ownership requirement which previously required a family relationship. R.56 However, the Trial Court determined that, despite the change in the qualifying ownership requirement, the legislature never intended to change the definition of "homestead" which, prior to the Amendment, required, according to the Trial Court, in and of itself a family. R.56. This decision by the Trial Court and the affirmance by the Second District were, with all due respect, totally and completely incorrect in that the reasoning applied has no basis in either law or fact, including the legislative history of the amendment.

In attempting to define "homestead" as required under the amended Article X, Section IV, the Trial Court continually resorted to the definition of homestead as set forth by the courts under the now abolished requirement that the homestead be owned by the "head of a family." What the Trial and District Courts failed to recognize is that the case law interpreting the definition of homestead as it existed prior to January 8, 1985, is totally obsolete and meaningless given the abolition of the "head of a family" requirement.

In reaching its decision as to the present definition of "homestead" subsequent to the abolition of the "head of a family" requirement, the Trial Court noted the Second District's opinion in In Re: Estate of VanMeter, 214 So.2d 639 (Fla. 2d DCA 1968), in an apparent effort at supporting its continuation of a "family" requirement notwithstanding the amendment. However, the decision and rationale in VanMeter clearly ties the "family" requirement therein to the "head of a family" requirement in the exemption. Thus, the meaning of "homestead" before the 1985 amendment amendment and the meaning of "homestead" after the 1985 amendment are substantially different and any reliance on pre-amendment definitions of homestead are misplaced.

In VanMeter, in defining homestead under Article X, Section IV, as it existed prior to the amendment, the court stated:

> A home is not necessarily a homestead, even though it is occupied as a residence and even though the person so occupying it is the owner. The crucial qualifying feature is that such resident owner must be the head of a family consisting of himself and at least one other person living together therein in relationship of one family.

Id. at 641. The Second District, in VanMeter, inextricably tied the pre-amendment definition of homestead to the "head of a family" requirement and mandated the presence of a family to effectuate that requirement. Other Florida Courts had likewise discussed the necessity of a family prior to the 1985 amendment in their discussion or application of the "head of a family" requirement. Because the property previously had to be owned by

the "head of a family," homestead necessarily required the existence of a family.

However, the Second District's definition of homestead in VanMeter as well as the other decisions along the same line are no longer applicable because the "head of a family" requirement, and therefore any family requirement, has been abolished. The definition of "homestead" can now only derive from the current language of the Constitution which has expressly and unambiguously obviated the need for a family. There is no longer any mention of family status as a prerequisite to homestead exemption and therefore single persons, under the clear language of Article X, Section IV, can validly claim the homestead exemption.

It has been universally held and recognized that various portions of statutory or constitutional provisions must be construed consistent with other provisions, if possible, in order to harmonize the whole. See e.g., State Ex Rel Quigley vs. Quigley, 446 So.2d 1174, 1176 (Fla. 2d DCA 1984). There is absolutely no harmony in Article X, Section IV as interpreted by the lower court. The lower court defines the term "homestead" based on the now totally abrogated requirement of the owner being a "head of a family." By so doing, the Court has rendered the amendment a virtual nullity in that a "natural person" may not claim homestead status under the Trial Court's ruling unless the former requirement of a family is met. The court has thereby reinstated by judicial fiat the requirement that the property

owner have a family, despite the fact that there is absolutely no language or support for this conclusion in the Constitution.

The patent error reflected by the Trial Court's order below is its continued reliance upon the definition of "homestead" as it existed prior to the amendment in 1985. The requirement of a family has been specifically abolished by the people of this State and the courts must abide by that amendment. Where the intent of the act is clear upon its face and when, standing alone, it is susceptible of but one construction, that construction must then be given. Irvin vs. Peninsular Telephone Company, 53 So.2d 647 (Fla. 1951). This Court appropriately held in Holly v. Auld, 450 So.2d 217 (Fla. 1984):

> Florida case law contains a plethora of rules and extrinsic aides to guide courts in their efforts to discern legislative intent from ambiguously worded statutes. However, "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given as plain and obvious meaning." It has also been accurately stated that courts of this state are "without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power."

Id. at 219.

Article X, Section IV as amended in January of 1985 is absolutely crystal clear on its face and susceptible of but one construction. The Trial Court violated a fundamental rule of statutory construction by nullifying or, at a minimum, amending the clear intent of the people of this State and failing to

interpret and define "homestead" consistent with the amended Constitution as opposed to defining "homestead" under the prior case law interpreting a fundamentally different provision. Because the provision is clear, the Trial Court was under an obligation to interpret the Constitution as written. By failing to do so, the Trial Court committed reversible error.

The courts must give due significance to a change in a statute or Constitutional provision. Kelly vs. Retail Liquor Dealers Assoc. of Dade County, 126 So.2d 299 (Fla. 3d DCA 1961). In the case of a change to a statute or Constitutional provision, it must be assumed that the legislature accorded significance to the change, had a reasonable motive for it and that the change effected was intentional. Id.

As the court recognized in Quigley, supra.

> The legislature is presumed to be cognizant of the judicial construction of a statute when contemplating making changes in the statute. Thus, it is presumed that when the legislature effectuates changes in the statute, it intends to accord the statute a meaning different from that accorded it before the changes were made.

Id. (citations omitted).

It is generally presumed that the construction of an old constitution continues to be applicable to a new one if the language is the same, but where a word in an amendment or a re-enactment of a constitution is omitted, the omission should be presumed to have been intentional. Swartz vs. State, 316 So.2d 618 (Fla. 1st DCA 1975). Constitutional provisions, as well as statutory enactments, are to be interpreted so as to accomplish rather than defeat their purpose. Lewis v. Mosley, 204 So.2d

197, 201 (Fla. 1967). The fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent of the framers and the people who adopted it. Swartz, supra at 621.

In the instant case, the amendment to the Constitution removed the requirement that the owner of the property be a "head of a family." The Constitution as it now reads only requires that the owner of property be a "natural person." Without question, the legislature and the People of this State intended to make a change in the availability of homestead exemption as is clearly reflected in the unambiguous and clear language of the present constitutional section.

In its Order, the Trial Court indicates that the effect of the amendment is a matter of first impression. This is simply not the case. Prior and subsequent to the Trial Court's decision below, the courts of this state have had the opportunity to interpret the amendment to Article X, Section IV, and have specifically recognized that it expanded the class of individuals who may now validly claim homestead exemption. In Westscott vs. Westscott, 487 So.2d 1099 (Fla. 5th DCA 1986) the court specifically recognized that,

> In November, 1984, the electors approved an amendment to Article X, Section IV of the Florida Constitution which extended the homestead exemption to all natural persons.

Additionally, in Steinbrecher vs. Cannon, 501 So.2d 659 (Fla. 1st DCA 1987) the court implicitly recognized that the amendment to Article X, Section IV, created a new class of

persons who may validly claim "homestead" exemption. Specifically, the court in Steinbrecher agreed that the appellee qualified for homestead status (which had previously been unavailable) by virtue of the amendment to Article X, Section IV, of the Florida Constitution which extended the "protection from forced sales of the homestead of natural persons." Steinbrecher at 660.

It is clear that the courts of this state have interpreted the amendment as expanding the availability of homestead status to property owners who are within the class of "natural persons," without regard to whether or not they have a family. This interpretation by the courts is absolutely consistent with the legislative history that accompanied the amendment.

The summary prepared by the Committee on Judiciary regarding the "Homestead Exemption - Head of Family" clearly indicates that the amendment to Article X, Section IV, was designed to allow any owner of homestead property to have homestead protection, if the owner is a natural person. Additionally, House Joint Resolution Number 40 also clearly supports the intention of the legislature and of the people of the State of Florida that any "natural person" may now claim homestead. Specifically, House Joint Resolution Number 40 specifically states,

> Exemption of Homestead and Personal Property from Forced Sale provides that the exemption of a homestead and of personal property to the value of $1,000 from forced sale and certain liens shall extend to any natural person, not just the head of a family.

Without question, the legislative history, as well as the strict interpretation of the language, clearly supports the fact 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 individual even has a family.

In the legislative history argued below and set forth, in part, in the appendix to Respondents' Answer Brief, sponsor Mary Ellen Hawkins noted in her discussion of the proposed amendment with the judiciary full committee on March 29, 1983:

> 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, any person who has a homestead, rather than just the head of a family... I think if everybody's homestead were protected from a judgment, you probably would find a different philosophy on the part of lenders - they would then not look at a homestead as a potential collateral for a debt and be more conservative about lending to people whose credit record might not be so good. Of course 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 is just a matter of philosophy.

Ap.D.3. Further discussion resulted in the following:

> Chair: But this bill also gives the benefit of homestead to persons who have never married or never had children.
>
> Ms. Hawkins: Right, it does.
>
> Chair: So in other words, they are getting some benefits without the obligations that the others have had to assume for some years.

> Ms. Hawkins: That is correct. We also have a society that's not marrying as much as it used to and what I am saying is that if these people are allowed - if their homes are protected, whether they are single, married - we have a lot of older people moving into Florida, for example, one older person who cannot establish himself as head of the family here now, maybe used to be head of the family, but isn't now head of the family because of having no dependents. That person's homestead is also at risk. We are not just talking about young unmarried people, we are talking about older unmarried people.

Ap.D.7-8.

Consistent therewith, the following took place during the floor debate with regard to House Joint Resolution 40 on May 25, 1983.

> Representative Martinez: ...then we have another situation which I am sure is annoying Ms. Hawkins in the area from where she comes, you have this situation: where the home has been a couple who have invested their life savings in a home somewhere and the husband dies. Now the widow is left by herself and she has no household to head because in order to have a household, you must be living with someone related to you and in a family situation. So the widow who is left with her children still living somewhere not at home, and there is a debt that she owed jointly with her husband, her husband dies, she no longer is the head of the household, even though she owns the property. It is the only place she can live. Now that is a situation that this amendment would correct. That widow would then not be... her home sold out from under her by a protecting natural person. You have all kinds of situations that can be described, but it is just... if your home is your castle, it should not mean that your home, you lose that status simply because your children have moved on or your husband dies, and I would urge the adoption of this very humane amendment.

Representative Pajic: Just a minute to support Representative Hawkins' a good joint resolution. If you just drop back from it for a minute and say why has she come forward with this joint resolution. Is it because life today has changed a little bit from the way it used to be. Unfortunately, there are more divorces that happen. Unfortunately there are more cases where a wife will outlive the husband and in those cases, the divorced wife, the widow who is left and living in a separate household, those people do not have the opportunity, the protection from creditors that other folks have. It is only fair that we extend that protection to that divorced person, to that widow, to that widower, to the old maid, you know, even give the old maid the protection, and whatever term we have for the man who is in the similar circumstance, confirmed bachelor. This is a bill that is for the confirmed bachelor, the old maid, the widower, the widow and the divorced person, and it is a good bill to eliminate the discrimination that I hope you will support Representative Hawkins in voting for it.

Representative Graham: ....He stated the Homestead Law is one of the most confusing areas of law in Florida and he is absolutely right. The passage of this amendment would clear up a great deal of that confusion because those of us who practice law, find that one of the greatest problems we have is not in determining what is homestead property, that is a fairly easy determination. The difficulty comes in determining who is head of a household... If you are concerned with the quality, and fairness and equity, then that is another reason for supporting this fine legislation. Because the ruling is, or the theory is that a person's home is his or her castle and should be inviolate. Whether they are supporting children or have a wife, or whether they are just supporting themselves, everybody needs a place to live and idea behind an exemption from forced sale was to protect a person's home and allow them not to have that taken away and have them put out on the streets...

> Representative Hawkins: Mr. Speaker, ladies and gentlemen, this is not something we are deciding here today, this is a Constitutional Amendment that would be placed on the ballot to let the people decide whether they want to be fair to widows who move here, who are widowed, say in another state, move here without dependents who would not be qualified to have homestead exemption under Florida Law... This is a fair thing to do, we have a change in population, we have a lot of older people, we are going to have more older people and when they are thrown out of their home, who is going to take care of them, they are going to become public charges. Therefore, I ask you to let the people decide whether or not they want to extend the homestead protection to any natural person, rather than just the head of the family.

Ap.D.1-6. It is infinitely clear that the Legislature as well as the people of the State of Florida intended the homestead exemption to be expanded to a class of individuals including single persons without dependents. Thus, the plain, unambiguous and therefore uninterpretable provision found in Article X, Section IV(b) which states - "<u>These exemptions shall inure to the surviving spouse or heirs of the owner</u>" - should have been applied to the case at bar and given the fact that the decedent enjoyed the homestead status of a single, natural person without dependents, then the heirs of that natural person likewise enjoyed that exemption. To rule otherwise is to completely remove Subsection (b) of Section IV of Article X of the Florida Constitution from the Constitution without a vote of the Legislature and without a vote of the people of the State of Florida.

In the Trial Court's Order, it poses the question of whether the amendment intended to change the prior court

definition of a homestead or only change the "family head" ownership requirement. R.57. What the Court failed to consider in reaching its decision is that the prior definition of "homestead" has always been interpreted based on the specific language of Article X, Section IV. The courts have considered homestead as requiring a family because that was the exact language and requirement of the prior provision. However, given the abolition of the "head of a family" requirement, any family requirement has been abolished. Homestead, as now used in the Constitution, clearly has taken on a totally and completely different meaning.

The Trial Court specifically noted, contrary totally to the entire legislative history of the amendment, that it did not believe that the intent of the amendment was to broaden the exemption to include the homes of single persons in that there was no social or economic changes in Florida which indicate a need for the creation of a new class of protected people. R.58. While the admission of the Trial Court's "belie(f)" that single persons still cannot enjoy the benefits of the homestead exemption is entirely consistent with and in fact mandated by its specific holding, such a conclusion is totally contrary to the specific language of the Constitution as well as the clear legislative history which accompanied the amendment.

Referring to the summary as prepared by the Judiciary Committee, in discussing the fiscal impact of the amendment, the Committee specifically stated,

> Accurate information relating to home ownership by single persons, other than heads of family, is not currently available. It does appear that there would be an impact upon the private sector in that an additional class of debtors would have their property protected.

Again, the legislative history is absolutely clear that the amendment was designed to extend protection to any and all "natural persons" whether they do or do not have a family. Single persons are clearly included under the definition of a "natural person" and the place where they reside is as much their homestead under the new Constitution provision as was the homestead of individuals who had a family under the former Article X, Section IV.

The Constitutional amendment has created and was intended to create an additional class of debtors which would have their property protected from forced sale. Under the new Article X, Section IV, a natural person is entitled to validly claim homestead status for their property. The term "natural person" does not carry with it the abolished family requirement and therefore single people can constitutionally and without question claim homestead status, thus exempting their property from forced sale.

Throughout its Order, it is clear the Trial Court was concerned about what it perceived as an inequity which would befall creditors. In all due respect, while the Trial Court may have been concerned about the effect of the amendment as written, it presumably had the chance to vote that concern when the amendment was presented to the citizens of the State of Florida.

Having failed in that forum as well as in the Legislative forum, it was totally inappropriate for the Trial Court below to take the matter in its own hands and attempt to rewrite the amendment to suit its concern and belief.

As has been consistently stated, Article X was and is intended to confer valuable rights on the owner of the homestead and was not drawn for the benefit of creditors. Orange Brevard Plumbing and Heating Co. vs. LaCroix, 137 So.2d 201, 204 (Fla. 1962). The deceased, as a "natural person," was entitled to the homestead exemption during her lifetime, and the property which she owned at her death was "homestead" as that term must now be defined under Article X, Section IV.

The decedent died intestate. Pursuant to Florida Statutes §732.101(2), it is the decedent's death that is the event that vests the heirs' right to intestate property. Since the decedent died intestate, pursuant to Florida Statutes §732.104 (1985), the entire estate of the decedent (in the absence of a surviving spouse) descends to the lineal descendants of the decedent. Pursuant to Florida Statutes §732.401 (1985) as well as Subsection (b) of Article X, Section IV, the homestead of a decedent descends in the same manner as other intestate property and thus, by operation of law and the Florida Constitution, the homestead of the decedent descends to the lineal descendants of the decedent free and clear of the claims of any creditors since the benefit of the homestead exemption inures to the lineal descendants of the decedent.

Florida Statutes, §733.677 provides that,

> Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except homestead ...

Additionally, Florida Statutes, §733.608 provides,

> All real and personal property of the decedent, except the homestead, within this state and the rents, income, issues, and profits from it shall be assets in the hands of the personal representatives ...

Based on the above, it is clear that once the property qualifies for homestead status, it retains that status beyond the death of the decedent. The Personal Representatives of an estate may not, under the clear and unambiguous language of the above-referenced statutes, sell the homestead for the benefit of creditors. The homestead does not become part of the decedent's estate, but rather descends directly to the lineal descendants free and clear of the claims of creditors.

Because the decedent's property was her homestead pursuant to the clear and unambiguous language of Article X, Section IV, the trial court's decision was reversible error. The contrary decision of the Trial Court was error mandating reversal. The decedent's property, as her homestead, was and is not subject to the claims of her creditors but passes free and clear to her lineal descendants pursuant to Florida statutory and constitutional law.

CONCLUSION

For the above reasons, the property that the decedent, a "natural person," resided upon and owned at her death was her homestead as that term must now be defined under the amended Article X, Section IV of the Florida Constitution. The Trial Court's reliance on pre-amendment case law to define "homestead" has and will, if accepted, emasculate the amendment and the intention and desires of the Legislature and citizens of the State of Florida in adopting the amendment. The decisions below of the Trial Court were erroneous and must be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail, postage prepaid, to Rex P. Cowan, Esquire, P.O. Box 1378, Winter Haven, Florida 33882; GERALD FORMAN, ESQUIRE, Suite 402 - Executive Plaza, 3000 Biscayne Boulevard, Miami, FL 33137; ROBERT A. GINSBURG, and SHEPARD J. NEVEL, Dade County Attorney's Office, Suite 2800, Metro Dade Center, 111 N.W. 1st Street, Miami, FL 33128, this 1st day of February, 1988

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