

Supreme Court of Florida

No. 76,431

RUTH JURMU HARTWELL, Petitioner,

vs.

JANE BLASINGAME, Respondent.

[August 15, 1991]

HARDING, J.

We have for review Hartwell v. Blasingame, 564 So.2d 543 (Fla. 2d DCA 1990), in which the Second District Court of Appeal construed article X, section 4, Florida Constitution.¹ We have

¹ Article X, section 4(c) provides in pertinent part:

jurisdiction pursuant to article V, section 3(b)(3), Florida Constitution. Based upon our recent decision in City National Bank v. Tescher, 578 So.2d 701 (Fla. 1991), we approve the decision below.

In Tescher, we held that "when a decedent is survived by no minor children and the surviving spouse has waived homestead rights, there is no constitutional restriction on devising homestead property." Id. at 703.

The facts of the instant case are virtually identical to those presented in Tescher. Here, Ruth Jurmu Hartwell, an adult child, appealed an order entered in the probate of the estate of Reino Wilho Jurmu, her father. The order denied the homestead status of a house that Jurmu devised to Harold Smith, Hartwell's former husband. Jurmu's surviving spouse had validly waived her constitutional homestead rights in a prenuptial agreement. However, Hartwell claimed that the spouse's waiver was not binding on her as a statutory heir and lineal descendant of Jurmu, and, thus, the devise was in violation of article X, section 4(c) of the Florida Constitution.

On appeal, the district court held that Hartwell was not entitled to seek the protection of this constitutional provision, as she fell into neither of the classes which the provision is

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child.

intended to protect (surviving spouses and minor children). Accordingly, the court held that the devise was valid under the Florida Constitution and Florida statutory law. Hartwell, 564 So.2d at 546.

Based upon the holding in Tescher, we approve the decision of the district court of appeal in Hartwell.

It is so ordered.

SHAW, C.J. and OVERTON, McDONALD, BARKETT, GRIMES and KOGAN, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of
Appeal - Direct Conflict of Decisions

Second District - Case No. 89-02859

(Pinellas County)

Philip W. Dann, St. Petersburg, Florida,

for Petitioner

Michael K. Reese, Holiday, Florida,

for Respondent