047

IN THE SUPREME COURT
STATE OF FLORIDA

Case No. 79,495

Certified Question from
the United States Court of Appeals
for the Eleventh Circuit
(No. 90-5733)

In re PAULA L. McCOLLAM,

Debtor.

THOMAS E. LeCROY,

Plaintiff-Appellant,

v.

PAULA L. McCOLLAM,

Defendant-Appellee.

REPLY BRIEF OF PLAINTIFF-APPELLANT

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ARGUMENT

This case involves a question certified by the Court of Appeals for the Eleventh Circuit and requires the interpretation of § 222.14, Fla. Stat. The full text of § 222.14 is as follows:

> Exemption of cash surrender value of life insurance policies and annuity contracts from legal process.--The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.

The underlined language was added by the enactment of Chapter 78-76, § 1, (Senate Bill No. 163) in 1978. All of the remaining language existed prior to the amendment (copy of Chapter 222 prior to the 1978 amendment attached in Appendix as Exhibit A.)

In her answer brief, the Debtor focuses on only five words ("annuity contracts ... upon whatever form") and ignores the overall statute and the context of the amendment itself. Her amicus companion ("Dixson") begins with the same narrow focus, but thereafter shifts to a broad overview of Chapter 222, Fla. Stat,, that also avoids a proper analysis of the purpose and legislative intent behind the 1978 amendment to § 222.14. Statutory construction should be the starting point for this Court's analysis.

a. The Appropriateness of Statutory Construction

The Debtor suggests that the Eleventh Circuit "overlooked"

Florida law on statutory construction, and both the Debtor and Dixson cite several cases. Although the cited cases properly state the law regarding statutory construction, the Debtor and Dixson consistently omit critical portions of the holdings and fail to apply the legal standards correctly to the present case.

The Debtor and Dixson refer to Holly V, Auld, 450 So. 2d 217 (Fla. 1984), and the Debtor quotes the following language:

> [C]ourts 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, (citation omitted) (emphasis in original). What they ignore is that Holly states that a court cannot "construe an unambiguous statute in a way which would extend ... its reasonable and obvious implications." Id. (emphasis supplied).

In Holly, this Court recognized that a departure from "a literal interpretation of a statute" is appropriate "'only when there are cogent reasons for believing that the letter [of the law] does not accurately disclose the [legislative] intent.'" Id. (citation omitted). There are such cogent reasons in the present case, but the Debtor and Dixson do not even consider that their literal interpretation of § 222.14 might not accurately reflect the legislature's intent in passing the 1978 amendment.

The Debtor cites Johnson v. Presbyterian Homes of Synod of Florida, Inc., 239 So. 2d 256 (Fla. 1970), for the proposition that "it is only when a literal interpretation of a statute would lead to 'an unreasonable or ridiculous conclusion' that a statute is not

interpreted literally." Debtor's Brief, p. 6. She does not indicate how this determination is to be made; the Johnson case does. "A fair and reasonable interpretation must be made of all laws, with due regard for the ordinary acceptation of the language employed and the object sousht to be accomplished thereby." Id. at 262 (emphasis supplied).

While typically a literal reading of a statute is proper,

> [t]his rule is subject to the qualification that if a part of a statute appears to have a clear meaning if considered alone but when given that meaning is inconsistent with other parts of the same statute or others in pari materia, the Court will examine the entire act and those in pari materia in order to ascertain the overall legislative intent.

Florida State Racing Commission v. McLaughlin, 102 So. 2d 574, 575-76 (Fla. 1958) (emphasis in original). The ambiguity does not have to arise from the particular language itself, but can exist where "doubt as to its meaning is engendered by apparent inconsistency with other parts of the same or a closely related statute." Id. at 576. When such inconsistency appears:

> legislative intent is the pole star by which we must be guided, and this intent must be given effect even though it may appear to contradict the strict letter of the statute and well-settled canons of construction. The primary purpose designated should determine the force and effect of the words used in the act, and no literal interpretation should be given that lends to an unreasonable or ridiculous conclusion or a purpose not designed by the lawmakers.

State V. Sullivan, 95 Fla. 191, 116 So. 255, 261 (1928) (emphasis supplied).

The Debtor quotes approvingly from In re Gefen, 35 B.R. 368,

371 (Bankr. S.D. Fla. 1984) ("[T]he Courts' role is restricted to an interpretation of what exemptions have been enacted ...."), and that is exactly what this Court should determine.

b. what Exemption was Enacted

The Staff Analysis and Economic Statement (dated January 10, 1978) to Senate Bill No. 163 (copy attached in Appendix as Exhibit B) reveals the legislature's aim in amending § 222.14:

> In 1977 the definition of "life insurance" in the Insurance Code, ch. 624-632, F.S., was expanded to include annuity contracts (ch. 77-295). Currently, 5222.14, which is not in the Insurance Code, exempts the cash surrender value of life insurance from attachment, garnishment or legal process. It is not clear whether the term "life insurance" as used in § 222.14 includes proceeds of annuities.

The amendment merely furthered the legislature's original purpose in exempting cash surrender values.

The exemption of cash surrender values was first enacted in 1925 under chapter 10154, Acts of 1925, which became § 7066 of the Compiled General Laws of 1927 and eventually § 222.14, Fla. Stat. The older companion statute that exempted the proceeds of life insurance policies had been enacted in 1872 and later became § 7065 of the Compiled General Laws of 1927.

This Court recognized, in Milam V. Davis, 97 Fla. 916, 123 So. 668, cert. denied, 280 U.S. 601 (1929), that "[t]he Act of 1872 ... is predicated upon a public policy to aid and encourage the making of suitable provision for the family without unduly curtailing the property that is generally subject to the claims of creditors." Id. at 688. In upholding the constitutionality of § 7066, the

court in Cooper v. Taylor, 54 F.2d 1055 (5th Cir.), cert. denied, 286 U.S. 554 (1932), referred to the exemption of life insurance proceeds in Milam and concluded that "the public policy of exempting such proceeds for the benefit of the wife and children would oftentimes be defeated if the cash surrender value were subject to the claims of creditors." Id. at 1057. The enactment of § 7066 (now § 222.14) in 1925 was specifically designed to do nothing more than ensure that the policy reasons behind § 7065 (now § 222.13) would not be frustrated by a creditor's execution on the cash surrender value, thereby depriving the beneficiary of the proceeds. Id. at 1056.

The original purpose of exempting the proceeds of life insurance (§ 7065, later § 222.13) was to encourage persons to purchase life insurance. The exemption of the cash surrender value (§ 7066, later § 222.14) ensured the availability of the proceeds when the appropriate time came. Adding annuities to the statute exempting the cash surrender value (following the expansion of "life insurance" in the Insurance Code to include annuity contracts) merely furthered the goals of the proceeds exemption by encouraging persons to purchase annuity contracts as an alternative to traditional life insurance policies.

c. Statutory Construction of § 222.14 in the Present *Case*

1. The Debtor's (Too Narrow) Analysis

The Debtor ignores the life insurance aspects of § 222.14, focuses entirely on five words ("annuity contracts ... upon whatever form"), and concludes that there is no ambiguity and

therefore nothing to interpret. In addition, she seriously misstates the amendment itself:

> Obviously, if the legislature had intended to limit Section 222.14 to certain annuity contracts, it would not have included the language, "upon whatever form", and, instead, would have defined annuity as including only certain annuity contracts.

Debtor's Brief, p. 14. But, the legislature did not "include" the phrase "upon whatever form"; the phrase had been a part of the statute since its enactment in 1925.[1/]

The Debtor does not refer to § 222.13 (without which an analysis of § 222.14 is incomplete) or even Chapter 222. Instead, she focuses on five words, assumes that "upon whatever form" is the equivalent of "for whatever purpose", and concludes that wherever there is an annuity, there must be an exemption.

As for any statutory construction, the Debtor recites that the Eleventh Circuit called the language of § 222.14 "broad." She then asserts that isolated words which by themselves are not ambiguous (regardless of the context) must be given literal interpretations, observes (correctly) that exemption statutes are to be liberally construed[2/], and concludes (once again) that wherever there is an

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[1/]The significance of "upon whatever form" is illustrated by Bank of Greenwood v. Rawls, 117 Fla. 381, 158 So. 173 (Fla. 1934), where this Court held that "cash surrender value ... is not limited to such a cash surrender value as can be demanded and legally enforced against an unwilling insurance company according to the usual significance of the term 'cash surrender value' of life insurance as that term is ordinarily used in the law of insurance strictissimis verbis." 158 So. at 175.

[2/]The Debtor cites spendthrift language in the Settlement Agreement. Debtor's Brief, pp. 9-10. At oral argument before the (continued...)

annuity, there must be an exemption.

Ironically, the Debtor cites Patterson v. Shumate, 6 HLW Fed. S416 (U.S. June 15, 1992), as an example of when statutory construction is unnecessary. Patterson concerned whether an ERISA-qualified pension plan was excluded from the bankruptcy estate under § 541(c)(2). The Supreme Court did not just focus on § 541(c)(2), but instead discussed no fewer than six other federal statutes to ascertain whether the context of the language suggested that a non-literal reading was appropriate.

The Debtor states that "[t]he legislature's use of the comprehensive term [annuity contracts] indicates its intent to include everything embraced within the term", Debtor's Brief, p. 14, and she cites McLaughlin, 102 So. 2d at 576, for support. In analyzing the pertinent statute in McLaughlin, this Court stated that "[t]here is nothing in the context which suggests a different meaning. ... The plain language of the quoted portion of the statute does not appear to be in any way inconsistent with the remainder of the statute." Id. (emphasis supplied).

Patterson used this same approach, and while a literal interpretation was proper in both Patterson and McLaughlin, the adoption of a literal interpretation followed an analysis of the

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2/ (...continued)
Eleventh Circuit, the Debtor's counsel made a passing reference to this language and was quickly countered by the court's admonition that the Debtor was a co-creator of the agreement and could not effect spendthrift provisions for her own benefit. E.g., In re Witlin, 640 F.2d 661, 663 (5th Cir. 1981) ("If a settlor creates a trust for his own benefits and inserts a spendthrift clause, it is void as far as then existing or future creditors are concerned ....").

context of the language. The Debtor ignores both the exemption of cash surrender values and the connection with § 222.13 (which prompted the predecessor of § 222.14 in the first place).

To understand what is "embraced within the term [annuity]", the term itself must be understood. That requires an examination of the whole statute (§ 222.14) and its companion (§ 222.13) to determine whether the context suggests that a non-literal interpretation is appropriate (i.e., per Johnson, a reading "with due regard for the ordinary acceptation of the language employed and the object sousht to be accomplished thereby." 239 So. 2d at 262 (emphasis supplied)). The Debtor's superficial analysis leads to her desired result, but also supports "a purpose not designed by the lawmakers." Sullivan, 116 So. at 261.

Finally, the Debtor requests that any decision be prospective and implies that her rights in the annuity were acquired in reliance on prior judicial interpretation of § 222.14. Debtor's Brief, p. 17. The cold reality is that the Debtor entered into the Settlement Agreement in 1985, and the first cases to construe § 222.14 with respect to structured settlements were the two Benedict decisions, In re Benedict, 88 B.R. 387 and 390 (Bankr. M.D. Fla. 1988).

2. Dixson's (Too Narrow/Too Broad) Analysis

Dixson also refers to the "upon whatever form" language, but his analysis suffers the same infirmities as the Debtor's. In referring to § 222.14, he offers "[i]ts text, as it pertains to annuity contracts", Dixson's Brief, p. 5, thereby avoiding having

to explain why the amendment was inserted in an existing statute. He further states that "the legislature meant to exempt the proceeds of any investment in the form of an annuity" Dixson's Brief, pp. 6-7 (emphasis in original), but fails to explain how the subject annuity can be called an "investment".

Incredibly, he asserts that if the annuity company defaulted on the payments under the Settlement Agreement and Travelers made them instead, "the payments would still be made on an annual [sic] basis and would, therefore, still be exempt under the Florida statute because they would still be proceeds of an annuity under section 222.14. All that would have changed would be the payor." Dixson's Brief, p. 10.[3/] His argument that the obligation of Travelers under ¶ 6 of the Settlement Agreement was not property of the Debtor's bankruptcy estate is pure sophistry that contradicts § 541(a) of the Bankruptcy code, which defines the property included in a bankruptcy estate. (Such "logic" would preclude a trustee from collecting debts that were owed to a debtor but not payable until after a bankruptcy was filed.)

Dixson then turns to an overly broad view of § 222.14 as a portion of Chapter 222. He takes the Creditor's reference to §§ 222.13 and 222.14 as dealing with retirement instruments, shifts quickly to the Creditor's reference to the overlap between the items contained in an Ohio exemption statute and those generally in Chapter 222, and then declares (erroneously) that the Creditor

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[3/]Presumably, according to Dixson's distorted reasoning, a promissory note payable to the Debtor on an annual basis would constitute an annuity and be an exempt asset under § 222.14.

somehow intimated that Chapter 222 "revolves about retirement benefits". Dixson's Brief, p. 12. Dixson then states that Chapter 222 covers various matters, his literal reading of § 222.14 results in an exemption for any holder of an annuity, exemptions protect debtors from creditors, and the purposes of Chapter 222 would be served by a literal reading of § 222.14.[4/]

3. The Proper Analysis

The 1978 amendment and the resulting statute cannot be properly analyzed without reference to § 222.13. A consideration of those statutes leads to an understanding that the amendment was designed to encourage persons to purchase annuity contracts as an alternative to traditional life insurance policies.

In the present case, the Debtor did not purchase an annuity contract. She was a party to a structured settlement.[5/] The settlement provided for Travelers to remain liable for the sums to be paid and to purchase "[a]s security for said installment

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[4/]The Debtor's and Dixson's analyses reveal the hazard of too narrow and too broad a focus in statutory construction. To an ant perched on the edge of a pothole, the crater appears to swallow everything in sight. To someone in an airplane, the pothole is lost in the vast expanse of roadway, To a person on the ground, however, the pothole is a pothole, nothing more nor less, Same paths cross over it, and some do not, but proper perspective means that the distinction can be made. In this case, the Debtor's focus on only five words in the statute is insufficient, as is Dixson's discourse on Chapter 222. The proper perspective is gained by focusing on §§ 222.13 and 222.14, which neither the Debtor nor Dixson seems too eager to do.

[5/]The Debtor asserts that she is "a non-professional, collecting an annuity to support herself ...." (Debtor's Brief, p. 16). Not only is there no evidence in the record regarding the annuity payments' contribution to her support, the issue is irrelevant to the issue at hand, and the Debtor's bald attempt to curry sympathy should be ignored, if not sanctioned.

payments" an annuity. Settlement Agreement, ¶6. The primary impetus for this arrangement was a tax benefit for the Debtor. "If properly structured, the proceeds of the annuity contracts are excluded from the recipient's gross income for tax purposes." Benedict, 88 B.R. at 388 (discussing structured settlements).

If the Debtor had instead opted to receive a lump sum payment and had then taken the net proceeds and purchased an annuity, she would have fulfilled the intention of the legislature in enacting §§ 222.13 and 222.14 in general and the 1978 amendment in particular. Of course, that option would have burdened her with the associated income tax consequences.

By no stretch of the imagination was the annuity in this case purchased with the purpose behind the 1978 amendment in mind. The arrangement was tax-driven, and the goal of encouraging persons to purchase annuities would not be furthered by allowing the exemption of an annuity purchased by a third party (Travelers).[6/] The payments represent the funds that the Debtor would have received from Travelers if she had not elected (for tax reasons) to defer them.

d. Other Courts and Other Statutes

The Debtor's discussion of the annuity cases from other jurisdictions is extremely limited. Her only attempt to

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[6/]Dixson argues that the failure to amend § 222.14 following the enactment of Chapter 24 (under which lottery prizes are paid through the State's purchase of single premium annuities) means that such annuities are within § 222.14. The simple rejoinder to this argument is that the legislature may not have considered an amendment necessary if § 222.14 is given a proper interpretation.

distinguish In re Young, 806 F.2d 1303 (5th Cir. 1987), (other than to state that she is "not an attorney seeking to protect her fees"; Debtor's Brief, p. 16) is to imply that under the Louisiana statute the substance of the arrangement is the key, but under the Florida statute the form should govern over substance. She distinguishes In re Simon, 71 B.R. 65 (Bankr. N.D. Ohio 1987), and In re Rhinebolt, 131 B.R. 973 (Bankr. S.D. Fla. 1991), by declaring that § 222.14 does not relate to future earnings (a fact important in construing the Ohio statute, but not relevant to § 222.14), but misses (even though she mentions) the point of Simon and Rhinebolt: "annuity" was construed in the context of the statute. With regard to In re Johnson, 108 B.R. 240 (Bankr. D.N.D. 1989), she attempts no serious distinction[7/] and merely recites that the North Dakota annuity statute was construed in the context of the entire exemption chapter (and "annuity" was not interpreted literally).

Dixson states that these cases "concern statutes which are materially different from section 222.14, Fla.Stat.; none of them contain the unqualified language of section 222.14." Dixson's Brief, p. 8. He concludes that "[i]t is obvious that if the statutes considered in the cases cited by appellant were as broad as Florida's, the results in those cases would have been different." Dixson's Brief, p. 9.

[7/] Except for noting that "[l]ike Ohio, North Dakota has a separate statute which contains a specific exemption for payments on account of personal injury." Debtor's Brief, p. 13. The absence of a separate statute in Florida does not imply that the legislature intended to exempt in § 222.14 personal injury recoveries that are funded by annuities.

In fact, the Louisiana statute (La.Rev.Stat.Ann. § 20:33) exempts "all proceeds of and payments under annuity policies or plans", and the North Dakota statute (N.D. Cent. Code § 28-22-03.1(3)) exempts "annuity policies or plans". Neither of these statutes on its face restricts the term "annuity". Only the Ohio statute (O.R.C. § 2329.66(A)(10)(b)) contains a limitation, requiring the annuity to be "on account of illness, disability, death, age, or length of service". That distinction does not lessen the value of the reasoning in Simon and Rhinebolt, however, where the courts reviewed the context of the statutes and the substance of the annuity arrangements.

The only new case cited by the Debtor is In re Wommack, 80 B.R. 578 (Bankr. M.D. Ga. 1987). The relevant Georgia exemption statute (O.C.G.A. § 44-13-100(a)(2)(E)) was designed to cover matters in the nature of future earnings. Given the unrebutted evidence that the annuity was set up in light of the debtor's age, Id. at 580, the Wommack court found that the annuity satisfied the legislature's intention. In the present case, § 222.14 was not designed to exempt future earnings (that is accomplished by §§ 222.11, 222.18, and 222.21). The annuity for the Debtor was set up for a tax advantage and purchased with a third party's funds, neither of which fulfills the purpose of the 1978 amendment. Except for reinforcing the Creditor's argument that the purpose of a statute must be determined and the substance of the annuity arrangement analyzed in terms of the statutory purpose, Wommack is inapplicable to the present case.

CONCLUSION

Dixson states the goal of Chapter 222 to be "the protection of debtors from the claims of creditors in certain specified contexts". Dixson's Brief, p. 13. The receipt of annuity payments as part of a structured settlement that was effectuated for income tax reasons, however, is not one of those contexts. To extend the exemption for annuity contracts under § 222.14 to encompass the present situation "would be an abrogation of legislative power." Holly, 450 So. 2d at 219.

The 1978 amendment was intended to encourage persons to purchase annuity contracts as an alternative to traditional life insurance policies. Dixson's own case (an attempt to discharge debts while receiving lottery winnings) illustrates a distorted result that can be produced by a literal reading of "annuity" in § 222.14. In receiving annuity payments under a structured settlement, the Debtor has done nothing more than Dixson in terms of furthering the legislature's purpose in the 1978 amendment.

If the Debtor had taken the settlement proceeds and purchased an annuity, she would have fulfilled the purpose of the 1978 amendment, but that is not what occurred. The exemption under § 222.14 should be restricted to annuity contracts that are purchased by debtors with their own funds and in furtherance of the legislature's objectives in enacting §§ 222.13 and 222.14.

The question certified to this Court by the Eleventh Circuit should be answered in the negative.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Plaintiff-Appellant was mailed this 27th day of July, 1992, to the following persons:

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✓ APPENDIX A

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TITLE XIV

HOMESTEAD AND EXEMPTIONS

CHAPTER 222

METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS

222.01 Designation of homestead by owner before levy.
222.02 Designation of homestead after the levy.
222.03 Survey at instance of dissatisfied creditor.
222.04 Sale after survey.
222.05 Setting apart leasehold.
222.06 Method of exempting personal property; inventory.
222.07 Defendant's rights of selection.
222.08 Jurisdiction to set apart homestead and exemption.
222.09 Injunction to prevent sale.
222.10 Jurisdiction to subject property claimed to be exempt.
222.11 Exemption of wages from garnishment.
222.12 Proceedings for exemption.
222.13 Life insurance policies; disposition of proceeds.
222.14 Exemption of cash surrender value of life insurance policies from legal process.
222.15 Wages due deceased employee may be paid wife, etc.
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222.17 Manifesting and evidencing domicile in Florida.
222.18 Exempting disability income benefits from legal processes.
222.19 Surviving spouse as head of family; defined.

222.01 Designation of homestead by owner before levy.—Whenever any person, being the head of a family, residing in this state desires to avail himself of the benefit of the provisions of the constitution and laws exempting property as a homestead from forced sale under any process of law, he may make a statement, in writing, containing a description of the real property, mobile home, or modular home claimed to be exempt and declaring that the same is the homestead of the party in whose behalf such claim shall be made. Such statement shall be signed by the person making the same and recorded in the circuit court.

History.—s. 1, ch. 1715, 1869; RS 1998; GS 2520; RGS 3875; CGL 5782; s. 20, ch. 73-334; s. 2, ch. 77-299; cf.—s. 4, Art. X, State Const.

s. 196.141 Homestead exemptions; duty of property appraiser.

222.02 Designation of homestead after the levy.—Whenever a levy is made upon the lands, tenements, mobile home, or modular home of such head of a family whose homestead has not been set apart and selected, such person, his agent or attorney, may in writing notify the officer making such levy, by notice under oath made before any officer of this state duly authorized to administer the same, at any time before the day appointed for the sale thereof, of what he regards as his homestead, with a description thereof, and the remainder only shall be subject to sale under such levy.

History.—s. 2, ch. 1715, 1869; RS 1999; GS 2521; RGS 3876; CGL 6783; s. 3, ch. 77-299.

222.03 Survey at instance of dissatisfied creditor.—If the creditor in any execution or process sought to be levied is dissatisfied with the quantity of land selected and set apart, and shall himself, or by his agent or attorney, notify the officer levying, the officer shall at the creditor's request cause the same to be surveyed, and when the homestead is not within the corporate limits of any town or city, the person claiming said exemption shall have the right to set apart that portion of land belonging to him which includes the residence, or not, at his option, and if the first tract or parcel does not contain 160 acres, the said officer shall set apart the remainder from any other tract or tracts claimed by the debtor, but in every case taking all the land lying contiguous until the whole quantity of 160 acres is made up. The person claiming the exemption shall not be forced to take as his homestead any tract or portion of a tract, if any defect exists in the title, except at his option. The expense of such survey shall be chargeable on the execution as costs; but if it shall appear that the person claiming such exemption does not own more than 160 acres in the state, the expenses of said survey shall be paid by the person directing the same to be made.

History.—s. 3, ch. 1715, 1869; s. 1, ch. 1944, 1873; RS 2000; GS 2522; RGS 3877; CGL 5784.

222.04 Sale after survey.—After such survey has been made, the officer making the levy may sell the property levied upon not included in such property set off in such manner.

History.—s. 4, ch. 1715, 1869; RS 2001; GS 2523; RGS 3878; CGL 5785.

222.05 Setting apart leasehold.—Any person owning and occupying any dwelling house, including a mobile home used as a residence, or modular home, on land not his own which he may lawfully possess, by lease or otherwise, and claiming such house, mobile home, or modular home as his homestead, shall

be entitled to the exemption of such house, mobile home, or modular home from levy and sale as aforesaid.

History.—s. 5, ch. 1715, 1869; RS 2002; GS 2524; RGS 3879; CGL 5786; s. 1, ch. 77-299.

222.06 Method of **exempting** personal **property**; inventory.—

(1) When a levy is made by writ ofexecution, writ of attachment, or writ of garnishment upon any personal property, money, choses in action, or other property of a personal nature, which may be exempt from levy and sale by any process upon which levy shall have been made, the debtor, if he wishes to claim said property as exempt from sale, as aforesaid, shall make or cause to be made an inventory of the whole of his personal property, affixing thereto true and correct cash valuations thereof, and shall attach to such inventory an affidavit made by himself, his attorney or authorized agent that said inventory contains a true and correct list or schedule of all the **personal** property owned by him in the *state*, and the true cash value thereof, and shall in such schedule designate which said property he claims to be exempt, or wishes to have set aside as his said exemption.

(2) Said inventory or schedule shall be in duplicate, and both thereof shall be delivered to the officer making the levy, or serving the writ under which said property has been levied upon. Thereupon such officer shall serve one of said schedules of said property upon the creditor or plaintiff, or his attorney or agent, within 24 hours after the same shall be so delivered to him.

(3) Then the said creditor, his attorney or agent, if he wishes to contest the claim of exemption so made by the debtor, shall file with such officer his notice of contest thereof within 24 hours after receipt of copy of schedule by him; and upon failure or refusal of the creditor, his attorney or agent, to file notice of contest of such exemption within 24 hours as aforesaid, the said officer shall release the said property from such levy, and redeliver the same to the said debtor.

(4) If notice of contest shall be filed, as aforesaid, then said officer shall appoint three disinterested appraisers who shall be citizens of the county, who. after having made oath before said officer that they will faithfully appraise said property, shall appraise the same at its cash value and affix to the several items or property enumerated in the inventory or schedule its cash value, and the appraisement shall be signed and sworn to by the said appraisers.

(5) Notice of the time and place of appraisement shall be given *to* the said creditor, his attorney or agent at least 24 hours before the making of the same. The appraisers shall be entitled to the same fees as are allowed to jurors, and the same shall be allowed as costs upon the process in the hands of the officer, but no costs shall be required of the debtor for the proceedings to appraise and exempt any property claimed by him to be exempt; provided, that any property owned by him, over and above the amount allowed by law as exempt, shall be liable to sale under such process, and for the costs of this proceeding. The officer levying such writ may demand of the creditor sufficient deposit of costs to pay the expenses of appraisement, as aforesaid, not exceeding the sum of $12, before he shall be required to appoint appraisers.

(6) If the property or any part thereof claimed to be exempt is held under a writ of garnishment, the officer levying said writ shall file, within 36 hours, if no contest of said exemption has been filed with him, the debtor's schedule of property claimed to be exempt with the clerk, or judge if there be no clerk, of the court out of which said writ issued, and thereupon the clerk, or the judge if there be no clerk, shall make an order, without delay, releasing or discharging the said writ, which said order may be delivered to the garnishee by the debtor, his attorney or agent, or may be served by the said officer; for the making and serving of said order a fee of $1 each may be collected by the officer and by the clerk or judge, but no other or further charges therefor shall be made against the debtor.

History.—s. 7, ch. 1715.1869; RS 2003; CS 2525; ss. 1, 2, ch. 6927, 1915; RGS 3880; CGL 5787.

222.07 Defendant's rights of selection.—Upon the completion of the inventory the **person** entitled to the exemption, his agent or attorney, **may** select from such an inventory an amount of property not exceeding, according to such appraisal, the amount of value exempted; but if the person *so* entitled, or his agent or attorney, does not appear and make such selection, the officer shall make the selection for him, and the property not *so* selected as exempt may be sold.

History.—s. 8, ch. 1715. 1869; RS 2004; GS 2526; RGS 3881; CGL 5788.

222.08 Jurisdiction **to** set apart homestead **and** exemption.—The circuit courts have equity jurisdiction to order and decree the setting apart of homesteads and of exemptions of personal property from forced sales.

History.—s. 2, ch. 3246. 1881; RS 2005; GS 2527; RGS 3882; CGL 5789.

222.09 Injunction to prevent sale.—The circuit courts have equity jurisdiction to enjoin the sale of all property, real and personal, **that** is exempt **from** forced sale.

History.—s. 1 ch. 3246. 1881; RS 2006; GS *2528;* RGS 3883; CGL 5790.

222.10 Jurisdiction **to** subject **property claimed to be exempt.—The** circuit courts **have** equity jurisdiction upon bill filed **by** a creditor or other person interested in enforcing any unsatisfied judgment or decree, to determine whether any property. real or personal, claimed to be exempt, is so exempt, and in **case** it be not exempt, the court shall, by its decree subject it, or *so* much thereofas may be necessary, to the satisfaction of said judgment or decree and may enjoin the sheriff or other officer from setting apart as exempt property, real or personal, which is not exempt, and may annul all exemptions made and set apart by the sheriff or other officer,

History.—s 3, ch 3246, 1881; RS 2007; GS 2529. RGS 3884; CGL 5791

222.11 Exemption of wages **from** garnishment.—No writ of attachment or garnishment or other process shall issue from any of the courts of this state to attach or delay the payment of any

money or other thing due to any person who is the head of a family residing in this state, when the money or other thing is due for the personal labor or services of such person.

History.—s. 1, ch. 2065, 1875; RS 2008; GS 2530; RGS 3885; CGL 5792

222.12 Proceedings for exemption.—Whenever any money or other thing due for labor or services as aforesaid is attached by such process, the person to whom the same is due and owing may make oath before the officer who issued the process that the money attached is due for the personal labor and services of such person, and he is the head of a family residing in said state. When such an affidavit is made, notice of same shall be forthwith given to the party, or his attorney, who sued out the process, and if the facts set forth in such affidavit are not denied under oath within 2 days after the service of said notice, the process shall be returned, and all proceedings under the same shall cease. If the facts stated in the *affidavit* are denied by the party who sued out the process within the time above set forth and under oath, then the matter shall be tried by the court from which the writ or process issued, in like manner as claims to property levied upon by writ of execution are tried, and the money or thing attached shall remain subject to the process until released by the judgment of the court which shall try the issue.

History.—s. 2, ch. 2065, 1875; RS 2009; GS 2531; RGS 3886; CGL 5793.

222.13 Life insurance policies; disposition of proceeds.—

(1) Whenever any person residing in the state shall die leaving insurance on his life, the said insurance shall inure exclusively to the benefit of the person for whose use and benefit such insurance is designated in the policy, and the proceeds thereof shall be exempt from the claims of creditors of the insured unless the insurance policy or a valid assignment thereof provides otherwise. Notwithstanding the foregoing, whenever the insurance, by designation or otherwise, is payable to the insured or his estate or to his executors, administrators. or assigns, the insurance proceeds shall become a part of the insured's estate for all purposes and shall be administered by the personal representative of the estate of the insured in accordance with the probate laws of the state in like manner as other assets of the insured's estate.

(2) Payments as herein directed shall, in every such case, discharge the insurer from any further liability under the policy, and the insurer shall in no event be responsible for, or be required to see to, the application of such payments.

History.—s. 1, ch. 1864, 1872; RS 2347; s. 1, ch. 4555, 1897; s. 1, ch. 5165, 1903; CS 3154; RGS 4977; CGL 7065; s. 1, ch. 29861, 1955; s. 1, ch. 59-333; s. 1, ch. 63-230; s. 1, ch. 70-376; s. 51, ch. 71-355

222.14 Exemption of cash surrender value of life insurance policies from legal process.—The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured, unless the insurance policy was effected for the benefit of such creditor.

History.—s. 1, ch. 10154, 1925; CGL 7066

222.15 Wages due deceased employee may be paid wife, etc.—

(1) It is lawful for any employer, in case of the death of an employee, to pay to the wife or husband, and in case there is no wife or husband, then to the child or children, provided the child or children be over the age of 18 years, and in case there is no child or children, then to the father or mother. any wages or traveling expenses that may be due said employee at the time of his death.

(2) It is also lawful for the Division of Employment Security of the Department of Commerce, in case of death of any unemployed individual, to pay to those persons referred to in subsection (1) any unemployment compensation payments that may be due said individual at the time of his death.

History.—s. 1, ch. 7366, 1917; RGS 4979; CGL 7068; s. 1, ch. 20407, 1941; s. 1, ch. 63-165; ss. 17.35, ch. 69-106; s. 1, ch. 73-283.
cf.—s. 215.28 Payroll deductions due deceased employe.

222.16 Wages or unemployment compensation payments so paid not subject to administration.—Any wages, traveling expenses, or unemployment compensation payments so paid under the authority of s. 222.15 shall not be considered as assets of the estate and subject to administration; provided. however, that the traveling expenses so exempted from administration shall not exceed the sum of $300.

History.—s. 2, ch. 7366, 1917; RGS 4980; CGL 7069; s. 2, ch. 20407, 1941; s. 2, ch. 63-165.
cf.—s. 215.28 Payroll deductions.

222.17 Manifesting and evidencing domicile in Florida.—

(1) Any person who shall have established a domicile in this state may manifest and evidence the same by filing in the office of the Clerk of the Circuit Court for the county in which the said person shall reside, a sworn statement showing that he resides in and maintains a place of abode in that county which he recognizes and intends to maintain as his permanent home.

(2) Any person who shall have established a domicile in the State of Florida, but who shall maintain another place or places of abode in some other state or states, may manifest and evidence his domicile in this state by filing in the office of the Clerk of the Circuit Court for the county in which he resides, a sworn statement that his place of *abode* in Florida constitutes his predominant and principal home, and that he intends to continue it permanently as such.

(3) Such sworn statement shall contain, in addition to the foregoing, a declaration that the person making the same is, at the time of making such statement, a bona fide resident of the state, and shall set forth therein his place of residence within the state, the city, county and state wherein he formerly resided, and the place or places, if any, where he maintains another or other place or places of abode.

(4) Any person who shall have been or who shall be domiciled in a state other than the State of Florida, and who has or who may have a place of abode

within the State of Florida, or who has or may do or perform other acts within the State of Florida, which independently of the actual intention of such person respecting his domicile might be taken to indicate that such person is or may intend to be or become domiciled in the State of Florida, and if such person desires to maintain or continue his domicile in such state other than the State of Florida, he may manifest and evidence his permanent domicile and his intention to permanently maintain and continue his domicile in such state other than the State of Florida, by filing in the office of the Clerk of the Circuit Court in any county in the State of Florida in which he may have a place of abode or in which he may have done or performed such acts which independently may indicate that he is or may intend to be or become domiciled in the State of Florida, a sworn statement that his domicile is in such state other than the State of Florida, as the case may be, naming such state where he is domiciled and stating that he intends to permanently continue and maintain his domicile in such other state so named in said sworn statement. Such sworn statement shall also contain a declaration that the person making the same is at the time of the making of such statement a bona fide resident of such state other than the State of Florida, and shall set forth therein his place of abode within the State of Florida, if any. Such sworn statement may contain such other and further facts with reference to any acts done or performed by such person which such person desires or intends not to be construed as evidencing any intention to establish his domicile within the State of Florida.

(5) The sworn statement permitted by this section shall be signed under oath before an official authorized to take affidavits. Upon the filing of such declaration with the Clerk of the Circuit Court, it shall be the duty of the clerk in whose office such declaration is filed to record the same in a book to be provided for that purpose. For the performance of the duties herein prescribed, the Clerk of the Circuit Court shall collect a service charge for each declaration as provided in s. 28.24.

(6) It shall be the duty of the Department of Legal Affairs to prescribe a form for the declaration herein provided for, and to furnish the same to the several clerks of the circuit courts of the state.

(7) Nothing herein shall be construed to repeal or abrogate other existing methods of proving and evidencing domicile except as herein specifically provided.

History.—ss 1-6, ch 20412 1941; s 1, ch 26896 1951; ss 11 35, ch 69-106; s 15, ch 70-134

222.18 Exempting disability income benefits from legal processes.—Disability income benefits under any policy or contract of life, health, accident, or other insurance of whatever form, shall not in any case be liable to attachment, garnishment, or legal process in the state, in favor of any creditor or creditors of the recipient of such disability income benefits, unless such policy or contract of insurance was effected for the benefit of such creditor or creditors.

History.—s 1, ch 20741, 1941

222.19 Surviving spouse as head of family, defined.—

(1) It is the declared intention of the Legislature that the purpose of the constitutional exemption of the homestead is to shelter the family and the surviving spouse, and such purpose should be carried out in a liberal spirit and in favor of those entitled to the exemption.

(2) The head-of-family status required to qualify the owner's property for homestead exemption, permitting such property to be exempt from forced sale under process of any court as set forth in s. 4, Art. X of the State Constitution, shall inure to the benefit of the surviving tenant by the entirety or spouse of the owner. The acquisition of this status shall inure to the surviving spouse irrespective of the fact that there are not two persons living together as one family under the direction of one of them who is recognized as the head of the family.

History.—s 1, ch 76-36

_____ APPENDIX A

_____ APPENDIX B

_____ APPENDIX C

_____ APPENDIX D

_____ APPENDIX E

_____ APPENDIX F

_____ APPENDIX G

_____ APPENDIX H

_____ APPENDIX I

_____ APPENDIX J

_____ APPENDIX K

_____ APPENDIX L

_____ APPENDIX M

_____ APPENDIX N

DATE: January 10, 1978

COMMITTEE ACTION: 1. FAV; 12-14-77

2. FAV; 1-18-78

ANALYST	STAFF DIRECTOR
1. Brainerd	Martin
2. Krasovsky	Alberdi
3.	

SENATE

STAFF ANALYSIS AND ECONOMIC STATEMENT

JUDICIARY-CIVIL COMMITTEE

3. _____

AMEND. OR CS ATTACHED _____

BILL NO. AND SPONSOR:

SB 163
Senator Scott

SUBJECT:

Annuity Contracts

REFERENCES: 1. Commerce; 2. Judiciary-Civil

I. BILL SUMMARY:

This bill amends s. 222.14, Florida Statutes, by exempting from legal process (i.e., attachment or garnishment) the proceeds of annuity contracts issued to citizens or residents of Florida.

II. PURPOSE:

A. Present Situation:

In 1977 the definition of life insurance in the Insurance Code, Chs. 624-632, F.S., was expanded to include annuity contracts (Ch. 77-295). Currently, s. 222.14, F.S., which *is* not a part of the Insurance Code, *exempts* the cash surrender value of life insurance from attachment, garnishment or legal process. Due to this change, it is unclear whether the term "life insurance" as used in s. 222.14, F.S., includes proceeds of annuities,

B. Effect on Present Situation:

This bill specifically insulates the proceeds of annuities from the claims of creditors if the annuity is issued to a citizen or resident of Florida. A creditor of the annuity beneficiary cannot attach or garnish the proceeds unless the annuity contract was acquired for the benefit of the creditor.

III. ECONOMIC CONSIDERATIONS:

A. Economic Impact on the Public: YES X NO _____

This bill would give beneficiaries of such annuities statutory protection against garnishment or attachment of their funds' proceeds.

B. Economic Impact on State or Local Government: YES _____ NO X

IV. COMMENTS:

A substantially similar bill, SB 1378, passed *the* Senate last session but died on the House Calendar.