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SUPREME COURT OF FLORIDA

SHIRLEY NEAL KING,
FRANCES SHERRY CLARKE
and CHARLOTTE CLAUS,

Petitioners,

v.

OLA DEAN T. ELLISON, a/k/a
OLADEAN TALLY, a/k/a OLADEAN
ELLISON, and CAROLYN ELLISON,
a/k/a CAROLYN CURTIS,

Respondents.

Case No. 82,300
DCA Case No. 92-02376, Fourth District
L.T. No. 92-0316-CA-21 INDIAN RIVER

PETITIONERS' BRIEF ON THE MERITS

Mike Krasny
Fla. Bar No.: 044335
KRASNY AND DETTMER, P.A.
780 S. Apollo Blvd.
Melbourne, FL 32901
Tel: (407) 723-5646

Attorney for Petitioners

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QUESTION PRESENTED

I. WHETHER S. 732.401(1), FLORIDA STATUTES (1991), WHICH VESTS THE REMAINDER INTEREST IN HOMESTEAD PROPERTY IN THE LINEAL DESCENDANTS, IS UNCONSTITUTIONAL WHEN APPLIED TO DEFEAT A TESTATOR'S INTENT TO DEVISE HOMESTEAD PROPERTY EQUALLY TO ADULT STEPCHILDREN AS WELL AS ADULT LINEAL DESCENDANTS?

STATEMENT OF THE CASE

On November 15, 1967, Hubert Earl Calhoun and Florence Etter Calhoun, husband and wife, purchased a parcel of real property in Indian River County as tenants by the entireties. (R. 25). This property was the homeplace of both parties.

Both Hubert and Florence Calhoun had children from previous marriages. Petitioners Shirley Neal King, Frances Sherry Clarke (now Frances Sherry Bengston), and Charlotte Claus are the natural daughters and lineal descendants of Florence Etter Calhoun. Respondents Oladean Tally (now Ola Dean T. Ellison) and Carolyn Curtis (now Carolyn Ellison) are the natural daughters and lineal descendants of Hubert Earl Calhoun. At all relevant times, Petitioners and Respondents were not minor children.

On September 12, 1973, Hubert and Florence executed mutual Wills which devised their respective estates to each other. Both Wills provided that if the other spouse died first or if they died together, the property was to go "to my children and stepchildren to wit: Oladean Tally, Carolyn Curtis, Shirley Neal King, Frances Sherry Clarke and Charlotte Claus, to share and share alike." (R. 26, 28).

On September 23, 1975, Florence Etter Calhoun died. An Order of Administration Unnecessary was entered on November 19, 1975. (R. 30). Hubert Earl Calhoun acquired title to the real property by right of

survivorship.

When Hubert later married Rosemarie, he did not change his 1973 Will, which provided for his estate to be divided equally between his two adult lineal heirs and Florence's three adult children. The title to the real property remained solely in Hubert Calhoun.

On May 19, 1977, Hubert died. His Will was admitted to probate. Because there was a surviving spouse at the time of Hubert's death, the property was not included in the Probate Estate, nor was there any request that the property be declared homestead. It was taken for granted that Rosemarie, as his surviving spouse, was entitled to a life estate in the homestead under the Florida Statutes.

On or about May 9, 1991, long after Hubert's death, without the knowledge of the Petitioners, Respondents purchased Rosemarie's life estate and obtained a quitclaim deed from her. (R. 33). Petitioners, in their Complaint, offered to repay Respondents a pro-rata share of this payment.

Petitioners brought suit in Indian River Circuit Court, the thrust of their contentions being:

1. Florida Statutes S. 732.401(1) (1991) is unconstitutional as applied to Petitioners because it deprives the testator of the right to select his beneficiaries. The state has no legitimate interest in preferring the lineal descendants of Hubert over Florence's lineal descendants in the face of his desire that they all share equally. In light of their joint express intent, it deprives Florence's heirs of the right to share in their mother's interest in the property which passed to Hubert by survivorship after the death of Florence; and

2. Florida Statutes S. 732.401(1) violates the equal protection clause of the Florida Constitution as applied to Petitioners. It statutorily vests the homestead in adult lineal descendants, to the exclusion of the lineal heirs of the former wife, who are also named as beneficiaries in the husband's Will. There is no rational purpose for this distinction which has any just or reasonable relation to a legitimate state objective.

Respondents filed a motion to dismiss Petitioners' complaint. The hearing on the motion was heard in Indian River Circuit Court by the Honorable Judge Paul B. Kanarek on July 15, 1992. The Court granted the Respondents' motion to dismiss and declined to declare Florida Statutes S. 732.401(1) unconstitutional as applied to Petitioners. (R. 16).

Petitioners appealed the Circuit Court's Order and requested the Fourth District Court of Appeal to reverse the findings of the Circuit Court. In the alternative, Petitioners requested that the Fourth District Court of Appeal certify the issue to the Supreme Court of Florida as one of great public importance.

The Fourth District Court of Appeal declined to hold Section 732.401(1) unconstitutional, but certified the following question as one of great public importance:

> WHETHER SECTION 732.401(1), FLORIDA STATUTES (1991), WHICH VESTS THE REMAINDER INTEREST IN HOMESTEAD PROPERTY IN LINEAL DESCENDANTS, IS UNCONSTITUTIONAL WHEN APPLIED TO DEFEAT A TESTATOR'S INTENT TO DEVISE HOMESTEAD PROPERTY EQUALLY TO ADULT STEPCHILDREN AS WELL AS ADULT LINEAL DESCENDANTS?

Petitioners request that the Supreme Court of Florida reverse the

affirmance of the Fourth District Court of Appeal and remand with instructions to validate the interest of the Petitioners on the ground that Florida Statutes S. 732.401(1) is unconstitutional as applied to Petitioners.

SUMMARY OF THE ARGUMENT

The issue presented here affects a great number of people in the State of Florida. Citizens are deprived of their right to inherit and devise property by a statute which goes further than necessary to protect surviving spouses and minor children. Florida Statutes Section 732.401(1) should be declared unconstitutional in this case, because it vests in adult lineal heirs the homestead remainder interest to the exclusion of non-lineal stepchildren of the testator where it is clear that he intended that they share equally.

The Constitution of the State of Florida guarantees to its citizens the right to: be let alone; be free from unwarranted governmental intervention and interference; possess and inherit property; be entitled to due process and equal protection of the law. The main thrust of these rights and protections is that, so long as public welfare is protected, every person in Florida enjoys the right to be free from unreasonable government interference.

Reasonable governmental intrusion is permitted by the Florida Constitution to protect a family homestead. However, Article X, Section 4(c) has been interpreted to protect only two classes of persons: surviving spouses and minor children. The Constitution restricts the ability of a homestead owner to devise homestead property in certain cases affecting the spouse or minor children.

Because the Florida Constitution restricts devise in those cases, the Florida Legislature established the descent of homestead property in Florida Statutes S. 732.401(1). If there is no valid devise, the homestead passes as other intestate property. Thus, there is no valid devise when the decedent is survived by a spouse or minor lineal descendants. The statute then takes over and creates the following legislative scheme:

1. If there is a spouse and minor lineal descendants, the spouse gets a life estate and the remainder is shared by minor lineal descendants and adult lineal descendants equally.

2. If there are minor and adult children but no spouse, all lineal descendants share equally.

3. If there is a spouse and no minor children, the legislature provides a life estate for the spouse and the remainder to adult lineal descendants.

It is the statute, not the Constitution, that directs that adult lineal descendants take the vested remainder after the termination of the spouse's life estate. It is the statutory direction to adult lineal descendants that creates the problem, because the statute ignores the testator's intent when there is no need to do so. Because the Constitution prohibits the devise so as to protect the spouse, it is a simple matter to give effect to the testator's intent while not depriving the protected person of a constitutional right.

The descent and distribution scheme of the Florida Statutes is in conflict with the Constitution and therefore is unconstitutional as applied to the facts of this case. The state's interest, as provided by the Florida Constitution, is to protect surviving spouses and minor children from the possibility that the decedent will devise the

property to someone other than the surviving spouse or minor child. Although the state has a legitimate interest in providing a surviving spouse with a life estate, there is no legitimate state interest in providing adult lineal descendants with a vested remainder to the exclusion of individuals who were designated by the testator to share in the family legacy.

Hubert Calhoun died survived by a spouse, adult lineal descendants and adult stepchildren. Under the language of S. 732.401(1), Rosemarie, his spouse, is entitled to a life estate. This fits the state's legitimate interest in protecting the surviving spouse. However, the granting of a vested remainder in adult lineal descendants is unconstitutional because it is an unreasonable restriction unintended by the Constitution's language and it impermissibly affects the property rights of Petitioners and Hubert. In effect, Petitioners are disinherited in favor of Hubert Calhoun's adult lineal descendants by Florida Statutes S. 732.401(1). Because adult lineal descendants are not intended to be protected by the Constitution, the result is arbitrary and unconstitutional.

Under the facts of this case, the statute's granting of a vested remainder to adult lineal descendants to the exclusion of those named in the decedent's Will is not rationally related to the designed purpose of the homestead law: that is, to protect the surviving spouse and minor children. It deprives Hubert Calhoun and Petitioners of valid constitutionally protected property interests in the homestead.

ARGUMENT

I. WHETHER SECTION 732.401(1), FLORIDA STATUTES (1991), WHICH VESTS THE REMAINDER INTEREST IN

HOMESTEAD PROPERTY IN LINEAL DESCENDANTS, IS UNCONSTITUTIONAL WHEN APPLIED TO DEFEAT A TESTATOR'S INTENT TO DEVISE HOMESTEAD PROPERTY EQUALLY TO ADULT STEPCHILDREN AS WELL AS ADULT LINEAL DESCENDANTS.

A. THE RIGHT TO DEVISE AND INHERIT PROPERTY IS A RIGHT PROTECTED BY THE FLORIDA CONSTITUTION.

Property rights are specifically protected by the Florida Constitution. The Constitution provides to every person the right to "acquire, possess and protect property." Art. I, Section 2, Fla. Const. The Supreme Court of Florida held that the right to devise and to inherit property is supported by the "common sense reading of the language." Shriners Hospitals for Crippled Children v. Zrillic, 563 So.2d 64 (Fla. 1990).

In Shriners, the Supreme Court of Florida held that the phrase "acquire, possess and protect property" in Article I, Section 2, includes the "right to transmit it to others." Id. at 67. The Court also notes that there would be no need to make an exception for aliens ineligible for citizenship unless the "ownership, inheritance, disposition and possession of real property" rights were also protected by the Constitution. Id. (emphasis added).

Hubert Calhoun had a property right guaranteed by the Florida Constitution to transmit or devise his property. He indicated his intent in his Will. He made no attempt to modify his Will, even though he subsequently remarried. His intent was to have his property divided in equal shares among his own adult children and the adult children of his deceased wife.

Likewise, the adult children of Florence Calhoun had an expectancy in the property of Hubert Calhoun because the property in question was

devised to them. (R. 26). The property had been their mother's property, as well as their stepfather's. It was obviously the intent of both parents, as evidenced by the reciprocal Wills which they executed, to have their property divided equally among all of their children, the Petitioners and Respondents.

B. THE RESTRICTION ON A PERSON'S ABILITY TO DEVISE HOMESTEAD PROPERTY IS INTENDED TO BENEFIT ONLY A SURVIVING SPOUSE AND MINOR CHILDREN.

Historically, the purpose of the homestead provision was to benefit the family. Barlow v. Barlow, 156 Fla. 458, 23 So.2d 723 (Fla. 1945); In re Noble's Estate, 73 So.2d 873 (Fla. 1954). The restriction on the devise of homestead if the owner is survived by a spouse or a minor child reflects the same concern for protection of the family. In re Estate of Scholtz, 543 So.2d 219 (Fla. 1989).

The Florida Constitution creates the following restrictions on the devise of homestead property:

> 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. Art. X, Section 4(c), Fla. Const.

The Supreme Court of Florida held that adult lineal descendants are not intended to be protected by the restriction on devise. City National Bank of Florida v. Tescher, 578 So.2d 701 (Fla. 1991).

In Tescher, the surviving spouse waived his rights to the homestead by signing an antenuptial agreement. The adult lineal descendants of the decedent attempted to prevent the personal representative from selling the property by claiming the property was homestead and not subject to devise. The lower court held that the

property was homestead but was subject to devise because the surviving spouse was deemed to have predeceased the decedent spouse because of the antenuptial agreement, and there were no minor children. The Third District Court of Appeal affirmed. City National Bank of Florida v. Tescher, 557 So.2d 615 (Fla. 3d DCA 1990).

The Supreme Court of Florida also affirmed and held that Article X, Section 4(c) is designed to protect only two classes of persons: surviving spouses and minor children. Petitioners were neither of these, they were adult children. Therefore, the property was permitted to pass by devise under the residuary clause of the Will.

Under the language of Article X, Section 4(c), Hubert's homestead could only be devised to his new spouse, Rosemarie. It was Hubert's intent, as evidenced by his Will, that his homestead be distributed equally to his children and stepchildren. Because this devise was not permitted under the language of the Florida Constitution, the homestead's descent was determined by the distribution scheme in the Florida Statutes.

Florida Statutes S. 732.401(1) provides that if the decedent is survived by a spouse and lineal descendants, the spouse will receive a life estate and the lineal descendants will receive a vested remainder. The life estate is a reasonable restriction on the property right of the decedent, necessary to ensure that the homestead remains with the surviving spouse for her to use for her lifetime. The life estate is consistent with the intent of the Florida Constitution, i.e., to protect the surviving spouse.

If the legislature determined that it was necessary to give the

surviving spouse a fee simple interest in the homestead to carry out the intent of the Constitution, it could be argued that such a restriction would be based on a legitimate state interest, i.e. to protect the spouse. Instead, the legislature determined that a life estate protects a surviving spouse sufficiently.

The statute, however, vests the remainder in persons whom the courts have determined are not among the classes entitled to the Constitution's protection. In this case, Section 732.401(1) vests the remainder in adult lineal descendants. This exceeds the scope and intent of the Florida Constitution. As the Supreme Court of Florida noted in In re Estate of McGinty, 258 So.2d 450 (Fla. 1971), the class of persons designated as "minor children" is substantially different from and inconsistent with "lineal descendants."

C. ONCE THE SPOUSE HAS BEEN PROTECTED WITH A LIFE ESTATE IN HOMESTEAD PROPERTY, THE STATE HAS NO LEGITIMATE INTEREST IN PROVIDING ADULT LINEAL DESCENDANTS WITH A VESTED REMAINDER.

Constitutionally protected property rights are not absolute, and are held subject to the fair exercise of power inherent in the state to promote the general welfare of the people through regulations that are reasonably necessary to secure the health, safety, good order, and general welfare. Shriners Hospitals for Crippled Children v. Zrillic, 563 So.2d 68 (Fla. 1990). The restraint on the right of an individual to devise property at death should not be extended beyond that expressly allowed by the Constitution. In re Estate of McGinty, 258 So.2d 450 (Fla. 1971).

To alter the property rights of Hubert and Petitioners, the state must act in a manner reasonably necessary to advance a legitimate state

interest. In Shriners Hospitals for Crippled Children v. Zrillic, 563 So.2d 69 (Fla. 1990), Florida Statutes S. 732.803 was declared to be unconstitutional because the statute was not reasonably necessary to accomplish the asserted state goals at the cost of offending property interests protected by the Florida Constitution. The Supreme Court of Florida also held that the statute was unconstitutional because it defeated the testator's express intent without any reasonable relation to the "evil sought to be cured". Id. at 70.

While the state has a legitimate interest in protecting the surviving spouse and minor children, the state has no legitimate interest in protecting adult lineal descendants. As the Supreme Court stated:

> Although it may be reasonable for the legislature to protect family members who are dependent or in financial need, it is unreasonable to presume, as the statute 732.803(1) seems to do, that all lineal descendants are dependents, in need, or are not otherwise provided for. Shriners Hospitals for Crippled Children v. Zrillic, 563 So.2d 64, 69 (Fla. 1990).

In this case, Florida Statutes S. 732.401(1) creates an arbitrary and unreasonable distribution scheme which is not necessary to adhere to the intent of the Constitution. The distribution scheme set up by the statutes infringes on the constitutional right of a homestead owner to transfer the remainder interest. Once the surviving spouse is provided a life estate, the state has no legitimate interest in vesting the remainder in adult lineal descendants. The evil sought to be cured has already been cured, i.e., the surviving spouse has been protected from losing a place to live and is assured shelter for life.

It should be noted that Hubert could not devise his wife a life

estate. In re Estate of Finch, 401 So.2d 1308 (Fla. 1981). As noted by the Supreme Court of Florida in In re Estate of Finch, the testator is prohibited from devising less than the fee simple interest to a surviving spouse when he is also survived by adult children. Id. at 1309. Since the devise in In re Estate of Finch was invalid, the property passed in accordance with S. 732.401(1), Florida Statutes (effective in 1977). Id.

In this case, Petitioners are challenging the constitutionality of Florida Statutes S. 732.401(1) because the statute unreasonably favors Hubert's adult lineal descendants, frustrating his express intent to provide for his adult lineal descendants and adult stepchildren. In this case, the adult lineal descendants of Hubert were "protected" and received the remainder interest, in effect, by the constitutional restriction. This result bears no relationship to the purpose of the constitutional provision for homestead protections. City National Bank of Florida v. Tescher, 578 So.2d 701 (Fla. 1991): Sun First National Bank of Polk County v. Fry, 579 So.2d 869, (Fla. 2d DCA 1991): Hartwell v. Blasingame, 564 So.2d 543 (Fla. 2d DCA 1990).

The statute vests the remainder interest of Hubert's homestead in Respondents, disregarding his express intent to leave an interest in the property to his deceased wife's children as well. The result is that Hubert's intent is frustrated and a windfall given to Hubert's adult lineal descendants. Because the homestead provision was not intended to protect Hubert's adult lineal descendants, the statute arbitrarily and unreasonably deprives Hubert of his constitutional right to dispose of his property to both his own children and

Florence's children.

In addition, the statute unreasonably deprives Petitioners of their constitutional right to inherit a share in property once owned by their mother and stepfather. Florida Statutes S. 732.401(1) deprived Petitioners of any interest in the property because it vested the remainder only in Hubert's lineal descendants, despite Hubert Calhoun's intent for both Petitioners and Respondents to share. Because Respondents are not meant to be protected by the constitutional restriction, the statute unreasonably deprives Petitioners of their constitutionally protected property right in the homestead.

D. THE QUESTION CERTIFIED BY THE FOURTH DISTRICT COURT OF APPEAL IS ONE OF GREAT PUBLIC IMPORTANCE BECAUSE IT AFFECTS EVERY CITIZEN'S RIGHT TO DEVISE AND INHERIT PROPERTY.

The issue certified by the Fourth District Court of Appeal is one that affects a great number of citizens of the State of Florida and is one of great public importance. At some point in time, most citizens of this state prepare a Will or other instrument to direct where their property will go upon their deaths. For many citizens, this is a difficult decision controlled by emotions unique to each individual. In recognition of the importance of that decision, the right to direct where property goes upon death is a constitutionally protected property right. Art. I, Section 2, Fla. Const. Shriners Hospitals for Crippled Children v. Zrillic, 563 So.2d 64 (Fla. 1990).

Florida has a large population of senior citizens, many of whose most valuable or only asset is their homestead property. In many instances, citizens are widowed or divorced and remarry a number of times. It is precisely because of these situations that the decision

on descent of homestead property is best left to the citizen where it does no violence to those intended to be protected by the Florida Constitution. In this case, the distribution scheme set up by the Florida Statutes affecting Florida homestead property is unnecessarily discriminatory.

The options left to Hubert Calhoun when planning his estate were so limited that his constitutional right to direct where property descended was impaired. Hubert Calhoun does not stand alone, but is one of many citizens affected by the homestead distribution "scheme". As a result of this "legal chameleon", many citizens are unable to prepare a meaningful estate plan.

The homestead provisions contained in the Florida Statutes have made estate planning impossible for some citizens of the State of Florida. Hubert Calhoun, in preparing his estate plan, wanted his children and stepchildren to share in his homestead. His Will clearly reflects that intent. Hubert Calhoun had four options when planning his estate: (1) give his new wife, Rosemarie, a fee simple in his homestead property, (2) do nothing, and allow the devise of his property to be invalidated so that his new wife, Rosemarie, gets a life estate and the remainder goes to his adult lineal descendants, (3) have his wife sign a prenuptial agreement, in effect waiving her interests in the homestead property, or (4) not remarry.

Under option (1), Hubert could have devised his wife a fee simple interest in the homestead property. This is in accord with Article X, Section 4(c)'s direction that if there are no minor children, a devise to their surviving spouse is valid. But Hubert does not want to do

this. His desire is that his adult children and adult stepchildren share equally in his property.

This is not unusual. In many instances when parties remarry, the most valuable asset which they have is their homestead. They desire this family asset to be distributed to "old" family members, and not to a new spouse.

Hubert's option (2) is less appealing. Whether through misinformation or misguidance, Hubert devised his property to his adult children and adult stepchildren, unaware that if he remarries this devise would be invalid. Because the devise to the five individuals was invalid, Section 732.401(1) directs that his new spouse, Rosemarie, receive a life estate and the remainder vests in Hubert's adult lineal descendants. Under the statutory scheme, this remainder is vested despite the fact that the Florida Constitution's restrictions on devise of homestead are not intended to benefit the adult lineal descendants.

It is entirely consistent with the Florida Constitution's language that once the surviving spouse and minor children are protected, that no further restriction be placed upon the constitutionally protected property right of testators to leave property to whomever they please. For example, should a testator decide that the remainder interest should go to some of his adult lineal descendants to the exclusion of other adult lineal descendants, there does not appear to be any rational state interest in denying the testator's intent. Many times, parents decide that some adult children are more deserving than others, and the constitutionally protected right to direct where property shall descend will not conflict with the underlying purpose of the Florida

Constitution's restrictions, specifically, to protect surviving spouses and minor children.

Additionally, if a testator decides to leave the remainder interest in property to someone other than adult lineal descendants, that intent should be carried out. Once the surviving spouse has been protected with a life estate, the constitutional restriction has been successful. The surviving spouse will have a place to live for his or her lifetime. The transfer of property at that time to those people designated in a Will or other documents of the testator will not violate the spirit of the constitutional restriction, because surviving spouses will be protected.

Considering option (3), Hubert could have insisted that his future wife sign a prenuptial agreement and waive her rights under S. 732.702(1), Florida Statutes (1975). The Fourth District Court of Appeal notes that at the time of his remarriage, Hubert and Rosemarie, his new wife, could have agreed that Rosemarie waive her right to homestead property, allowing the property to pass by Hubert's Will. While it is true that she could have waived her life estate, it forces the one person in this scenario whose rights are protected by the Constitution to give up that right in favor of lineal descendants or stepchildren she probably doesn't know or care about.

In effect, the Fourth District Court of Appeal suggests that to protect a stepchild's interest, we must force the surviving spouse to waive her own interest in the homestead. This rationale undermines the very purpose for the constitutional restriction on devise of homestead, that being to protect a surviving spouse by "loaning" her an interest

in the property, insuring that she has a place to live for the rest of her life. To suggest that the new wife waive her interest in homestead injures the one individual that the constitutional restriction was designed to protect: a surviving spouse.

With all due respect to the Fourth District Court of Appeal's suggestion that the new spouse waive her right in homestead, it is unreasonable to require that a new spouse waive his or her constitutionally protected homestead rights (and give up the shelter that Article X, Section 4(c) is designed to provide) in order to allow a testator to marry and choose between his new wife or his stepchildren when he ought to be able to choose both.

Option (4) for a testator in Hubert's position is to forego remarriage. The homesteader with adult children and stepchildren who desires to provide for all of them, and possibly others, must not remarry in order to insure that his homestead property descends to the people of his choosing. Once he or she remarries, there is no means available by which he can leave his remainder interest in homestead to anyone other than all, including adult, lineal descendants. This produces an absurd result. Hubert can't remarry if he wants his children and stepchildren to get the homestead property or a vested remainder.

The intent of the Florida Constitution is to protect surviving spouses and minor children, not to prevent citizens from choosing who will receive their property upon death. The state has a legitimate interest in protecting Hubert's surviving spouse, and she was, in fact, protected with a life estate in the homestead property. The state,

however, has no interest in vesting the remainder to Respondents at the expense of Petitioners. The result is not supported by the Constitution's restrictions or by the public policy of this state. S. 732.401(1) creates this ludicrous result and is, therefore, arbitrary and unreasonable as applied.

Because of the dilemna created by the scheme of the Florida Statutes under S. 732.401(1), Hubert Calhoun's constitutionally protected property right was infringed upon. Petitioners were also deprived of their constitutional right to inherit property by the application of S. 732.401(1).

CONCLUSION

Petitioners respectfully request that this Court declare S. 732.401(1) unconstitutional as applied to Petitioners and to acknowledge their interests in the property of their mother and stepfather.

KRASNY AND DETTMER, P.A.
Attorneys for Petitioners
780 S. Apollo Boulevard
Melbourne, FL 32901
Tel: (407) 723-5646

By: _____
Mike Krasny
FL Bar No. 044335

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioners' Initial Brief has been furnished by mail to Charles R. Gardner, Attorney for Respondents, 1300 Thomaswood Drive, Tallahassee, Florida 32312, this 4th day of October, 1993.

_____
Mike Krasny