

In the
SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THOMAS S. TRAMEL, III,
as Sheriff of Columbia County,

Petitioner,

Case No. 89,032

v.

District Court of Appeal
1st District No.: 95-3971

CHARLES STEWART, JR.,
and BEVERLY J. STEWART,

Respondents.

BRIEF OF AMICUS CURIAE

FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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STATEMENT OF THE CASE AND OF THE FACTS

Amicus curiae the FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS (hereinafter "FACDL") adopts that "Statement of the Case" and "Statement of the Facts" found in the Respondents' Brief on the Merits.

SUMMARY OF ARGUMENT

At issue before this Court is the First District Court of Appeal's decision in Stewart v. Tramel, 21 Fla. L. Weekly D2050 (Fla. 1st DCA, Sept. 11, 1996) that Article X, Section 4¹ of the Florida Constitution protects the Respondents' residential homestead from a final order of civil forfeiture entered under the "proceeds" provisions of Chapter 932's

¹That constitutional provision provides, in relevant part:

(a) 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, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or his family

"Florida Contraband Forfeiture Act." The First District concluded that the Respondents' residential homestead property cannot be forfeited because of this Court's "unqualified holding" in Butterworth v. Caggiano, 605 So. 2d 56, 61 (Fla. 1992) that "article X, section 4 of the Florida Constitution prohibits civil or criminal forfeiture of homestead property." Id. at D2050, quoting Butterworth v. Caggiano, 605 So. 2d at 61. The First District found that there is "no significant distinction in terms of public policy" between the "use" (or facilitation) theory of forfeiture at issue in Butterworth v. Caggiano and the "proceeds" theory of forfeiture at issue in the case at bar; neither falls within any of the exceptions provided to the homestead exemption in Article X, Section 4. 21 Fla. L. Weekly at D2051. The Court certified the following question as one of great public importance:

WHETHER ARTICLE X, SECTION 4, FLA. CONST., PROHIBITS CIVIL FORFEITURE OF HOMESTEAD PROPERTY PURSUANT TO SECTIONS 932.701-.702, FLA. STAT., WHEN THE PROCEEDS OF ILLEGAL ACTIVITY ARE INVESTED IN OR USED TO PURCHASE THE PROPERTY?

Id.

Amicus curiae the FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS respectfully submit that if this Court accepts jurisdiction of this case, the decision of the First District Court of Appeal should be upheld, and the certified question answered in the affirmative. This Court has directed that Article X, Section 4 must be "liberally construed," and its

stated exceptions strictly applied, because of important public policy considerations that include protection of the family home. Butterworth v. Caggiano reiterates these principles of Florida law in the context of the harsh penalty of civil or criminal forfeiture and provides direct precedent precluding the forfeiture sought in this proceeding.

ARGUMENT

ARTICLE X, SECTION 4 OF THE FLORIDA CONSTITUTION PROHIBITS CIVIL FORFEITURE OF HOMESTEAD PROPERTY PURSUANT TO CHAPTER 932 OF THE FLORIDA STATUTES WHEN THE PROCEEDS OF ILLEGAL ACTIVITY ARE INVESTED IN OR USED TO PURCHASE THE RESIDENCE.

The Petitioner seeks the forfeiture of the Respondents' homestead property pursuant to the "proceeds" provisions of Florida's Contraband Forfeiture Act.² The Petitioner contends that because the jury found that the Stewarts purchased or improved their property with illegally obtained proceeds, they are precluded from the homestead exemption protection of Article X, Section 4.

The First District Court of Appeal disagreed in a unanimous opinion, holding that the forfeiture of the Respondents' homestead is forbidden by Article X, Section 4, principles of constitutional and statutory construction, and this Court's rationale and holding in Butterworth v. Caggiano.

²See Sections 932.701(2)(f), 932.702(5) and 932.703(1), Florida Statutes (1991).

1. Butterworth v. Caggiano

In Butterworth v. Caggiano, the State had convicted Caggiano of Florida RICO Act (Chapter 895) and bookmaking violations. Three bookmaking incidents took place at Caggiano's residence. The State subsequently sought civil forfeiture of the residence under the RICO Act because the property had been used in racketeering activity in violation of Section 895.05(2)(a), Florida Statutes (1989). The trial court relied on DeRuyter v. State, 521 So. 2d 135 (Fla. 5th DCA 1988) to find that the homestead exemption did not protect Caggiano's property from forfeiture. The Second District Court of Appeal disagreed with the holding in DeRuyter and reversed the final order of forfeiture, certifying the question of whether "forfeiture of homestead under the RICO Act is forbidden by article X, Section 4 of the Florida Constitution." Butterworth v. Caggiano, 605 So. 2d at 56-7.

This Court answered the certified question in the affirmative, approving the Second District's decision and disapproving DeRuyter. Initially, the Court rejected the State's argument that the homestead exemption is not intended to apply outside the debtor context and that forfeiture is not a "forced sale" under Article X, section 4. "[P]roperty is obviously taken from the owner, through court process, without the owner's consent" in a forfeiture, resulting in a "judicial sale" at state auction. 605 So. 2d at 59 & n.3, citing

Section 895.05(2)(c), Florida Statutes (1989).

This Court identified guiding principles of constitutional and statutory construction. Homestead exemption under Article X, Section 4 "must be liberally construed." 605 So. 2d at 58, citing Graham v. Azar, 204 So. 2d 193, 195 (Fla. 1967) and Hill v. First Nat'l Bank, 79 Fla. 391, 401, 84 So. 190, 193 (1920). "The purpose of the homestead exemption has been described broadly as being to protect the family, and to provide for it a refuge of misfortune, without any requirement that the misfortune arise from a financial debt." 605 So. 2d at 60, citing (and quoting) Collins v. Collins, 150 Fla. 374, 377, 7 So. 2d 443, 444 (1942). Liberal construction and application of Article X, Section 4 is particularly necessary in the context of forfeitures, which "are considered harsh penalties that are historically disfavored in law and equity" 605 So. 2d at 58-9, citing Department of Law Enforcement v. Real Property, 588 So. 2d 957, 961 (Fla. 1991) and General Motors Acceptance Corp. v. State, 152 Fla. 297, 302, 11 So. 2d 482, 484 (1943).

Applying these principles, this Court held that forfeiture is not one of the three exceptions in Article X, Section (4)(a) to homestead exemption. Those exceptions are payment of taxes and assessments thereon; obligations contracted for the purchase, improvement or repair of the homestead; and obligations contracted for house, field or

other labor performed on the realty. Under the rule of construction of "expressio unius est exclusio alterius" (the expression of one thing is the exclusion of another), forfeiture is not excluded from the homestead exemption because it is not expressly mentioned in the three exceptions. 605 So. 2d at 60. The unqualified language of Article X, Section 4 and substantial precedent prohibit "the implication of exceptions or limitations to article, section 4." Id. at 60, citing (and quoting) Olesky v. Nicholas, 82 So. 2d 510, 513 (Fla. 1955). Article X, Section 4 contains no exception for criminal activity, and "[n]either the legislature nor this Court has the power to create one." 605 So. 2d at 60, citing Henderson v. State, 155 Fla. 487, 491, 20 So. 2d 649, 651 (1945) and Crawford v. Gilchrest, 64 Fla. 41, 54, 59 So. 963, 968 (1912).

This Court concluded:

Consequently, in light of the historical prejudice against forfeiture, the constitutional sanctity of the home, and the rules of construction requiring a liberal, nontechnical interpretation of the homestead exemption and a strict construction of the exceptions to that exemption, we hold that article X, section 4 of the Florida Constitution prohibits civil and criminal forfeiture of homestead property.

605 So. 2d at 61.

Butterworth v. Caggiano is direct precedent and dispositive of the issue raised in this appeal. It unequivocally states that forfeiture of homestead -- whether

civil or criminal -- is equivalent to a "forced sale under process of any court" under Article X, Section 4; is not one of the three state exceptions to homestead protection; cannot be judicially or legislatively engrafted as an exception to the exemption; and is constitutionally prohibited.

2. "Footnote 5"

The Petitioner argues³ that "footnote 5" of Butterworth v. Caggiano distinguishes a "proceeds" from a "use" (or facilitation) case for purposes of homestead protection. In footnote 5, this Court referenced a number of cases cited by the State as examples of Florida courts refusing to allow the homestead protection where there is fraud or other "reprehensible conduct." The final paragraph of that footnote concludes:

The factual situations involved in the cited cases are not present here. It is undisputed that no illicit proceeds were used to purchase, acquire, or improve Caggiano's property.

Id. (emphasis added). This single statement seemingly

³The Petitioner does not argue that homestead protection under Article X, Section 4 generally is inapplicable to a civil forfeiture under the Florida Contraband Forfeiture Act, as opposed to Florida's RICO Act, which was directly at issue in Butterworth v. Caggiano. The "forced sale" rationale of that decision is applicable to a Chapter 932 forfeiture. While the Florida Contraband Forfeiture Act has been amended since 1991, both the current and the 1991 Act, at issue herein, provide for judicial sale of forfeited property. See, e.g., Sections 932.704(3)(a) and (b), (4), and (5), Florida Statutes (1991); Sections 932.7055(1)(b), (2)(a) and (b), (3), and (8)(a), Florida Statutes (1995).

supports the Petitioner's argument that if illegal proceeds were used to "purchase, acquire or improve" the Respondents' residence, then homestead protection does not prohibit forfeiture. However, this conclusion must be read in conjunction with the remainder of footnote 5:

All of the cases cited by the State where a court has actually imposed a lien on the homestead in question, however, are either factually or legally inapposite. Virtually all of the relevant cases involve situations that fell within one of the three stated exceptions to the homestead provision. Most of those cases involve equitable liens that were imposed where proceeds from fraud or reprehensible conduct were used to invest in, purchase, or improve the homestead. See e.g., Jones v. Carpenter, 90 Fla. 407, 415, 106 So. 127, 130 (1925); La Mar, 135 Fla. 703, 711, 185 So. 833, 836. Other relevant cases cited involve situations where an equitable lien was necessary to secure to an owner the benefit of his or her interest in the property. See, e.g., Tullis v. Tullis, 360 So.2d 375, 377 (Fla. 1978) ("We hold, with the First District, that our constitutional provisions allow the partition and forced sale of homestead property upon suit by one of the owners of that property, if such partition and forced sale is necessary to protect the beneficial enjoyment of the owners in common to the extent of their interest in the property."). In particular, Tullis involved a marital situation with joint homestead property. In no other case has this Court imposed a lien on a homestead beyond one of the three stated exceptions in the constitutional provision. The Court in Bessemer [Bessemer v. Gersten, 381 So. 2d 1344 (Fla. 1980)] specifically did not address the issue of whether the lien came within one of the stated exceptions to the homestead exemption. 381 So.2d at 1347 n.1.

605 So. 2d at 60-61 n.5 (emphasis added).

As in Butterworth v. Caggiano, the present case does not fall within any of the three stated exceptions to homestead

protection, including the second exception of "obligations contracted for the purchase, improvement or repair" of homestead property. Art. X, §4(a). The First District Court of Appeal agreed, expressly finding that this case does not fall within any of the three exceptions. In addition, the Court noted:

[W]e perceive a distinction between the cases cited in footnote five of Caggiano, in which funds were acquired fraudulently and an equitable lien was imposed on behalf of the person or entity against whom the fraud was perpetrated, and the present situation.

21 Fla. L. Weekly at D2051.

This distinction is critical and is further addressed at footnote 1 of the District Court's opinion, where the Court states:

Appellee [Petitioner] did not proceed under a theory that no homestead interest arose due to the purchase with allegedly illegal funds, but stated specifically in its brief that for purposes of this appeal, it considered the property in dispute to be homestead.

Id.⁴ The Petitioner presumably chose to acknowledge the homestead status of the real property in question, because the facts of this case demonstrate that the Respondents acquired the real property, improved it, and established its homestead status prior to 1989, the effective date of both the real

⁴The First District also noted that "Appellee [Petitioner] has agreed for purposes of this appeal that the property involved in the present case is homestead property." 21 Fla. L. Weekly at D2050.

property and "proceeds" provisions of the Florida Contraband Forfeiture Act.⁵ Restated, under the facts in this case homestead protection is not defeated by arguing that homestead status was not lawfully acquired. It was -- prior to 1989. To argue or hold otherwise is to impose an unnecessary ex post facto issue into the determination of this case.⁶

3. Policy Considerations

The First District Court of Appeal expressly rejected the Petitioner's policy argument that forfeiture based on proceeds from illegal activity should defeat homestead protection. 21 Fla. L. Weekly at D2051. Similar arguments were rejected by this Court in Butterworth v. Caggiano, 605 So. 2d at 60. The overriding policy at issue is the interest of the family home. Olesky v. Nicholas, 82 So.2d at 512. In that case, this Court applied the homestead exemption to insure "preservation of a domestic roof" despite creditors' claims predicated on the tort of malicious prosecution. Id. at 511-12. While the Court noted that the "homestead exemption provisions of the Florida Constitution should not be employed as a vehicle to defraud creditors," nonetheless, broad application of the

⁵The Florida Contraband Forfeiture Act was amended in 1989 to provide for both the forfeiture of real property (Sections 932.701(2)(f), 932.702(5) and 932.703(1)) and illegal proceeds (Sections 932.701(2)(e) and (f), 932.702(5)). Chapter 89-148, Laws of Florida.

⁶See Article I, Section 10 of the Declaration of Rights of the Florida Constitution.

exemption "has contributed immeasurably to the happiness and solidarity of family life and such, in the ultimate, is the bulwark of our social system." Id. at 512. The protection of a residence is no less important in the instant case.

Additionally, important principles of constitutional construction are at issue. The Florida Constitution is the framework for this state's government, providing general principles by which the government functions. 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." City of Jacksonville v. Continental Can Company, 113 Fla. 168, 151 So. 488, 489 (Fla. 1933). That construction "should not be technical nor liberal," and it must be "absolutely certain, that the people did not intend what the language they had employed in its natural signification imports before a court should feel at liberty to depart from the plain meaning of a constitutional provision." 151 So. at 490.

These principles require a straightforward reading of Article X, Section 4. The language is plain; the constitutional provision contains three exceptions to an otherwise broad homestead exemption. Those three exceptions do not include forfeiture. Rather, the clearly expressed language of this Article must be read to specifically exclude any exception other than those three circumstances outlined in

Section 4(a).

Finally, other provisions of the Florida Constitution bar the otherwise unwarranted homestead exception proposed by the Petitioner. Thus, Article I, Section 2 protects property rights, and particularly residential property interests, as basic substantive rights under the Florida Constitution. Department of Law Enforcement v. Real Property, 588 So. 2d at 964. Further, in the context of residential property, the constitutional right of privacy guaranteed by Article I, Section 23 would be invaded by the proposed judicially engrafted homestead exception. Id.


CONCLUSION

Article X, Section 4, this Court's decision in Butterworth v. Caggiano, and rules of constitutional and statutory construction, including rules that govern the scope of both homestead protection under the Florida Constitution and forfeiture under the Florida Statutes, directly govern and affirm the First District Court of Appeal's decision. That decision should be upheld by this Court. In so doing, the Court will enforce substantive rights under the Florida Constitution that are implicated through the unwarranted expansion of forfeiture urged by the State in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the BRIEF OF AMICUS CURIAE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS has been served by regular United States mail/hand delivery/facsimile to ROD BOWDOIN, 327 North Hernando Street, Post Office Drawer 1707, Lake City, Florida 32056-1707, Counsel for Petitioner; STEPHEN N. BERNSTEIN, 116 N.E. 3rd Avenue, Gainesville, Florida, Counsel for Respondents; and ROBERT A. BUTTERWORTH, Attorney General, in care of JACQUELINE H. DOWD, Assistant Attorney General, Department of Legal Affairs, 28 West Central Boulevard, Suite 310, Orlando, Florida 32801 this 22nd day of November, 1996.


ROBERT S. GRISCTI