ORIGINAL

SUPREME COURT OF FLORIDA

KELLI SNYDER,	:	
	:	
Petitioner,	:	CASE NO. 89,410
	:	
v.	:	District Court of Appeals
	:	2nd District - No. 96-00483
KENT W. DAVIS, ETC.,	:	
	:	
Respondent,	:	

PETITIONER'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Constitutional Provisions and Statutes

Florida Session Laws

PRELIMINARY STATEMENT

In this brief, the Petitioner, will be referred to by name, Petitioner, Devisee, or "the Granddaughter", and the Respondent will be referred to by name, Respondent, Personal Representative, and the following symbol will be adopted for reference:

"R" for "Original Record on Appeal".

STATEMENT OF THE CASE

This is an appeal from a final order of the Second District Court of Appeal determining that the protection from forced sale provided by Fla. Const. Art. X, §4(a)(1), does not inure to a granddaughter that received the grandmother's homestead property through testamentary devise when the decedents son (and sole heir had she died intestate) survives.

The Circuit Court in Pinellas County had determined the decedent's property to be homestead property subject to devise and that the Petitioner, although not the immediate intestate successor to the decedent's property, as the decedent's grandchild she is a member of the statutorily defined class of persons identified as "heirs" and "heirs at law". Accordingly, having received the homestead real property by testamentary devise as well as being a member of that class, she enjoys the constitutionally protected exemption from forced sale with the homestead property descending to her free and clear of creditors claims, specific bequests and costs of administration.

An appeal by the personal representative was taken to the Second District Court of Appeal requesting review of the trial court's order. On October 23, 1996 the District Court reversed the order of the trial court, holding that the decedent's devise of her homestead to her granddaughter is not exempt from forced sale when she is survived by her adult son who would have taken the homestead as an "heir" had she died intestate. Essentially, the constitutional exemption from forced sale inures only to a widow or the next-in-line or nearest in degree intestate taker without regard to any testamentary disposition.

In reversing the trial court, however, the District Court certified the following question as being of great public importance:

> WHETHER ARTICLE X, SECTION 4, OF THE FLORIDA CONSTITUTION EXEMPTS FROM FORCED SALE A DEVISE OF A HOMESTEAD BY A DECEDENT NOT SURVIVED BY A SPOUSE OR MINOR CHILD TO A LINEAL DESCENDANT WHO IS NOT AN HEIR UNDER THE DEFINITION IN SECTION 731.201 (18), FLORIDA STATUTES (1993)?

The Petitioner's notice to invoke the discretionary jurisdiction of this Court was timely filed on November 20, 1996.

STATEMENT OF FACTS

The decedent, Betty M. Snyder, died February 15, 1995 (R-006), leaving only an adult son, Milo Snyder, and an adult granddaughter, Kelli M. Snyder (R-003). She was not survived by a minor child or spouse. Pursuant to her last will and testament, she left specific devises to her son and two of her friends. The residual estate, which includes the decedent's tangible personal property as well as homestead real property, was devised to her granddaughter (R-001). The Personal Representative, Kent W. Davis, filed the Petition for Administration with the Pinellas County Circuit Court, February 28, 1995, but failed to file a petition to determine homestead property. Upon discovery of the omission, the Petitioner filed her petition to determine homestead on August 7, 1995 (R-013-015). Accordingly, a hearing on the petition was held November 20, 1995, with the trial court determining that the decedent's residence was homestead property, it was devisable, and descended to the devisee, the decedent's granddaughter, free of creditors claims and costs of administration.

The personal representative filed a timely appeal to the Second District Court of Appeal, which, after hearing oral argument on October 23, 1996, rejected the trial courts determination, explaining that the decedent's son, Milo Snyder, was her only heir, as contemplated by the Florida Constitution and statutes which define "heirs" and "heirs-at-law".

In reversing the trial court, however, the District Court certified the following question as being of great public importance:

> WHETHER ARTICLE X, SECTION 4, OF THE FLORIDA CONSTITUTION EXEMPTS FROM FORCED SALE A DEVISE OF A

HOMESTEAD BY A DECEDENT NOT SURVIVED BY A SPOUSE OR MINOR CHILD TO A LINEAL DESCENDANT WHO IS NOT AN HEIR UNDER THE DEFINITION IN SECTION 731.201 (18), FLORIDA STATUTES (1993)?

SUMMARY OF THE ARGUMENT

The Second District Court of Appeal erred in its determination that Kelli Snyder, although a lineal descendant of her deceased grandmother, is not an "heir" as contemplated by Fla. Const. Art. X, §4(b).

I. The Fla. Const. Art. X, §4(b) states that the homestead exemptions provided in Fla. Const. Art. X, §4(a) "shall inure to the surviving spouse or heirs of the owner." It is the Petitioner's contention the term "heirs", used therein, for the purpose of appending the right from forced sale to the homestead, includes any member of the broad class of persons identified in Fla. Stat. §732.103 in which the whole of the general line of inheritable succession from generation to generation is described. Whether the property transfers through intestacy or devise, if it does so to any member of that class, it transfers free and clear of creditors claims, specific bequests and costs of administration, notwithstanding that they would not be the next, immediate intestate recipient(s) of the physical property.

For the purpose of that protection from forced sale, it is not to be limited to the designation of a specific person or persons that, who, but for the testor's foresight in making a will, would be the next in line to take the intestate decedent's property. All members of the statutorily defined class of persons identified as "heirs" and "heirs-at-law", enjoy the constitutionally protected exemption from forced sale of homestead property.

The Petitioner, as the decedent's granddaughter and a lineal descendant, is, pursuant to Fla. Stats. §731.201(18) and §732.103(1), a member of the general class of persons defined as "heirs" or "heirs-

at-law", albeit not the next immediate intestate successor lineal descendant. However, by virtue of being a member of that class, as well as the devisee of the property, she is entitled to receive the homestead property free from forced sale, creditors claims, specific bequests and costs of administration of the estate. Notwithstanding her inclusion as an "heir" under Fla. Stat. §732.103, she should receive the homestead property because it cannot be included as an asset of the estate to pay specific devises, creditors claims, or costs of administration.

II. The constitutional protection from forced sale does not confer upon Kelli Snyder ownership of her grandmother's homestead. However, the right of election of the immunity is incident to the actual ownership of the property and should follow it.

III. The purpose of the exemption is to promote the stability and welfare of the state by placing the homestead beyond the reach of creditors. As an heir contemplated by the constitution, Kelli Snyder, as a matter of public policy should receive the homestead free from creditors claims, specific devises and costs of administration.

ARGUMENT

I. THE DISTRICT COURT OF APPEAL ERRED WHEN IT DETERMINED THAT THE PROTECTION FROM FORCED SALE OF HOMESTEAD PROPERTY, PROVIDED BY FLA. CONST. ART. X, §4(A)(1), DOES NOT INURE TO KELLI SNYDER WHO RECEIVED HER GRANDMOTHER'S HOMESTEAD PROPERTY THROUGH DEVISE RATHER THAN INTESTACY, REGARDLESS WHETHER KELLI SNYDER'S FATHER, AND DECEDENT'S SON, MILO SNYDER, STILL SURVIVES.

Prior to her death, Betty Snyder's real property met all the requirements of Fla. Const. Art. X, §4(a)(1), to be claimed as her homestead and exempt from forced sale (R-023). Accordingly, the trial court made the factual determination that it was "homestead" property for the purpose of distribution (R-026) which she had disposed of through the residuary clause of her will (R-001).

The Fla. Const. Art. X, §4(c) and Fla. Stat. §732.4015 permit an individual to devise homestead property in any manner they wish if they are not survived by a spouse or minor child. **Public Health Trust of Dade County v. Lopez**, 531 So.2d 946 (Fla. S.Ct. 1988), **In Re Estate of McGinty**, 258 So.2d 450 (Fla. S.Ct. 1971), **Bartelt v. Bartelt**, 579 So.2d 282 (Fla. 3DCA 1991). Betty Snyder, was not survived by a spouse (R-003), and her only surviving child, Milo Snyder, is an adult (R-003), therefore she could devise her homestead property without limitation.

a. KELLI SNYDER IS A MEMBER OF THE CLASS OF PERSONS DEFINED IN FLA. STAT. §732.103 AS "HEIRS" TO WHOM THE PROTECTION FROM FORCED SALE OF A HOMESTEAD CONTAINED IN FLA. CONST. ART. X, §4(a)(1) "INURES".

The District Court reasoned that since the decedent's only child, her son, Milo Snyder, is still alive, he is the only "heir" of the decedent. Ergo, the descendant-child must have predeceased the decedent before a grandchild could be defined as the decedent's "heirs" or

"heirs-at-law". Similarly, the decedent's grandchild must predecease the decedent before the greatgrandchild can be included as an "heir" or "heir-at-law." Therefore, through the logic of the District Court, Kelli Snyder is not an "heir" or "heir-at-law" and the decedent's only real property, her homestead during her life, should be subjected to creditors claims, specific testamentary bequests and costs of administration.

Since we first received the right to claim a homestead and its protection from forced sale through the Florida Constitution of 1868, most courts, when presented with the task of defining the term "heirs," as used in Fla. Const. Art. X, §4(b), have, generally, whether testate or intestate, also wrestled with such issues as devise or descent of the actual property, division of the proceeds of its sale, dower rights, minor children, or the testators intent when it was used in a will. [See e.g. **Hinson et. al. v. Booth**, 39 Fla. 333, 22 So. 686 (Fla. 1897) (construing the term "children" in allowing the exemption in personal property); **Scull v. Beatty, et al.**, 9 So. 4, 27 Fla. 426, (Fla 1891) (distribution of proceeds from foreclosure sale); **Shone v. Bellmore**, 78 So. 605, 75 Fla. 515 (Fla. 1918) (denying devise of homestead where there was a widow and children); **McGinty**, supra, (devise of homestead to daughter)]. Overwhelmingly, the majority of case law discovered has been directed toward either an intestate situation to determine the actual successor to real (or personal) property or to determine whom is intended when such terms are used in the text of a testamentary device (e.g. "to A and his heirs").

Typically those courts, as did the Second District Court, when interpreting Fla. Const. Art. X, §4(b), focus on Fla. Stat. §731.201(18) for their definition and Fla. Stat. §732.103 to determine whether a specific person receives the physical property and only collaterally, the exemption. However, Section 732 of the probate code is entitled "Intestate Succession", with Fla. Stat. §732.103 titled "(s)hare of other heirs" stating that the "intestate estate ... descends as follows:." This statute addresses only the passing of title and identifies a group of persons, a class, that may receive the decedents property. Regardless of which member of that class receives the property through intestacy, the constitutional immunity from forced sale accompanies (or "inures" to) it.

Through these statutes, and Fla. Stat. §732.401, the legislature has specified descent of his/her homestead property when the decedent has failed to do so. When the property descends through intestacy, the exemption from forced sale "inures" to whomever within the class that receives the property. However, the decedent, also, is permitted to make the determination of whom is to receive his/her homestead property with the only constitutional restraint being Fla. Const. Art. X, §4(c), as codified in Fla. Stat. §732.4015.

Kelli Snyder contends that for the purpose of determining whether the beneficiary of homestead property also receives the constitutional protection from forced sale contained in Fla. Const. Art. X, §4(b), Fla. Stat. §732.103 defines a class of recipients and is not directive to a particular stratum contained therein.

Support for this position can be found in several recent cases.

When a testator leaving no surviving heirs, devised his entire estate to a "good friend", the First District Court of Appeals determined, that the beneficiary of the homestead, the "good friend", was not an "heir" for the purpose of the homestead exemption stating:

> "Heirs are defined in Section 731.201(18), Florida Statutes, as `those persons, including the surviving spouse who are entitled under the statutes of intestate succession to the property of a decedent.' Among the heirs listed in Section 732.103, Florida Statutes, are lineal decedents, fathers and mothers, brothers and sisters, and grandmothers and grandfathers. Bessie Trammell, who was decedent's `good friend', is not recognized as an heir under Florida law, and is therefore not entitled to the protection of the constitutional homestead provisions that exempt the decedent's property from forced sale."

State of Florida, Department of HRS v. Trammell
508 So.2d 423 at 433 (Fla. 1DCA 1987)

The **Trammell** Court's use of the phrase "among the heirs listed", appears to indicate that Fla. Stat. §732.103 identifies a class of persons to be protected and a recognition that any one listed in the statute is an "heir," particularly when the homestead passes by devise. A "friend" is not listed within the class of persons identified therein, therefore, she was not entitled to the exemption.

There was a similar result from the Third District Court of Appeal when it was faced with the question of whether the exemption applied only in intestacy, or did it include a devisee. It allowed the homestead to be subjected to creditors claims in a case in which the testatrix had devised a life estate to her stepdaughter (it is unclear to whom the remainder passed). Should the homestead be sold, the proceeds were to be divided and given to her naturel son and her stepdaughter. The court reasoned that there is a substantial difference between a "devisee" and an "heir." **In Re Estate of Hill**, 552 So.2d 1133

(Fla. 3DCA 1989), Dismissed, 564 So.2d 487 (Fla. 1990). It should, however, be recognized that a stepdaughter may be included within the class under Fla. Stat. §732.103(5).

However, following **Lopez**, supra, the Third District Court receded from its opinion in **Hill** when confronted with an adult son that had been devised the homestead and refined its definition of "heirs" and to whom the constitutional exemption inured. The Court, in **Bartelt** at 283, stated:

> "Heirs, as defined in section 731.201(18), are simply those persons entitled to receive property under the laws of intestacy; the decedent's son, as his lineal descendant, is a member of that class. 732.103(1), Fla. Stat. (1989). The class designated "heirs" does not exclude those who, but for the decedent's foresight in executing a will, would have taken by the laws of intestate succession. `The term, heirs, in 4(b) is a definition of a class of persons who may enjoy the continuation of the decedent's exemptions from forced sale by decedent's creditors.'" Citing Kelley, **Homestead Made Easy, Part I: Understanding the Basics**, Fla. Bar Journal, Mar. 1991, at 22."

The **Bartelt** Court, appropriately, views Fla. Stat. §732.103 as defining a class of persons - not just a particular stratum contained therein - that may enjoy the benefits of the exemption provided by the constitution. For a specific person to receive such benefits, that person must be a member of that class. See also **Hubert v. Hubert**, 622 So.2d 1049 (Fla. 4DCA 1993), rev. den. 634 So.2d 624 (Fla. S.Ct. 1994) for a similar result.

As a testate, lineal descendant, albeit not the next-in-line intestate successor, Kelli Snyder, is a member of the "class" of persons identified in Fla. Stat. §732.103 and contemplated by the constitution to be an "heir." In dicta, the **Bartelt** Court said more succinctly, "The word `heirs' does not always refer to the intestacy statutes. In Roman

law, `heres' meant either a person designated by will or someone who took upon intestacy.", citing Mcgovern, Kurtz, & Rein, **Wills Trusts & Estates**, 11.2 (1988). Id at 283.

b. THE SECOND DISTRICT COURT OF APPEALS ERRED BY, EFFECTIVELY. ADDING THE WORDS "NEXT IMMEDIATE " BEFORE "HEIRS" TO ARTICLE X, SECTION 4(B) OF THE FLORIDA CONSTITUTION.

In its decision, the Second District Court determined that if the beneficiary of the homestead property is not the next immediate intestate recipient, then the constitutionally protected immunity from forced sale provided the testatrix, does not inure to her devisee. Effectively, the Court has added the term "next immediate heir" to Fla. Const. Art. X, §4(b).

In 1988, this Court addressed the issue of whether words could be added, or inserted, into the constitution, when it answered the Third District Court's certified question of whether the exemption applies when the decedent is not survived by a dependent spouse or children. In a case involving a testatrix's devise of her homestead to her adult non-dependant children, Article X, Section 4(b) of the Florida Constitution was construed to mean that the exemptions permitted therein are exactly as stated in the text of the Constitution; they "inure to the surviving spouse or heirs of the owner". **Lopez** at 949.

Creditors sought to have this Court make a distinction between "adult heirs" and "dependent heirs", which it refused to do, explaining that it would not insert words into the Constitution which were not there. The Court refused to "attribute to the legislature an intent beyond that expressed." Id. As the Court said

> "There are no words suggesting that the heirs or surviving spouse had to have been dependent on the homeowner to enjoy this protection." Id.

Therefore, the term "heirs" contained in Fla. Const. Art. X, §4(b) doesn't mean the "next immediate" heirs when determining to whom the exemption inures. The **Lopez** and the **Bartelt** Courts have been quite clear to whom the constitutional exemption under Fla. Const. Art. X, §4(b), inures. These Courts have neither broadened nor limited the definition of "heir, but have looked to Fla. Stat. §732.103 as an all-inclusive list of whom is to be considered, refusing to append the Constitution by adding modifiers to its language such as "adult heirs". The Second District Court would have this Court insert into the constitutional text either the term "next immediate" or "next-in-line" to describe "heirs" identified in Fla. Const. Art. X, §4(b).

Kelli Snyder, while the daughter of Milo Snyder (R-024) (R-017), is, also, a lineal descendant of the decedent. As such, she falls within the class of persons designated as "heirs" or "heirs-at-law" in Fla. Stat. §732.103(1). The essential purpose of this statute is to identify, definitively, the next-in-line taker of the physical property when a decedent dies intestate. However, if it is to be used for the purpose of broadly determining to whom the constitutional immunity from forced sale inures, then it defines a class of persons intestate as well as testate. If the definition can take an ambulatory definition and mean all takers under intestacy then it must be construed to mean all takers under testacy.

c. THE PERSONAL REPRESENTATIVE CANNOT LOOK TO THE DECEDENT'S HOMESTEAD FOR FUNDS TO SATISFY THE SPECIFIC DEVISES, DEBTS OF THE DECEDENT AND COSTS OF ADMINISTRATION.

In its reversal of the trial court's order determining that Kelli Snyder is an heir contemplated by Fla. Const. Art. X, §4(b), the Second District Court of Appeal looked to Fla. Stats. §731.201(18) and §732.103 to define and interpret the meaning of the term "heirs" as used in that provision of the constitution.

Long settled in construing the homestead exemption provision of the constitution, sources (i.e. statutes) other than the constitution must give direction because it provides the entitlement, not the actual disposition of the property. **Miller v. Finegan**, 26 Fla. 29, 7 So. 140 (Fla. 1890) and **Hinson**, supra.

While the foregoing statutes are directive in an intestate situation, one additional statute, together with its predecessor, must be reviewed to determine whether Kelli Snyder receives her grandmother's homestead property free of specific devices, creditors claims, or costs of administration as it has long been settled that a decedents homestead shall neither be an asset of the estate in the hands of the personal representative nor subject to administration. **In Re Nobles Estate**, 73 So.2d 873 (Fla. 1954); **In Re Lieber's Estate**, 103 So.2d 192 (Fla. 1958)].

The personal representative officially took possession of the decedents homestead property upon issuance of the letters of administration, February 28, 1995 (R-010) and pursued its sale in an effort to fund specific devises, creditors claims and costs of

administration. Pursuant to Fla. Stat. §733.608, the homestead cannot be used for these purposes.

Fla. Stat. §733.608 and its predecessor statute Fla. Stat. §733.01(1)(1973) each state very specifically that homestead property is excluded from inclusion in an estate for the "payment of devises, debts, family allowances, estate and inheritance taxes, claims, charges, and expenses of administration." In 1974, when the Florida Probate Code was consolidated and revised, by House Bill No. 4050, Fla. Sess. Law Serv., Chapter 74-106 (West), revised Fla. Stat. §733.01(1) (1973), into Fla. Stat. §733.608, but the legislature omitted the term "except homesteads" originally contained in Fla. Stat. §733.01(1)(1973). This omission was corrected in 1977 by Senate Bill No. 686, Fla. Sess. Law Serv., Chapter 77-87 (West) and the term "except the homestead" was inserted into Fla. Stat. §733.608. Therefore, it is quite clear that the legislature intended to exclude the homestead from a decedents estate for the purpose of funding any creditors claims, specific bequests, or administrative costs. No interpretation is necessary as the plain meaning of the statutory language is quite clear. **St. Petersburg Bank and Trust Co. v. Hamm**, 414 So.2d 1071 (Fla. 1982).

Once the trial court made the determination that the real property was the "homestead" of Kelli Snyder's grandmother, it should have been removed, pursuant to Fla. Stat. §733.608, as an asset from her grandmother's estate and transferred to Kelli Snyder, intact, free from any creditors claims, specific bequests, or administrative costs.

d. THE CONSTITUTIONAL HOMESTEAD EXEMPTION PROVISION DOES NOT CONFER UPON KELLI SNYDER THE RIGHT TO OWN HER GRANDMOTHER'S HOMESTEAD PROPERTY, ONLY AN EXEMPTION

FROM ITS FORCED SALE. THIS EXEMPTION IS INCIDENT TO THE TRANSFER OF THE PROPERTY AND SHOULD ACCOMPANY IT.

As noted by the Second District Court, without her grandmother's will, Kelli Snyder would have neither a claim to her homestead property nor its accompanying exemption from forced sale. While acknowledging that her grandmother could devise her homestead to Kelli Snyder, the Court determined that the exemption did not accompany the real property because she was not the immediate intestate taker (i.e. not the "heir"), thereby making a distinction between the transfer of the title of the actual homestead real property and the transfer of the constitutional immunity of protection from forced sale. However, if the Second District Court of Appeal is upheld, she is to receive the property but not the exemption - a meaningless exercise defeating the devise of the homestead and not within the intent of the constitution.

Although the decedent died intestate, the **Miller** Court, supra discussed the extent to which the protection from forced sale was provided and to whom it should go. That case involved a creditor who was trying to force a sale of the homestead property to recover for a promissory note entered into by the decedent prior to his death. Noting, in that case, that the statute of descent confers title to the homestead while the constitution gives the right of exemption, the Court explained "[t]o those upon whom the statute throws the title of descent, the constitution gives the right of exemption; or, in other words, the constitution makes the exemption incident to the inheritance..." (Emphasis added). Id. at 141.

This would suggest that the exemption follows the physical property.

In discussing to whom this exemption "accrued" the Court stated:

> "The meaning of this is that those who inherit the property shall take with it, and as incident to the inheritance, the same exemption from the debts of the deceased head of the family who owned it as he enjoyed at his death. This exemption is free from liability for the debts of the ancestor, and it is given to whoever may be heirs, without reference to whether they be infants or adults." (Emphasis added.) Id. at 142.

In a later testate case, this Court said the exemption which "inures" to the widow or heirs of the decedent, does not establish an estate in the exempted property, only a right to exempt such property from forced sale. **Hinson** Supra. In construing Section 2, Article 10 of the 1885 Florida Constitution (a precursor of our constitution) as it related to personal property and a widow's dower, the **Hinson** Court said:

> "The widow and heirs, on the death of the paterfamilias, acquire their proprietary rights of property in things exempted, not from the constitutional provisions quoted, but entirely from the statutes regulating dower and the descent of property, unaffected by such constitutional provisions, except that the latter instrument appends to the things exempted, in their transmission to the widow and heirs, the feature of immunity from forced sale for the debts of the ancestor." (Emphasis added). Id. at 692.

Although addressing the issue of distribution of the constitutional personal property exemption, the **Hinson** Court stated:

> "The immunity from debts that inures to the heirs is appended only to such property as the heirs acquire a right of ownership in.... When the ancestor, while in life, disposes of his effects by will, to take effect on his death, the instant of his death brings to the dispositions of property therein made a consummated effectiveness, as though he had made the same dispositions thereof absolutely during his life by deed." Id. at 692.

These courts, one dealing with an intestate situation, the other testate, while making the distinction between taking of the property and claiming the exemption from forced sale thereof, appear to have resolved the issue of to whom the right of exemption "inures." While the statutes or a testamentary devise determines in whom title to the property vests, the beneficiary of the property receives those rights from forced sale enjoyed by the homesteader.

Accordingly, Kelli Snyder, having received her grandmother's homestead by devise should be permitted to enjoy the same protection from forced sale enjoyed by her grandmother.

II. KELLI SNYDER'S RIGHT TO THE CONSTITUTIONAL IMMUNITY FROM FORCED SALE SHOULD NOT BE BASED UPON ITS EFFECT ON ADMINISTRATION OF THE ESTATE OR CONCERN FOR THE RIGHTS OF CREDITORS.

The Second District Court in its decision stated "Kelli Snyder's interpretation would have a profound effect on the administration of estates and the rights of creditors and hardly seems intended by the constitution." Cite omitted. This Court, in **Lopez** made it quite clear that the homestead exemption is not based upon principles of equity and concerns of windfalls to the heirs are not to be considerations in construing the constitutional homestead provisions.

III. AS A MATTER OF PUBLIC POLICY, KELLI SNYDER'S RIGHT TO THE CONSTITUTIONAL IMMUNITY FROM FORCED SALE SHOULD NOT BE ABRIDGED.

Kelli Snyder's grandmother made her intent clear when she chose to make a will leaving the majority of her assets to her granddaughter. She did not entirely exclude her son. She left him, as well as her friends, cash distributions (R-001). Unfortunately, at her demise, her liquid assets were insufficient to effect such a distribution. Had she

intended any other result than Kelli Snyder receiving the bulk of her estate, including her homestead property, she would have made such intent clear in her will.

Public policy should dictate that if a resident provides, by will, that his/her homestead property descend to a member of the class defined as "heirs," he/she should have no fear of its later sale to pay creditors and the cost of administration. "To hold otherwise would discourage Florida residents from making wills and promote the passage of property through intestacy laws." **Bartelt** at 284.

This Court has stated that "the purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the householder a home...beyond the reach of...the creditors who have given credit under such law." **Lopez** at 948.

Should this Court adopt the Second District Court's interpretation that only the most immediate of intestate heirs may receive the benefits of the homestead exemption, it would be pointless for an individual to make a testamentary disposition of homestead property to other than the most immediate intestate heir if the testator/testatrix wishes to protect his/her homestead. For example, often grandparents rear their grandchildren and wish to provide for them through their will. If the Second District Court is upheld, it would be unfortunate for these grandchildren if their parents were to survive their grandparents, for the homestead property could not be left to them; a result not intended by the Constitution.

CONCLUSION

The Second District Court of Appeal erred in its decision when it determined that the protection from forced sale of her grandmother's homestead property provided by Fla. Const. Art. X, §4(a)(1), does not inure, pursuant to Fla. Const. Art. X, §4(b), to Kelli Snyder, when she received the homestead property. She is entitled, as a testamentary devisee of that property and a member of the statutorily defined class of "heirs", to the immunity from forced sale provided by the Constitution.

Additionally, the homestead property cannot be included in the assets of the estate for use by the personal representative, therefore, it should descend to Kelli Snyder as devised.

The testatrix's homestead property, should descend to Kelli Snyder, an "heir", as contemplated within constitutional and statutory interpretation, as a matter of public policy, and should not be subject to forced sale to satisfy creditors claims, specific bequests and costs of administration.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to **Kent W. Davis, Esquire**, Foster and Davis, 555 Fourth Street, P.O. Box 2911, St. Petersburg, Florida 33731, by U.S. Mail/Facsimile, on this 7th day of January, 1997.

Respectfully submitted,

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1/8/97 filed Jan. 8, 1997

RE: KELLI SNYDER
V.
KENT W. DAVIS, etc.

CASE NO. 89,410

I have this date received the below-listed pleadings or documents:

Petitioner's Brief on the Merits (Original & 7). Please file an Appendix immediately.
Petitioner's Request for Oral Argument.
Diskette.

Please make reference to the case number in all correspondence and pleadings.

Most cordially,

Clerk, Supreme Court

ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

SJW/bhp
cc: Mr. Kent W. Davis