

047

SUPREME COURT OF FLORIDA

KELLI SNYDER, :
 Petitioner :
v. :
KENT W. DAVIS, ETC., :

 Respondent,

CASE NO. 89,410
District Court of Appeal
2nd District - No. 96-00483

FILED

SID J. WHITE

JAN 27 1997

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

RESPONDENT'S BRIEF ON THE MERITS

✓
Kent W. Davis, Esquire
Foster and Davis, Attorneys
Attorney for Respondent

555 - 4th Street North
St. Petersburg, Florida 33701
(813) 822-2013
FL Bar No. 018362

TABLE OF CONTENTS

Issue Presented for Review:

**1. ISSUE: WHAT DOES THE WORD "HEIRS" MEAN AS USED IN ARTICLE
X SECTION 4(b) OF THE FLORIDA CONSTITUTION?**

	<u>PAGE</u>
Table of Contents	i
Table of Citations	ii
Summary of Argument	1
Issues on Appeal Certified Question from District Court of Appeal	2
Argument:	3,4,5
Conclusion	6
Certificate of Service	7

TABLE OF CITATIONS

<u>CASES:</u>	<u>PAGE:</u>
<u>Bartelt v. Bartelt</u> , 579 So. 2d 282 (3rd DCA 1991)	4
<u>Bigelow v. Dunphe</u> , 197 So. 328 (Fla. 1940)	5
<u>Hubert v. Hubert</u> , 622 So. 2d 1049 (4th DCA 1993)	4
<u>Pitts v. Pitts</u> , 162 So. 2d. 708 (1935)	4
<u>Public Health Trust of Dade City v. Lopez</u> , 531 So. 2d 946 (Fla. 1988)	5
<u>Rawlins v. Dade Lumber Co.</u> , 80 Fla. 398 (SC 1920)	4
<u>Scull v. Beatty</u> , 27 Fla. 426 (1891)	3,5
<u>Shone v. Bellmore</u> , 75 Fla. 515 (1918)	4
<u>State of Florida Dept. of Health vs. Trammell</u> , 508 So. 2d 422, (1st DCA 1987)	4
<u>Stone v. Citizens State Bank</u> , 59 S. 945 (1912)	4
<u>Williams v. Williams</u> , 6 So. 2d 275 (1942)	4
 <u>STATUTES:</u>	
Florida Statute 731.201 (18)	3
 <u>FLORIDA CONSTITUTION:</u>	
Florida Constitution, Article 10, Section 4(b)	3,5
 <u>OTHER:</u>	
17 Fla. Jur 2d - Decedents Property Section 11	4

SUMMARY ARGUMENT

The order of the District Court of Appeal should be affirmed and the certified question answered in the negative because:

1. The District Court properly determined that the word heirs as used in the constitutional provision in question has the same meaning as is commonly used and understood.

2. There are no special circumstances warranting a departure from the settled, plain meaning of the word heirs as used in our law.

3. The order preserves the purpose of the homestead exemption provisions in the constitution.

QUESTION CERTIFIED BY THE DISTRICT COURT OF APPEAL

1. **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)?**

ISSUE ON APPEAL

2. **WHAT DOES THE WORD "HEIRS" MEAN AS
USED IN ARTICLE X SECTION 4(b) OF THE FLORIDA
CONSTITUTION?**

ARGUMENT

ISSUE: WHAT DOES THE WORD "HEIRS" MEAN AS USED IN ARTICLE X SECTION 4(b) OF THE FLORIDA CONSTITUTION?

The above issue presents a questions of law which will determine the answer to the question certified to this court by the District Court of Appeal.

POINT 1

Respondent contends that the word "heirs" as used in Article X section 4(b) of the constitution means exactly what lawyers and judges have commonly understand it to mean for hundreds of years; specifically, that a person's heirs are those persons who inherit from a decedent under the law when the decedent dies intestate. This elementary principal of law is found in Florida Statutes section 731.201 (18) which states:

"Heirs or heirs at law means those persons including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent."

But is this commonly understood meaning of the word heirs the correct meaning of that word as it is used in Article X Section 4(b) of the constitution? Yes it is. This has been established by many opinions from this court and the District Courts of Appeal for more than one hundred years. One of the older cases which succinctly states the principle is Scull v. Beatty (1891) 27 Fla 426, where at page 436 this court said:

"The language of the Constitution is: The exemptions provided for . . . shall accrue to the heirs of the party having enjoyed or taken the benefit of such exemption." The statute of descents fixes who are the heirs in this case the children of James Beatty, deceased."

Another opinion by this court frequently cited for the same principal is

Shone et al., v. Bellmore et al., (1918) 75 Fla 515 where at page 522 this court stated:

"The exemptions provided for in section one shall inure to the widow and heirs of the party entitled to such exemption . . . In this connection the word "heirs" means those who may under the law of the State inherit from the owner of the homestead."

Other cases stating the principle are: Rawlins v. The Dade Lumber Co., 80 Fla. 398 (SC 1920) State of Fla. Dept. of Health v. Trammell 508 So. 2d 422 (1st DCA 1987) Bartelt v. Bartelt, 579 So. 2d 282 (3rd DCA 1991) and Hubert v. Hubert 622 So. 2nd 1049 (4th DCA 1993).

Petitioner argues at page 13 of her brief that she is a member of a class of heirs. This is erroneous. It is a principal of law that heirs are determined after death and after Betty Snyder's death, Petitioner was not in the class of person(s) who would be considered an heir of Betty Snyder, Stone v. Citizens State Bank (1912) 59 So. 945; 17 Fla. Jur 2d Decedent's Property, Section 11; Williams v. Williams, (1942) 6 So. 2d 275 and Pitts v. Pitts (1935) 162 So 708. Florida Statute 731.201 (18) defining heirs implies the same principle in that it defines heirs as persons entitled to the property of a decedent. In other words there has to be a decedent before you can have heirs.

POINT 2

It should be noted that Petitioner can cite no body of law, cases or theory which supports her position that she is an heir of Betty Snyder.

Petitioner was a relative of Betty Snyder who had the potential to become an heir, but that never happened. The constitution provides that the exemption inures to the heirs not the potential heirs of a decedent.

The meaning of the word "heirs" is well defined by statute and case law. The use of that term in Article X Section 4(b) is ordinary, plain and unambiguous. Under these circumstances there is no valid purpose for the court to interpolate or give the term anything but its ordinary, plain meaning. Public Health Trust v. Lopez 531 So. 2d 946 (Fla 1988) and Scull v. Beatty 27 Fla 426.

POINT 3

The purpose of the homestead exemptions in our constitution as stated by the courts is to protect the homeowner and his family and to secure the house to the family so that they can live beyond the reach of economic misfortune. Bigelow v. Dunphe 197 So. 328 (Fla. 1940), Public Health Trust v. Lopez, supra. If this is the case then the exemption provisions should be interpreted in a way that accomplishes this purpose and does not extend the exemption to distant and remotely related relatives of the decedent at the expense of bona-fide creditors.


As noted by the District Court of Appeal a ruling supporting the Petitioner would have a profound effect on the administration of estates, the rights of creditors and other estate beneficiaries.

CONCLUSION

Petitioner's cause is without merit and unsupported by legal principles. To adopt her position would unsettle long established law and make a mockery of the homestead exemptions designed to protect the family. The Constitution is quite clear. The exemption goes to heirs of a decedent. Petitioner never was and never will be an heir of Betty Snyder.

The Order of the District Court of Appeal correctly follows the case law in determining the meaning of the constitutional provision, re-establishes what was understood to be settled law and preserves the purpose of the constitutional homestead exemptions.

Because Petitioner's contention that she is an heir of Betty Snyder is not supported by fact or law, the order of the District Court of Appeal should be affirmed and the certified question should be answered in the negative.



KENT W. DAVIS
Foster and Davis, Attorneys
555 - 4th Street North
St. Petersburg, FL 33701
(813) 822-2013
SPN# 0041207
FBN# 018362
Counsel for Respondent
Kent W. Davis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Respondent's Brief on the Merits has been furnished by Kent W. Davis, U.S. Mail this 24 day of January, 1997, to Gerald L. Pickett, Esquire, 211 South Seminole, Boulevard, Inverness, Florida 34452.



KENT W. DAVIS
Foster and Davis, Attorneys
555 - 4th Street North
St. Petersburg, FL 33701
(813) 822-2013
SPN# 0041207
FBN# 018362
Counsel for Respondent
Kent W. Davis

FOSTER AND DAVIS
Attorneys and Counselors at Law

DAVID L. FOSTER
KENT W. DAVIS
D. WILLIAM FOSTER
DAVID A. PEEK

813-822-2013
813-894-3261
FACSIMILE
813-823-2562

FILED

SID J. WHITE

JAN 27 1997

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

January 24, 1997

Sid J. White, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1927

Re: Kelli Snyder v. Kent W. Davis
Case No. 89,410

Greetings:

Enclosed please find an original and seven copies of the Respondents Brief on the Merits regarding the above referenced case along with the diskette required.

If you have any questions, please contact my office.

Cordially yours,

FOSTER AND DAVIS



Kent W. Davis

KWD/dcc
Enclosures