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CLERK, SUPREME COURT

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SUPREME COURT OF FLORIDA

VIRGINIA WALKER

Petitioner,

CASE NO. 89,992

vs.

**LAUNA G. MICKLER,
Personal Representative
IN RE: THE ESTATE OF
CAROLYN B. MANSFIELD,**

Respondent.

_____ /

On **Appeal** from the District Court of **Appeal**
First District of Florida

RESPONDENT'S ANSWER BRIEF

✓
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PRELIMINARY STATEMENT

The Respondent, Estate of Carolyn B. Mansfield, will be referred to herein as decedent. LAUNA G. MICKLER, Personal Representative, will be referred to herein as Personal Representative. Petitioners in the court below are LAUNA G. MICKLER and DAVID BAVLE. Portions of the transcript of Court Proceedings held before Honorable L. Haldane Taylor on December 11, 1995, will be referred to as (T-). Portions of the Record will be referred to as (R-). The District Court of Florida, First District, will be referred to as the First District. The opinion of the First District herein shall be referred to as (O-).

STATEMENT OF THE FACTS AND OF THE CASE

Appellee adopts the Statement of the Facts and of the Case filed herein by Appellant.

SUMMARY OF ARGUMENT

The trial court and the First District were correct in its determination that the grandson of the decedent, DAVID BAVLE, was an heir entitled to the exemption protection provided by Article X, Section 4 (b), Florida Constitution. The pivotal question for this court is the interpretation and definition of the word "heir". Florida Statute Section 731.201 (18) defines heirs as "those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of the decedent". Department of Health and Rehabilitative Services v. Trammel, 508 So.2d 422, 423-424 (Fla. 1st DCA 1987). Florida Statute Section 732.103 (1) defining who is entitled under intestate succession reads "To the lineal descendants of the decedent". Clearly, a grandson is a lineal descendant, and is in the class of protected persons.

ARGUMENT

THE TRIAL COURT AND THE FIRST DISTRICT WERE CORRECT IN FINDING THAT DAVID BAVLE IS AN HEIR OF THE DECEDENT, CAROLYN B. MANSFIELD, WITHIN THE PROTECTION OF ARTICLE X, SECTION 4 (B) OF THE FLORIDA CONSTITUTION ENTITLING HIS REMAINDER INTEREST TO BE EXEMPT FROM CLAIMS OF THE DECEDENT'S CREDITORS.

The trial court and the First District's finding that DAVID BAVLE is an heir entitled to protection from decedent's creditors with the meaning of Article X, Section 4(b) of the Florida Constitution is correct. The Florida First District has interpreted heirs as used in Article X, Section 4(b) of the Florida Constitution to mean "those who *may* under the laws of the state inherit from the owner of the homestead." Department of Health and Rehabilitative Services v. Trammell (emphasis added) (citing Shone v. Bellmore, 78 So. 605, 607 (Fla. 1918)). The Trammel Court noted that lineal descendants, fathers and mothers, brothers and sisters, and grandmothers and grandfathers are heirs as listed in Section 732.103, Florida Statutes. Id. at 424. Petitioners, LAUNA G. MICIUER and DAVID BAVLE, the decedent's daughter and grandson, respectively, are lineal descendants of the decedent. Thus they are heirs within the meaning of Article X, Section 4(b) of the Florida Constitution. Although this decision is in conflict

with the decision rendered by the District Court of Appeal, Second District, in the case of Davis v. Snyder, 681 So.2d 1191 (Fla. 2nd DCA 1996), which is presently under appeal to this Court, the reasoning of the First District is that "We find the Davis opinion contrary to the purpose of the homestead exemption from forced sale." (0-5). This opinion falls squarely within the opinions reached by this Court and other Florida Courts that provisions regarding homestead exemption are to be liberally interpreted. Davis clearly does not follow this tradition.

Petitioner argues that DAVID BAVLE is not an "heir" because his mother is living and she and her two brothers would have been entitled to inherit under the laws of intestate succession. This is an extremely narrow interpretation of Trammell. Trammell does not limit "heirs" to the order of descent in Florida Statute 732.103, but only limits it to the classes named therein. In the instant case, DAVID BAVLE is a member of that class.

Appellant's assertion that the grandson, DAVID BAVLE, is not an heir is inconsistent with the expansive interpretation of the word "heirs" by the Trammell Court and the policy implications of the homestead exemption. See Public Health Trust of Dade County v. Lopez, 531 So.2d 946, 948 (Fla. 1988) "As a matter of public policy, the purpose of the homestead exemption is to

promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law."

In Bartelt v. Bartelt, 579 So.2d 282 (Fla. 3rd DCA 1991), the Court held that "A decedent's homestead exemption inures to an interest acquired by devise, so long as the devisee is a member of the class designated as the decedent's heirs". The decedent's grandson, DAVID BAVLE, is clearly a member of the "class", as he is a lineal descendant. Even though the interest held by DAVID BAVLE is a remainder interest, the homestead exemption inures to his benefit. See Hubert v. Hubert, 622 So.2d 1049 (Fla. 4th. DCA 1993) (holding that the homestead exemption inured to a remainder interest).

As a member of the class protected under Article X, Section 4(b) and Florida Statute 732.103, the remainder interest of DAVID BAVLE is exempt from the claims of creditors of the decedent. If we were to follow Petitioner's reasoning, then would not the property have to be devised to all of the heirs within the class in order to be exempt. If it is allowable to decide between heirs within a class, why is not allowable to decide among heirs in different classes?

CONCLUSION

DAVID BAVLE, as grandson of decedent, is an heir entitled to the protection of Article X, Section 4 of the Florida Constitution as to the remainder interest and residuary interest he received pursuant to the will of the decedent. For the reasons expressed herein this Court should affirm the decision of the District Court of Appeal, First District.

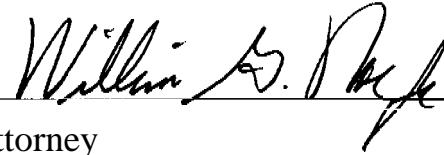
Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent to THOMAS A. DANIEL, Esquire, Attorney for Petitioner/Appellant, 623 North Main Street, Gainesville, Florida 32601, by United States Mail this 18th. day of April, 1997.



Attorney