

**FILED**

SID J. WHITE

MAY 2 1997

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

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.  
\_\_\_\_\_ /

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

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PETITIONER'S REPLY BRIEF

✓  
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## ARGUMENT

**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**

The appellant would have this court redefine "heir" in a very imprecise manner. Such an interpretation would be inconsistent with the **logical** and long adopted definition used to determine who would under the laws of intestate succession inherit from a decedent. A probate court would surely be confused by a definition of heir for the purpose of determining entitlement to the property of a decedent and a separate definition of heir for the purpose of determining whether the homestead exemption provision applies to the particular transfer.

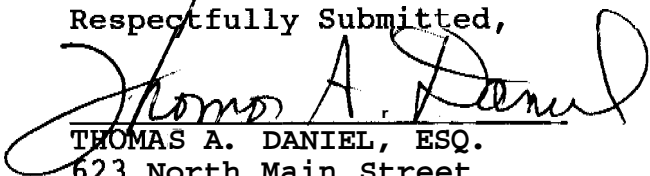
The constitutional provision is precise as it is written. It **could** have been drafted to include lineal descendants. It could have been drafted to include only dependant heirs or lineal descendent. As this court has previously **state** "This Court consistently has adhered to the plain meaning rule in applying statutory and constitutional provisions." Public Health Trust of Dade County v. Lopez, 531 So. 2nd **946, 949 (Fla. 1988)**.

The interpretation of heir has been clear, reasonable and logical and has served the purposes of the courts of this state throughout its history. "'Heirs' or 'heirs at law' means those persons, including the surviving spouse, who are entitled under the statute of intestate succession to the property of a decedent." Florida Statute section 731.201(18). Respondent has failed to provide this court with any other usage or definition. Respondent has failed to provide this court with any citation which equates heir with lineal descendent. Such an imprecise meaning or a series of meanings would not serve the Courts of this State.

CONCLUSION

DAVID BAVLE as grandson of a decedent survived by her children is not an heir entitled to the protection of Article X, section 4(2)(b) and 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 reverse the Opinion of the District Court of Appeal of Florida, First District.

Respectfully Submitted,



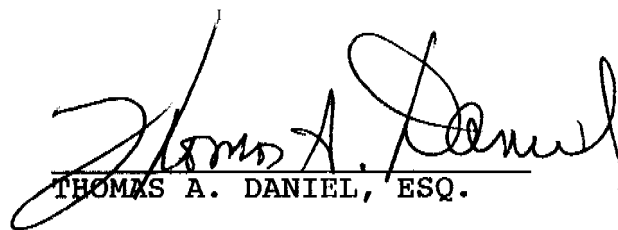
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by US Mail to:

WILLIAM G. NOE, JR., ESQ.  
Attorney for the Personal Representative  
for the estate of Carolyn B. Mansfield  
599 Atlantic Blvd., Suite 6  
Atlantic Beach, FL 32233

this 1 day of May, 1997,

  
THOMAS A. DANIEL, ESQ.