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Homestead Exemption: Extension of Protection After Judgement

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HOMESTEAD EXEMPTION: EXTENSION OF PROTECTION AFTER JUDGMENT

Quigley v. Kennedy and Ely Insurance, Inc., 207 So. 2d 431 (Fla. 1968)

Appellants, while subject to an outstanding judgment, sought to add additional land to their existing homestead. After entry of judgment, appellants testified in a deposition in aid of execution that the seven-and-one-half-acre tract they then occupied was their homestead and the only realty they owned. As such, it was exempt from levy under the Florida constitution.[1] Appellants later purchased a vacant tract of land adjacent to their declared homestead. Appellee, creditor under the outstanding judgment, attempted to levy on this newly acquired property. To avoid levy appellant claimed both tracts constituted one homestead.

The district court of appeal affirmed the trial court and held that husband and wife who, in the face of a recorded judgment against both, purchased land contiguous to their homestead cannot claim homestead exemption to prevent levy on the new tract.[2] On certiorari the Supreme Court of Florida reversed and HELD, that at purchase the adjacent tract became *eo instanti* a part of the homestead and was therefore exempt.

The purpose of Florida's homestead exemption has long been held to be that of providing a home to shelter and protect the family from misfortune.[3] In addition, homestead exemption provisions have been broadly construed[4] to protect the shelter of a family home despite just demands of creditors.[5] The homestead, however, cannot be employed as an instrument of fraud or a means of escaping payment of obligations.[6] A party subject to levy can designate in writing what constitutes his homestead prior to the levy[7] or he may make such designation after levy is made.[8] Once such a designation has been made, the remainder of his land is subject to sale.[9] If he does not make a designation at the time of judgment, but has land he intends to designate as his homestead, he must immediately occupy it as his homestead through open, visible acts.[10] He cannot at some later date

1. Homesteads of one-half acre within an incorporated area or 160 acres outside of incorporated areas are exempt from forced sale to satisfy outstanding judgments. FLA. CONST. art. X, §1.

2. Quigley v. Kennedy & Ely Ins., Inc., 202 So. 2d 610 (3d D.C.A. Fla. 1967).

3. Collins v. Collins, 150 Fla. 374, 7 So. 2d 443 (1942). *See also In re* Noble's Estate, 73 So. 2d 873 (Fla. 1954). For a general discussion of homestead exemption, *see* Crosby & Miller, *Our Legal Chameleon, The Florida Homestead Exemption* (pts. I-V), 2 U. FLA. L. REV. 12, 219, 346 (1949).

4. Graham v. Azar, 204 So. 2d 193, 195 (Fla. 1967). *Cf.* Comment, *A Balancing of Equities Between Two Dependent Families*, 20 U. FLA. L. REV. 422 (1968).

5. Hill v. First Nat'l Bank, 79 Fla. 391, 84 So. 190 (1920).

6. Anderson Mill & Lumber Co. v. Clements, 101 Fla. 523, 134 So. 588 (1931). *See also* Hillsborough Inv. Co. v. Wilcox, 152 Fla. 889, 13 So. 2d 448 (1943). *But. cf.* Sponholtz v. Sponholtz, 180 So. 2d 497 (3d D.C.A. Fla. 1965), *modified*, 190 So. 2d 572 (1966).

7. FLA. STAT. §222.01 (1967).

8. FLA. STAT. §222.02 (1967).

9. *Id.*

10. First Nat'l Bank v. Peel, 107 Fla. 413, 145 So. 177 (1932).

move to a more valuable tract to increase the amount of property protected by homestead exemption.[11] When a party is subject to an outstanding judgment, the judgment lien attaches to any new property the instant he acquires title.[12] By later making it his homestead he does not defeat the lien.[13]

Appellants in the instant case designated their original tract of seven-and-one-half-acres as their homestead after judgment had been entered against them.[14] Thereafter, this property was exempt from forced sale.[15] Any remaining land they then owned would have been subject to levy. Since they had no other real property or assets with which to settle the judgment, it remained outstanding against them, attaching itself to the new tract of land at the instant title was acquired.[16] If the new tract was to become part of their protected homestead, according to precedent, appellants should have manifested their intent to include the new tract in their homestead by immediate open, visible acts.[17] It is not clear from the decisions whether they did so.

In the present case, the Florida supreme court nevertheless ruled that when the new tract was purchased it became *eo instanti* a part of the homestead. The court then stated that when homestead rights and a lien attach simultaneously, the homestead right has priority. As authority for this conclusion the court cited *American Jurisprudence.*[18] A careful study of the cases listed there[19] reveals that all of them can be distinguished from the present case. In those cases either no homestead existed at the time of acquisition of new property or the new property was in use as part of the homestead before title was transferred. The court thus apparently ignored a solution that would have afforded some measure of protection to innocent creditors and at the same time would have promoted the purposes of homestead exemption. In similar cases the courts have considered at what point the judgment lien attached to the property in relation to when the property was declared homestead and whether there was a homestead already in existence at the time new property was acquired. If the new tract did not become part of the homestead until *after* the judgment lien attached, the lien clearly has priority over the claim of homestead rights under existing Florida law.[20] If the lien and the homestead rights attach simultaneously to the property, as in this decision and there is no existing homestead,[21] or the property in

11. *Id.* at 414-15, 145 So. at 178.
12. Porter-Mallard Co. v. Dugger, 117 Fla. 137, 157 So. 429 (1934).
13. Moorhead v. Yongue, 134 Fla. 135, 183 So. 804 (1938); Porter-Mallard Co. v. Dugger, 117 Fla. 137, 157 So. 429 (1934).
14. FLA. STAT. §222.02 (1967).
15. FLA. CONST. art. X, §1.
16. Porter-Mallard Co. v. Dugger, 117 Fla. 137, 157 So. 429 (1934).
17. First Nat'l Bank v. Peel, 107 Fla. 413, 145 So. 177 (1932).
18. 26 AM. JUR. *Homesteads* §101 (1940).
19. Maples v. Rawlins, 105 Tenn. 457, 58 S.W. 644 (1900); Frieberg v. Walzem, 85 Tex. 264, 20 S.W. 60 (1892); *see* Annot., 110 A.L.R. 880 (1937).
20. Porter-Mallard Co. v. Dugger, 117 Fla. 137, 157 So. 429 (1934); *see* Crosby & Miller, *Our Legal Chameleon, The Florida Homestead Exemption*, 2 U. FLA .L. REV. 12, 35 (1949).
21. Stovall v. Kerr, 72 Kan. 330, 83 P. 827 (1905); Freiberg v. Walzem, 85 Tex. 264, 20 S.W. 60 (1892).

question is already in use as part of the homestead at the time of acquiring title,[22] it should be exempt from forced sale under the constitution. However, where there is already an adequate homestead existing and newly acquired property had not been in use as part of that homestead prior to acquisition of title, it should not be exempt from forced sale to meet judgment liens. Such an approach would insure the family a home and shelter and allow for the liberal interpretation of the homestead exemption laws. At the same time it would prevent a loophole affording judgment debtors a means of avoiding payment of just debts and defrauding creditors.

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22. Maines v. Sistrunk, 170 La. 768, 129 So. 158 (1930); Farmers' Mechanics' Trust Co. v. Perry, 56 S.W.2d 501 (Tex. Civ. App. 1933).