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Homestead: Family Headship

W. Joseph Reynolds

HOMESTEAD: FAMILY HEADSHIP

Beck v. Wylie, 60 So.2d 190 (Fla. 1952)

Appellant, thrice-married adult daughter of decedent, lived with and was largely supported by her mother. She performed all household duties while her mother managed the business affairs. Prior to rendition of a final divorce decree from her third husband, she began keeping company with one Beck, into whose home she moved five months before her mother's death and whom she married a week after her mother's death. As sole heir, she sought to have the estate declared free of a spendthrift trust placed on it for her benefit by her mother. The chancellor found that no homestead had existed even while she had remained with her mother and accordingly upheld the trust, whereupon she appealed. HELD, the residence was a homestead during its occupation by mother and daughter and could not be devised unless the daughter's departure terminated the family relationship. Decree reversed and remanded, Chief Justice Sebring and Justices Thomas and Roberts dissenting.

Family headship,[1] in reference to the Florida homestead exemption of realty from forced sale and the limitations on devise by the family head, has been the subject of numerous cases in this state. A widowed mother has been held the family head in the following situations: when she cared for her injured veteran son and his wife;[2] when she provided for two adult, unmarried daughters;[3] when she cared for an adult, unmarried daughter;[4] when she opened her home to and nursed an afflicted adult son;[5] and when she supported a younger son and his children after the death of her elder son, who had been recognized as the family head.[6] The Supreme Court has made it clear that there is no invariable test of family headship based solely on dependency and that family headship must be determined by the facts of each case.[7]

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[1]*I.e.*, status as "head of a family," FLA. CONST. Art. X, §1.

[2]Hillsborough Inv. Co. v. Wilcox, 152 Fla. 889, 13 So.2d 448 (1943).

[3]Caro v. Caro, 45 Fla. 203, 34 So. 309 (1903).

[4]DeCottes v. Clarkson, 43 Fla. 1, 29 So. 442 (1901).

[5]Davis v. Miami Beach Bank and Trust Co., 99 Fla. 1282, 128 So. 817 (1930) (reversing the chancellor).

[6]Hill v. First Nat. Bank, 73 Fla. 1092, 75 So. 614 (1917).

[7]Anderson v. Anderson, 44 So.2d 652 (Fla. 1950); Hillsborough Inv. Co. v. Wilcox, 152 Fla. 889, 13 So.2d 448 (1943); Jetton Lumber Co. v. Hall, 67 Fla. 61, 64 So. 440 (1914); DeCottes v. Clarkson, 43 Fla. 1, 29 So. 442 (1901).

The Court has, however, adopted a workable test based on a family at law, a family in fact,[8] or a combination of the two.[9] It adhered to this test in the instant case and held that family headship existed.

The homestead character of property attaches as a result of the constitutional provision[10] without further legislative action[11] when an owner occupies a house with his family as his domicil, or permanent residence.[12] The homestead was established in the instant case, if at all, when the mother bought the home and occupied it with her daughter.

The critical date is that of the death of the family head, in this instance the mother.[13] If homestead status exists at that time, the residence cannot be devised or encumbered by will.[14] Once homestead status is acquired, only abandonment or alienation in the manner provided by law can destroy it.[15] The instant record contains substantial evidence to justify a finding of abandonment; and this finding of fact would, of course, extinguish the homestead character of the property.[16] Abandonment, however, was apparently not alleged; in any event the chancellor did not rule on this issue.

The homestead exemption of the residence from forced sale was established to shelter the family and protect it from the stresses and strains of misfortune,[17] and also to protect the family against devise

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[8]Johns v. Bowden, 68 Fla. 32, 66 So. 155 (1914).

[9]See Crosby and Miller, *Our Legal Chameleon, The Florida Homestead Exemption*, 2 U. OF FLA. L. REV. 12, 24 (1949), quoted with approval in the instant opinion at p. 2.

[10]FLA. CONST. Art. X, §1.

[11]Hutchinson Shoe Co. v. Turner, 100 Fla. 1120, 130 So. 623 (1930).

[12]Raulerson v. Peeples, 77 Fla. 207, 81 So. 271 (1919); Oliver v. Snowden, 18 Fla. 823 (1882); *cf.* Croker v. Croker, 51 F.2d 11 (5th Cir. 1931).

[13]See Crosby and Miller, *Our Legal Chameleon, The Florida Homestead Exemption*, 2 U. OF FLA. L. REV. 12, 27 (1949).

[14]FLA. CONST. Art. X, §4; Griffith v. Griffith, 59 Fla. 512, 52 So. 609 (1910); Palmer v. Palmer, 47 Fla. 200, 35 So. 983 (1904); Caro v. Caro, 45 Fla. 203, 34 So. 309 (1903); Walker v. Redding, 40 Fla. 124, 23 So. 565 (1898); *see* Nelson v. Franklin, 152 Fla. 694, 695, 12 So.2d 771 (1943).

[15]Barlow v. Barlow, 156 Fla. 458, 23 So.2d 723 (1945); Hillsborough Inv. Co. v. Wilcox, 152 Fla. 889, 13 So.2d 448 (1943); Fidelity and Casualty Co. of New York v. Magwood, 107 Fla. 208, 145 So. 67 (1932); Nelson v. Hainlin, 89 Fla. 356, 104 So. 589 (1925); Clark v. Cox, 80 Fla. 63, 85 So. 173 (1920).

[16]Lanier v. Lanier, 95 Fla. 522, 116 So. 867 (1928); Matthews v. Jeacle, 61 Fla. 686, 55 So. 865 (1911); Murphy v. Farquhar, 39 Fla. 350, 22 So. 681 (1897).

[17]Croker v. Croker, 51 F.2d 11 (5th Cir. 1931); Collins v. Collins, 150 Fla. 374, 7 So.2d 443 (1942).