

SUPREME COURT OF FLORIDA

Don TULLIS, Petitioner, v. Shirley D. TULLIS, Respondent.

Don TULLIS, Petitioner, v. Shirley D. TULLIS, Respondent., 360 So. 2d 375 (Fla. 1978) (Fla. 1978) · No. No. 51206

SUMMARY

In *Tullis v. Tullis*, 360 So. 2d 375 (Fla. 1978), the Florida Supreme Court held that the state constitutional homestead exemption (Article X, Section 4) does not bar a partition action and forced sale of homestead property by a co-owner, when partition is necessary to protect the beneficial enjoyment of the common owners' interests. The court reasoned that the exemption protects the family home from forced sale for the owner's debts, not from a cotenant's right to partition, and reaffirmed the rule in *Donly v. Metropolitan Realty & Investment Co.*, 71 Fla. 644, 72 So. 178 (1916). This decision resolved a conflict with *Hoskin v. Hoskin*, 329 So. 2d 19 (Fla. 3d DCA 1976), and remains controlling authority on the intersection of homestead rights and partition by tenants in common.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	HATCHETT; OVERTON; BOYD; SUNDBERG; KARL; ADKINS; ENGLAND
JURISDICTION	Florida
DOCKET	No. 51206
DISPOSITION	approved
PROCEDURAL POSTURE	Petitioner Don Tullis appeals from the First District Court of Appeal's decision affirming the trial court's partition order, asserting conflict jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution.
PRECEDENTIAL VALUE	binding
PARTIES	Don Tullis v. Shirley D. Tullis

TOPICS

- homestead
- constitutional law
- real estate
- family law
- civil procedure

PRACTICE AREAS

- Property Law
- Family Law
- Constitutional Law

QUESTIONS PRESENTED

1. Whether Article X, Section 4 of the Florida Constitution (1968) prohibits partition and forced sale of homestead property when one co-owner sues for partition.

HOLDINGS

1. The constitutional provisions allow the partition and forced sale of homestead property upon suit by one of the owners of that property, if such partition and forced sale is necessary to protect the beneficial enjoyment of the owners in common to the extent of their interests in the property.

KEY QUOTATIONS

“We hold, with the First District, that our constitutional provisions allow the partition and forced sale of homestead property upon suit by one of the owners of that property, if such partition and forced sale is necessary to protect the beneficial enjoyment of the owners in common to the extent of their interests in the property.” (at 376-77)

“The purpose of the homestead exemption provision in our state constitution is to protect the family home from forced sale for the debts of the owner and head of the family. However, this court has never held that the homestead provision precludes a common owner of property from suing for partition and obtaining a forced sale in order to obtain the beneficial enjoyment of her interest in the property.” (at 377)

“Homestead interests should be protected from forced sale wherever possible, but not at the expense of others owning interests in the property.” (at 378)

FACTUAL BACKGROUND

The parties were married and lived in a home they owned as tenants by the entirety. After the wife moved out, the husband remained in the home with his minor daughter from a previous marriage. The dissolution judgment did not award the home to either party or grant exclusive possession, leaving them as tenants in common. The property is not divisible. The husband claimed the property as his constitutional homestead, asserting it was exempt from forced sale.

PROCEDURAL HISTORY

The parties' marriage was dissolved by final judgment which did not dispose of the marital home. The property was held as tenants in common. The wife filed suit for partition, which the trial court granted over the husband's claim of homestead exemption. The First District Court of Appeal affirmed. The husband petitioned for review based on conflict with *Hoskin v. Hoskin*, 329 So. 2d 19 (Fla. 3d DCA 1976).

DISPOSITION

approved

REMAND INSTRUCTIONS

Remand for further action on the partition suit.

CASES CITED

- Hoskin v. Hoskin, 329 So. 2d 19 (Fla. 3d DCA 1976)
- Hoskin v. Hoskin, 349 So. 2d 755 (Fla. 3d DCA 1977)
- Donly v. Metropolitan Realty & Investment Co., 71 Fla. 644, 72 So. 178 (1916)
- Moxley v. Wickes Corp., 356 So. 2d 785 (Fla. 1978)

CITED IN

- Don Tullis v. Shirley D. Tullis, Tullis v. Tullis, 360 So. 2d 375 (Fla. 1978)
- Don Tullis v. Shirley D. Tullis, Tullis v. Tullis, 360 So. 2d 375 (Fla. 1978)

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