

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

In re Estate of Frank Shefner, Frank Shefner, Jr., and Deborah Shefner Van Horn v. Linda Shefner-Holden and Susan Gorman

2 So. 3d 1076 (Fla. 3d DCA 2009) · No. No. 3D07-1890 · Decided February 11, 2009

SUMMARY

The Florida Third District Court of Appeal held that proceeds from the sale of homestead property devised directly to a qualified heir remained exempt from the decedent's creditors' claims and estate administrative expenses. The court also held that the devisees were entitled to attorney's fees and expenses for successfully defending a Slayer Statute claim because their defense effectuated the decedent's testamentary intent. The court affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Gersten, C.J.; Shepherd, J.; Lagoa, J.
JURISDICTION	Florida
DECIDED	February 11, 2009
DOCKET	No. 3D07-1890
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Frank Shefner, Jr. and Deborah Shefner Van Horn appealed separate probate orders. The appeal challenged an order determining that proceeds from the sale of the decedent's homestead were protected from creditors' claims and estate administrative expenses, and an order denying attorney's fees and expenses incurred in defending a voluntarily dismissed Slayer Statute claim.
STANDARD OF REVIEW	The opinion does not expressly identify a standard of review. It applied the governing constitutional and statutory rules to the undisputed probate facts and reviewed the attorney's-fee determination for legal error, while recognizing trial-court discretion under section 733.106(4).
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	In re Estate of Frank Shefner, Frank Shefner, Jr., Deborah Shefner Van Horn v. Linda Shefner-Holden, Susan Gorman

TOPICS

homestead

creditor claims

estate administration

slayer statute

probate procedure

PRACTICE AREAS

probate

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real estate

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether homestead property devised directly to a qualified heir remains protected from the decedent's creditors' claims and estate administrative expenses after the heir sells the property.
2. Whether beneficiaries who successfully defend a Slayer Statute claim are entitled to attorney's fees and expenses under section 733.106(3), Florida Statutes.

HOLDINGS

1. Homestead property devised directly to a qualified heir passes outside the probate estate, and the heir's subsequent sale of the property does not make the proceeds available to satisfy the decedent's creditors' claims or the estate's administrative expenses when the will did not direct a sale.
2. Beneficiaries who successfully defend a Slayer Statute claim are entitled under section 733.106(3), Florida Statutes, to reimbursement from the estate for reasonable attorney's fees and expenses when their defense effectuates the decedent's testamentary intent.

KEY QUOTATIONS

"The heir's sale of the property, after the decedent's death, does not change the legal consequences of the bequest from the decedent to the heir." (1078)

"When a testator directs that his or her homestead be sold and the proceeds distributed to devisees, the property loses its constitutional protection." (1079)

"In such cases, the decedent is devising money, not homestead property, and the proceeds may be subject to the claims of decedent's creditors and administrative expenses." (1079)

"An attorney may render services to an estate by: (1) bringing about an enhancement in value or an increase in estate assets, or (2) actions which establish and effectuate the decedent's testamentary intent." (1079)

FACTUAL BACKGROUND

Frank Shefner, Sr. died from a self-inflicted gunshot wound, leaving four adult children. His will devised his homestead to Frank Shefner, Jr. and provided that, if Frank sold the house, the proceeds would be divided equally among the children, while stating that Frank could not be forced to sell. Linda Shefner-Holden and Susan Gorman challenged the will and asserted that Deborah and Frank were barred from benefiting under Florida's Slayer Statute because they assisted in the decedent's suicide; the Slayer Statute claim was voluntarily dismissed before trial. After the will was upheld, Frank sold the house and deposited the proceeds for distribution to his siblings.

PROCEDURAL HISTORY

The decedent's children Linda Shefner-Holden and Susan Gorman challenged the will on undue-influence grounds and asserted a claim under Florida's Slayer Statute. They voluntarily dismissed the Slayer Statute claim before trial, and the trial court later found no undue influence. After Frank Shefner, Jr. sold the devised homestead, the trial court declared the sale proceeds homestead-protected and denied Deborah and Frank's request for attorney's fees. The appellate court affirmed the homestead ruling, reversed the attorney's-fee ruling, and remanded for an award of fees, with the trial court retaining discretion over the estate assets from which the fees and costs would be paid.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must award Deborah and Frank attorney's fees and expenses for defending the Slayer Statute claim. On remand, the trial court may determine whether the fees and costs should be paid from Linda and Susan's shares of the probate estate, excluding the homestead property, and may determine which estate assets should be used.

CASES CITED

- Public Health Trust of Dade County v. Lopez, Public Health Trust of Dade County v. Lopez, 531 So. 2d 946 (Fla. 1988)
- Michael Engelke v. Estate of Paul Engelke, Engelke v. Engelke, 921 So. 2d 693 (Fla. 4th DCA 2006)
- Thompson v. Laney, 766 So. 2d 1087, 1088 (Fla. 3d DCA 2000)
- Kelli Snyder, Petitioner, v. Kent W. Davis, etc., Respondent, Snyder v. Davis, 699 So. 2d 999, 1003 (Fla. 1997)
- Thomas McKean, et al. v. Peter Warburton, McKean v. Warburton, 919 So. 2d 341, 347 (Fla. 2005)
- In re ESTATE OF Jack HAMEL, Karyn H. White, individually and as Personal Representative of the Estate of Jack Hamel, Appellant, v. Theodore Parker, P.A., a Florida corporation, Appellee, Estate of Hamel v. Parker, 821 So. 2d 1276, 1280 (Fla. 2d DCA 2002)
- In re Estate of Tudhope, 595 So. 2d 312 (Fla. 2d DCA 1992)
- Knadle v. Estate of Knadle, 686 So. 2d 631, 632 (Fla. 1st DCA 1996)
- Elmowitz v. Estate of Zimmerman, 647 So. 2d 1064, 1065 (Fla. 3d DCA 1994)
- Estate of Brock v. Brock, 695 So. 2d 714 (Fla. 1st DCA 1996)
- Segal v. Levine, 489 So. 2d 868 (Fla. 3d DCA 1986)
- In re ESTATE OF S. Cyrus LEWIS, Deceased., In re Estate of Lewis, 442 So. 2d 290, 291-92 (Fla. 4th DCA 1983)
- In re Estate of Paris, 699 So. 2d 301 (Fla. 2d DCA 1997)
- Dorothy Helen DAYTON, M.D., Mary Johnson, Anne Cooper, Laurie Cauthen, Marcie Lynn Conger and George Drew Conger, Appellants, v. Thomas A. CONGER, Appellee., Dayton v. Conger, 448 So. 2d 609 (Fla.

3d DCA 1984)

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