

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

Constance A. Herrilka v. Christine P. Yates

Herrilka v. Yates, 13 So. 3d 115 (Fla. 4th DCA 2009) · No. 4D08-1727

SUMMARY

In *Herrilka v. Yates*, 2009 WL 1527935 (Fla. 4th DCA 2009), the court held that a lien on homestead property under Fla. Stat. § 733.608 was improper because the curator never took possession of the property (it was occupied by an interested person) and the attorney’s fees were incurred for general estate administration, not for preserving, maintaining, insuring, or protecting the homestead. The decision strictly construes the statute to require both possession of unoccupied protected homestead and expenditures limited to specific preservation purposes.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Hazouri; Farmer; Gerber
JURISDICTION	Florida
DOCKET	4D08-1727
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County, order imposing a lien on homestead property.
PRECEDENTIAL VALUE	published
PARTIES	Constance A. Herrilka v. Christine P. Yates

TOPICS

- homestead
- probate
- probate procedure
- real estate
- fiduciary duty

PRACTICE AREAS

- Estate Planning, Probate, and Trusts
- Real Property

QUESTIONS PRESENTED

1. Whether the trial court erred by imposing a lien on homestead property under section 733.608, Florida Statutes, when the curator did not take possession of the property, as it was occupied by an interested

person.

2. Whether the fees for which the lien was imposed were incurred for the purpose of preserving, maintaining, insuring, or protecting the homestead property, as required by section 733.608(3).

HOLDINGS

1. Section 733.608 requires the personal representative to take possession of the protected homestead property before a lien may be imposed under subsection (3); the lien is not available if an interested person occupies the property.
2. Section 733.608(3) permits a lien only for expenditures incurred to preserve, maintain, insure, or protect the protected homestead property; general estate administration expenses do not satisfy this requirement.

KEY QUOTATIONS

“The pertinent parts of section 733.608 are: (2) If property that reasonably appears to the personal representative to be protected homestead is not occupied by a person who appears to have an interest in the property, the personal representative is authorized, but not required, to take possession of that property for the limited purpose of preserving, insuring, and protecting it for the person having an interest in the property, pending a determination of its homestead status. If the personal representative takes possession of that property, any rents and revenues may be collected by the personal representative for the account of the heir or devisee, but the personal representative shall have no duty to rent or otherwise make the property productive. (3) If the personal representative expends funds or incurs obligations to preserve, maintain, insure, or protect the property referenced in subsection (2), the personal representative shall be entitled to a lien on that property and its revenues to secure repayment of those expenditures and obligations incurred. These expenditures and obligations incurred, including, but not limited to, fees and costs, shall constitute a debt owed to the personal representative that is charged against and which may be secured by a lien on the protected homestead, as provided in this section. The debt shall include any amounts paid for these purposes after the decedent's death and prior to the personal representative's appointment to the extent later ratified by the personal representative in the court proceeding provided for in this section.” (at 2-3)

“The trial court's decision to impose the lien pursuant to section 733.608 was improper because, in accordance with the plain meaning of the statute, Yates failed to meet its requirements. This is because: (1) Yates has not, and cannot, take possession of the property, as it is occupied by an 'interested person;' and (2) the fees incurred by Yates for which the lien was imposed were not incurred for the purpose of preserving, maintaining, insuring, or protecting the homestead property.” (at 3)

FACTUAL BACKGROUND

Christine P. Yates was appointed Curator of the Estate of Joseph M. Herrilka. Constance A. Herrilka claims to be Joseph's second wife and jointly owns and occupies the homestead property. Yates performed legal services for the general administration of the Estate, not specifically for preserving, insuring, or protecting the homestead. The validity of Constance's marriage and the property's homestead status are undisputed for this appeal.

PROCEDURAL HISTORY

After Joseph Herrilka's death, Kathleen Piascik was appointed personal representative. Constance Herrilka petitioned for Kathleen's removal and her own appointment. The trial court removed Kathleen and appointed Christine P. Yates as Curator. Yates performed legal services for the general administration of the estate. Yates moved for a lien on the homestead property for attorney's fees and costs, which the trial court granted. Constance appealed.

DISPOSITION

reversed

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