

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

J. Scott Lanford, Trustee of the Kirk Family Foundation, v. Robin Phemister, Personal Representative of the Estate of Mary L. Dillard and as Trustee of the Testamentary Trust of Mary L. Dillard

No. 5D21-1015, 2022 WL 1069825 (Fla. 5th DCA Apr. 8, 2022) · No. 5D21-1015

SUMMARY

In Lanford v. Phemister, the Florida Fifth District Court of Appeal held that Florida’s constitutional homestead protections prohibit using proceeds from the sale of a decedent’s protected homestead to pay personal representative fees and estate administration expenses, because the homestead passes outside the probate estate. However, the court affirmed that trustee fees and costs incurred in administering a testamentary trust that holds the homestead proceeds may be reimbursed from those proceeds under Florida trust law. The court also declined to disturb the reasonableness determination due to the absence of a hearing transcript, applying the Appellate rule.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Traver, J.; Edwards, J.; Eisnagle, J.
JURISDICTION	Florida
DOCKET	5D21-1015
DISPOSITION	affirmed in part; reversed in part
PROCEDURAL POSTURE	Appeal from the Circuit Court for Brevard County, David E. Silverman, Judge.
STANDARD OF REVIEW	de novo for constitutional homestead protection issues; abuse of discretion for trustee fees
PRECEDENTIAL VALUE	published
PARTIES	J. Scott Lanford, Trustee of the Kirk Family Foundation v. Robin Phemister, Personal Representative of the Estate of Mary L. Dillard and as Trustee of the Testamentary Trust of Mary L. Dillard

TOPICS

- probate procedure
- probate
- homestead
- trusts
- fiduciary duty

PRACTICE AREAS

Probate and Trust

Homestead Exemption

Attorney Fees

QUESTIONS PRESENTED

1. Whether the probate court erred in authorizing reimbursement of personal representative fees and costs from homestead sale proceeds.
2. Whether the probate court correctly allowed reimbursement of trustee fees and costs from homestead sale proceeds.
3. Whether the fees and costs awarded were reasonable.

HOLDINGS

1. The probate court erred in allowing reimbursement of Phemister's personal representative fees and costs from the homestead sale proceeds because Florida's constitutional homestead provisions forbid it.
2. The trial court correctly allowed reimbursement of Phemister's fees and costs as testamentary trustee from the homestead sale proceeds.
3. The court will not disturb the probate court's determination that fees and costs were reasonable and incurred for the testamentary trust's benefit because there are no transcripts of the evidentiary hearing.

KEY QUOTATIONS

*“The probate court erred in allowing for reimbursement of Phemister's personal representative fees and costs from the homestead sale proceeds because Florida's constitutional homestead provisions forbade it.” (at *7)*

*“The trial court correctly allowed for reimbursement of Phemister's fees and costs as testamentary trustee from the homestead sale proceeds.” (at *9)*

*“Without a record of the trial proceedings, the appellate court can not properly resolve the underlying factual issues so as to conclude that the trial court's judgment is not supported by the evidence or an alternate theory.” (at *11)*

FACTUAL BACKGROUND

Mary Lee Dillard died in 2016, leaving her homestead and residuary estate to a testamentary trust for her sister Billie Jo Schell, with the Kirk Family Foundation Charitable Trust as contingent remainder beneficiary. Phemister was appointed personal representative and testamentary trustee. The probate court determined the home was exempt homestead property, and the protections inured to Phemister as trustee for Schell's benefit. The homestead was sold and proceeds placed in escrow. Schell died in 2018, and the residuary passed to the Kirk Trust. Phemister sought to use the sale proceeds to pay her fees and costs as both personal representative and trustee.

PROCEDURAL HISTORY

Decedent died in 2016. Probate court appointed Phemister personal representative and testamentary trustee. Probate court determined decedent's home constituted exempt homestead and that protections inured to

Phemister as trustee for Schell's benefit. Phemister sold the homestead and placed proceeds in escrow. After Schell died, residuary passed to Kirk Trust. Phemister petitioned to disburse sale proceeds for fees and costs incurred as personal representative and trustee. Lanford objected. Probate court held evidentiary hearing and granted amended petitions, authorizing payment from escrowed homestead proceeds. Lanford appealed.

DISPOSITION

affirmed in part; reversed in part

CASES CITED

- Anderson v. Letosky, 304 So. 3d 801 (Fla. 2d DCA 2020)
- Morey v. Everbank, Morey v. Everbank, 93 So. 3d 482 (Fla. 1st DCA 2012)
- Est. of Shefner v. Shefner-Holden, 2 So. 3d 1076 (Fla. 3d DCA 2009)
- Dorothy M. Clifton v. Lonnie R. Clifton, Sr., et ux., et al., Clifton v. Clifton, 553 So. 2d 192 (Fla. 5th DCA 1989)
- Thompson v. Laney, 766 So. 2d 1087 (Fla. 3d DCA 2000)
- Bronstein v. Bronstein, 332 So. 3d 510 (Fla. 4th DCA 2021)
- Genna Demircan v. Igor Mikhaylov, Demircan v. Mikhaylov, 306 So. 3d 142 (Fla. 3d DCA 2020)
- Charles Barnett v. William R. Barnett, Barnett v. Barnett, 340 So. 2d 548 (Fla. 1st DCA 1976)
- Hicks v. Am. Integrity Ins. of Fla., 241 So. 3d 925 (Fla. 5th DCA 2018)
- Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150 (Fla. 1979)
- Lanford v. Phemister, 280 So. 3d 79 (Fla. 5th DCA 2019)