

CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR
ST. LUCIE COUNTY, FLORIDA

In re Hamrick's Estate

40 Fla. Supp. 157 (Fla. Cir. Ct. 1973) · Decided October 3, 1973

SUMMARY

The court held that a 1969 deed transferring homestead property into an estate by the entirety between P. L. Hamrick and his second wife was valid under Article X, section 4(c) of the revised Florida Constitution. Upon P. L. Hamrick’s death, title passed by survivorship to Annis E. Hamrick and was not part of his probate estate. His children therefore had no title or interest in the property.

CASE DETAILS

COURT	Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida
WRITING FOR THE COURT	James E. Alderman
JURISDICTION	Florida
DECIDED	October 3, 1973
DISPOSITION	other
PROCEDURAL POSTURE	Petition by the decedent's five children seeking a declaration that certain real property was homestead property, that a deed creating an estate by the entirety was ineffective, and that the children held vested remainder interests.
PRECEDENTIAL VALUE	Published state trial court opinion
PARTIES	The five children of P. L. Hamrick v. Annis E. Hamrick

TOPICS

- homestead
- probate
- estate administration
- deeds
- title disputes

PRACTICE AREAS

- probate
- real estate
- constitutional law

QUESTIONS PRESENTED

1. Whether a married owner of Florida homestead property could, after the 1968 revision of the Florida Constitution, convey the property by deed to himself and his spouse as an estate by the entirety.

2. Whether the property passed to the surviving spouse by right of survivorship and therefore was excluded from the decedent's probate estate.
3. Whether the decedent's children retained any title or remainder interest in the property.

HOLDINGS

1. Under article X, section 4(c) of the Florida Constitution as revised in 1968, an owner of homestead real estate joined by the spouse may transfer title by deed to an estate by the entirety with the spouse. The July 29, 1969 deed was therefore valid and created an estate by the entirety.
2. Because the deed created an estate by the entirety, title passed to Annis E. Hamrick as the surviving spouse by right of survivorship. The property was not homestead property for purposes of descent and distribution, was not part of P. L. Hamrick's probate estate, and the children had no right, title, or interest in it.

KEY QUOTATIONS

"The court having considered the pleadings and the memorandum brief prepared by petitioners' attorney, and being fully advised in the premises, determines and holds that the deed to P. L. Hamrick and Annis E. Hamrick, his wife, dated July 29, 1969, and recorded in O.R. book 179, page 113, of the public records of St. Lucie County, Florida, is a valid deed which created an estate by the entirety between the grantees as authorized and allowed by Article 10 §4 (c) of the Florida constitution as revised in 1968, that the said real estate is not homestead property for the purpose of descent and distribution, that on the death of P. L. Hamrick, title to the said property passed to Annis E. Hamrick as the surviving spouse of the estate by the entirety previously created in said property between P. L. Hamrick and Annis E. Hamrick, his wife, that said property having passed by right of survivorship to Annis E. Hamrick, it is not a part of the probate estate of P. L. Hamrick, deceased, and that petitioners as the heirs of P. L. Hamrick, deceased, have no right, title or interest in said property." (159)

FACTUAL BACKGROUND

P. L. Hamrick and his first wife acquired the property as an estate by the entirety and used it as their family home. After his first wife's death, Hamrick continued to occupy the property as his homestead and later married Annis E. Hamrick. On July 29, 1969, Hamrick and Annis executed a deed conveying the property to themselves as tenants by the entirety; Hamrick later died intestate, survived by Annis and his five children from his first marriage.

PROCEDURAL HISTORY

The children filed a petition concerning ownership and descent of their deceased father's real property. The circuit court considered the pleadings and the petitioners' memorandum brief and determined that the 1969 deed validly created an estate by the entirety, leaving the children without any interest in the property.

DISPOSITION

other

CASES CITED

- Moore v. Moore, 237 So. 2d 217 (Fla. 4th DCA 1970)

OPINION

ALDERMAN, J.

JAMES E. ALDERMAN, Circuit Judge. Petitioners, the five children of P. L. Hamrick, deceased, ask the court to declare certain real estate to have been the homestead of their deceased father and that they, as his children, are entitled to vested remainders in said property upon termination of a life estate in their step-mother, Annis E. Hamrick.

The following factual situation is alleged in their petition — The property in question was acquired by their mother and father as an estate by the entirety and was used as the family home place until the death of their mother on August 24, 1965.

After the death of their mother, title to the property was vested in their father, P. L. Hamrick, who continued living on the property and maintained it as his homestead. Sometime after the death of his first wife, Mr. Hamrick married Annis E. Hamrick.

On July 29, 1969, P. L. Hamrick, joined by his wife, Annis E. Hamrick, conveyed to P. L. Hamrick and Annis E. Hamrick, his wife, by deed recorded in O.R. book 179, page 113, of the public records of St. Lucie County, the property here under consideration. The purpose of said deed was to create an estate by the entirety in this homestead property. Mr. Hamrick died intestate on May 1, 1971, survived by his second wife, Annis E. Hamrick, and the five children by his previous marriage.

Petitioners contend that because this was homestead property at the time of their father's attempt by deed to create an estate by the entirety, the deed was a nullity and of no effect and that no estate by the entirety was created. They argue that this being the case, title to said property passed under the homestead law to Mr. Hamrick's surviving widow for life with the remainder vested equally among them as his children.

The contention of the petitioners would be correct under the constitution of the state of Florida prior to 1968. The Fourth District Court, in Moore v. Moore, 237 So.2d 217 (1970), held that under the provision of the Florida constitution prior to the 1968 revision a deed conveying homestead property when executed by the owner, either directly to his spouse, or to the husband and wife as tenants by the entirety, is ineffectual to convey legal title to such homestead and is a nullity as to the heirs of the homestead and also as to the husband and wife, and is void ab initio.

However, under the new Florida constitution as revised in 1968, Article 10, §4(c) provides that the owner of homestead real estate, joined by the spouse, if married, may alienate the homestead by mortgage, sale or gift, and, if married, may, by deed, transfer the title to an estate by the entirety

with the spouse. Mr. Hamrick's deed purporting to create an estate by the entirety was executed July 29, 1969, and is controlled by the provision of the Florida constitution as revised in 1968, which allows an owner of homestead real estate, such as Mr. Hamrick, to transfer title of his homestead into an estate by the entirety.

This having been done by Mr. Hamrick subsequent to the effective date of the revised Florida constitution, his children cannot now complain. To hold otherwise would be to deny the force and effect of the revised provision of the Florida constitution.

The court having considered the pleadings and the memorandum brief prepared by petitioners' attorney, and being fully advised in the premises, determines and holds that the deed to P. L. Hamrick and Annis E. Hamrick, his wife, dated July 29, 1969, and recorded in O.R. book 179, page 113, of the public records of St. Lucie County, Florida, is a valid deed which created an estate by the entirety between the grantees as authorized and allowed by Article 10 §4 (c) of the Florida constitution as revised in 1968, that the said real estate is not homestead property for the purpose of descent and distribution, that on the death of P. L. Hamrick, title to the said property passed to Annis E. Hamrick as the surviving spouse of the estate by the entirety previously created in said property between P. L. Hamrick and Annis E. Hamrick, his wife, that said property having passed by right of survivorship to Annis E. Hamrick, it is not a part of the probate estate of P. L. Hamrick, deceased, and that petitioners as the heirs of P. L. Hamrick, deceased, have no right, title or interest in said property.