

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)

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