

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Deleana Harrell v. Jean Snyder, Kyla Renee S. Palmiter, et al.

Deleana Harrell v. Jean Snyder, Kyla Renee S. Palmiter, et al., 913 So. 2d 749 (Fla. 5th DCA 2005) (Fla. 5th DCA 2005) · No. 5D04-1961

SUMMARY

Harrell v. Snyder holds that under Florida Statutes § 733.608(2), a personal representative may take possession of protected homestead property to preserve it for the heirs, but the statute does not authorize the personal representative to sell such property. The court reasoned that protected homestead is not part of the probate estate, and thus the personal representative lacked legal authority to convey the decedent’s homestead, which had passed to his adult daughters via a residuary clause. The decision reversed the trial court’s validation of the sale to a third party.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	PLEUS; GRIFFIN; ORFINGER
JURISDICTION	Florida
DOCKET	5D04-1961
DISPOSITION	affirmed in part and reversed in part
PROCEDURAL POSTURE	Appeal from non-final order determining right to immediate possession of property
PRECEDENTIAL VALUE	published
PARTIES	Deleana Harrell v. Jean Snyder, Kyla Renee S. Palmiter

TOPICS

- probate procedure
- probate
- homestead
- fiduciary duty

PRACTICE AREAS

- Probate
- Real Property
- Estate Administration

QUESTIONS PRESENTED

1. Whether a personal representative has legal authority to take possession of protected homestead property.

2. Whether a personal representative has legal authority to sell protected homestead property.

HOLDINGS

1. Section 733.608(2), Florida Statutes (2002), authorizes a personal representative to take possession of protected homestead property for the limited purpose of preserving, insuring, and protecting it for the heirs, but does not authorize sale.
2. A personal representative has no legal authority to sell protected homestead property absent a specific testamentary directive in the will ordering sale. Section 733.608(2) does not grant sale power, and protected homestead is not an asset of the probate estate.

KEY QUOTATIONS

“Homestead property, whether devised or not, passes outside of the probate estate. Personal representatives have no jurisdiction over nor title to homestead, and it is not an asset of the testatory estate.”

“If property that reasonably appears to the personal representative to be protected homestead is not in the possession of 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 heir or devisee, pending a determination of its homestead status.”

“homestead property can become part of the probate estate in unusual circumstances. . . . the best and perhaps only exception to the general rule occurs when the will specifically orders that the property be sold and the proceeds divided among the heirs.”

FACTUAL BACKGROUND

Gerald Hugh Schmitz died on January 27, 2001, owning a mobile home and lot that was his protected homestead. He was survived by three adult daughters. His will left everything to his ex-wife Jean Snyder, but she was treated as predeceased, so the residuary clause passed the property to a trust for the daughters, which had terminated. Snyder, as personal representative, took possession of the property and sold it to Leonard Yost in February 2002 over the objection of daughter Deleana Harrell. The property was reportedly in disrepair with a mortgage in default.

PROCEDURAL HISTORY

Deleana Harrell filed an amended petition to determine homestead status of the Baker Road property. The trial court entered an order determining the property was protected homestead and validating the personal representative's actions. Harrell appealed.

DISPOSITION

affirmed in part and reversed in part

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with this opinion.

CASES CITED

- Kelli Snyder, Petitioner, v. Kent W. Davis, etc., Respondent, *Snyder v. Davis*, 699 So. 2d 999 (Fla. 1997)
- 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, *In re Estate of Hamel*, 821 So. 2d 1276 (Fla. 2d DCA 2002)
- In re Estate of Mahaney, 903 So. 2d 234 (Fla. 2d DCA 2005)
- Dorothy M. Clifton v. Lonnie R. Clifton, Sr., et ux., et al., *Clifton v. Clifton*, 553 So. 2d 192 (Fla. 5th DCA 1989)
- City Nat'l Bank of Florida v. Tescher, 557 So. 2d 615 (Fla. 3d DCA 1990)
- R. Gene Cavanaugh, Margaret M. Callahan, and Hansel Cavanaugh, Appellants, v. John R. Cavanaugh, Appellee., *Cavanaugh v. Cavanaugh*, 542 So. 2d 1345 (Fla. 1st DCA 1989)
- Knadle v. Estate of Knadle, 686 So. 2d 631 (Fla. 1st DCA 1996)
- Estate of Price v. West Florida Hospital, Inc., 513 So. 2d 767 (Fla. 1st DCA 1987)
- Thompson v. Laney, 766 So. 2d 1087 (Fla. 3d DCA 2000)
- In re Granger, 318 So. 2d 509 (Fla. 1st DCA 1975)
- Warburton v. McKean, 877 So. 2d 50 (Fla. 4th DCA 2004)
- McKean v. Warburton, 30 Fla. L. Weekly S613 (Fla. Sept. 8, 2005)
- Basel v. McFarland & Sons, Inc., 815 So. 2d 687 (Fla. 5th DCA 2002)

CITED IN

- Deleana Harrell v. Jean Snyder, Kyla Renee S. Palmiter, et al., *Harrell v. Snyder*, 913 So. 2d 749 (Fla. 5th DCA 2005)