DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

LINDSAY BALLARD, as personal representative of the Estate of Robert Williams, deceased,

Appellant,

v.

KRISTEN PRITCHARD and KEVIN WILLIAMS,

Appellees.

No. 2D20-2967

December 22, 2021

Appeal from the Circuit Court for Hillsborough County; Vivian T. Corvo, Judge.

Chelsea Scott and Keathel Chauncey of Fresh Legal Perspective, PL, Tampa, for Appellant.

Caitlein J. Jammo of Johnson, Pope, Bokor, Ruppel & Burns, LLP, Clearwater, for Appellees.

SILBERMAN, Judge.

Lindsay Ballard, as personal representative of the Estate of Robert Williams, deceased (Ballard), appeals an order that

determines the homestead status of real property concerning the Estate of Juanita Carter, deceased (the Decedent). Because the Decedent made an invalid devise of homestead property, the property passed immediately at her death pursuant to the statutory laws of intestacy. Thus, we reverse the circuit court's order determining that the homestead property passed pursuant to the devise in the Decedent's Last Will and Testament (the Will).

It is undisputed that when the Decedent passed away on February 17, 2002, she owned a residence that was her homestead, she was married to Pinkney W. Carter, and she had two adult sons, Ronald R. Williams (Ronald) and Robert A. Williams (Robert). In her Will, the Decedent devised a life estate in her residence to her spouse, with the remainder to Ronald in fee simple. She devised the residue of her estate to both Ronald and Robert in equal shares. The Will provides that the Decedent "carefully considered" her relatives and that she "made what [she] consider[ed] to be the wisest and most just disposition."

Robert died on February 8, 2017. Lindsay Ballard is his sole heir. Pinkney Carter, the Decedent's spouse, died on February 24, 2019.

In May 2020, Ronald filed a petition for summary administration of the Decedent's estate with the only asset being the subject property. In June 2020, Ballard filed a petition to determine homestead status. She alleged that the Decedent's residence was homestead property and that the devise of the Decedent's homestead was invalid under section 732.4015, Florida Statutes (2002). Ballard contended that the homestead descended on the Decedent's date of death pursuant to section 732.401 with a life estate to the Decedent's spouse and with the remainder to Ronald and Robert.

In his affirmative defense and memorandum in opposition to the homestead petition, Ronald asserted that a devise of a life estate to the surviving spouse was valid under section 732.4015(1). He asserted that if a life estate in homestead property is bequeathed to the surviving spouse, then the remainder interest can be bequeathed to anyone, but he cited no case law. Ronald further asserted that because the Decedent's spouse did not raise any objections and enjoyed a life estate in the property, any objection to the validity of the Will was waived. Ronald requested the circuit court to uphold the validity of the Will.

The circuit court's Order Determining Homestead Status reflects that the court heard argument of counsel before entering the order on September 22, 2020. The court determined that the Decedent's real property constituted her homestead, which the parties do not dispute. Further, the court determined that on the Decedent's date of death the title to the property descended to her spouse, "until his date of death on February 24, 2019, and then to the Decedent's son, [Ronald], as of February 24, 2019." Ballard appealed the Order Determining Homestead Status. *See* Fla. R. App. P. 9.170(b)(13).

Soon after the circuit court entered its order, Ronald executed a quitclaim deed transferring his interest in the homestead property to his children, Kristen Pritchard and Kevin Williams. Ronald died in November 2020. This court subsequently entered an order substituting Kristen Pritchard and Kevin Williams (collectively, Pritchard) as appellees in place of Ronald.

When the relevant facts are undisputed, appellate review of an issue of law is de novo. *See Chase v. Horace Mann Ins. Co.*, 158 So. 3d 514, 517 (Fla. 2015). The Florida Constitution limits the devise of homestead property. "The homestead shall not be subject to

devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child." Art. X, § 4(c), Fla. Const. Similarly, section 732.4015(1) states, "As provided by the Florida Constitution, the homestead shall not be subject to devise if the owner is survived by a spouse or minor child, except that the homestead may be devised to the owner's spouse if there is no minor child." In contrast, when no spouse or minor child survives a decedent, "no constitutional restriction on the devise of the homestead" exists. *Webb v. Blue*, 243 So. 3d 1054, 1057 (Fla. 1st DCA 2018).

On appeal, Pritchard does not dispute that when the decedent has a surviving spouse or minor children, the Florida Constitution and section 732.4015(1) restrict what devises can be made. *See In re Estate of Finch*, 401 So. 2d 1308, 1309 (Fla. 1981). When a devise is invalid because it violates the Florida Constitution and section 732.4015(1), the homestead descends via intestate succession under section 732.401(1). 401 So. 2d at 1309. Section 732.401(1) provides as follows:

> (1) If not devised as permitted by law and the Florida Constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is

> survived by a spouse and lineal descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the lineal descendants in being at the time of the decedent's death per stirpes.

In *In re Estate of Finch*, the petitioner argued that neither the constitution nor statutes should frustrate the decedent's expressed intent to devise a life estate in his homestead to his spouse with a vested remainder interest to one of his two adult daughters. 401 So. 2d at 1309. The Florida Supreme Court disagreed. *Id.* The court adopted the Fourth District's position and held that when "a testator dies leaving a surviving spouse and adult children, the property may not be devised by leaving less than a fee simple interest to the surviving spouse." *Id.* (quoting *In re Estate of Finch*, 383 So. 2d 755, 757 (Fla. 4th DCA 1980)). Similarly, here the Decedent was restricted to devising a fee simple interest in her homestead to her spouse, despite the intent she expressed in her Will.

Pritchard argues that the appealed order does not show if the circuit court made factual determinations regarding the defenses raised. The circuit court did not conduct an evidentiary hearing, so no factual determinations were made. The relevant facts were

undisputed. On appeal, Pritchard mentions two defenses. She contends that Ronald raised in the circuit court that the Decedent provided for Robert through other methods. Pritchard also makes a vague reference to a waiver of a homestead interest. Neither of these theories are legally valid defenses under the circumstances here.

As to the waiver argument, the sons each had a vested remainder interest in the property at the time of the Decedent's death in 2002. When an owner is survived by a spouse or minor child, the homestead passes outside of probate at the time of the owner's death. *See Aronson v. Aronson*, 81 So. 3d 515, 519 (Fla. 3d DCA 2012) ("At the moment of Hillard's death, his homestead property passed outside of probate, in a twinkle of an eye, as it were, to his wife for life, and thereafter to his surviving sons, James and Jonathan per stirpes." (citations omitted)); *see also White v. Theodore Parker, P.A.*, 821 So. 2d 1276, 1279 (Fla. 2d DCA 2002) ("Florida courts have continued to hold that homestead does not become part of the probate estate unless a testamentary disposition is permitted and is made to someone other than an heir, i.e., a person to whom the benefit of homestead protection could not

inure."). In addition, "homestead rights exist and continue even in the absence of a court order confirming the exemption." *White*, 821 So. 2d at 1280. Petitions to determine homestead property "are similar to actions for declaratory relief that explain or clarify existing rights rather than determine new rights." *Id.*

Further, equitable principles such as waiver or estoppel "cannot operate to nullify a homestead interest." *Rutherford v. Gascon*, 679 So. 2d 329, 331 (Fla. 2d DCA 1996). Rather, to find a waiver of homestead protection by a surviving spouse, "evidence must demonstrate the survivor's intent to waive the constitutional and statutory claim to homestead property." *Id.* (citing *In re Estate of Cleeves*, 509 So. 2d 1256, 1259 (Fla. 2d DCA 1987)).

Here, Robert's vested remainder interest in the homestead came into existence at the moment of the Decedent's death, *see White*, 821 So. 2d at 1280, and waiver principles do not apply, *see Rutherford*, 679 So. 2d at 331. As to the Decedent's intent to provide for Robert in other ways, this intent does not control over the provision in article X, section 4(c), of the Florida Constitution and section 732.4015. *See In re Estate of Finch*, 401 So. 2d at 1309. Thus, the homestead did not pass via the Decedent's Will;

rather, it passed via section 732.401(1) immediately upon the Decedent's death to her spouse for life with a vested remainder interest in each of her sons, Ronald and Robert, per stirpes. Therefore, we reverse the circuit court's Order Determining Homestead Status and remand for entry of an order consistent with this opinion.

Reversed and remanded.

VILLANTI and STARGEL, JJ., Concur.

Opinion subject to revision prior to official publication.