IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

LANDMARK CONSTRUCTION INC. OF CENTRAL FLORIDA, AS ASSIGNEE OF CARMELO GONZALEZ AND VICTORIA GONZALEZ,

Appellant,

v.

Case No. 5D19-2629

ANCHOR PROPERTY AND CASUALTY INSURANCE COMPANY,

Appellee.

_____/

Opinion filed September 4, 2020

Appeal from the Circuit Court
for Osceola County,
Mike Murphy, Judge.

David R. Heil, of David R. Heil, P.A.,
Winter Park, for Appellant.

David B. Shelton and Darryl Gavin, of
Rumberger, Kirk & Caldwell, P.A.,
Orlando, for Appellee.

PER CURIAM.

For the reasons set forth in *Speed Dry, Inc. v. Anchor Property and Casualty Insurance Co.,* 45 Fla. L. Weekly D1999 (Fla. 5th DCA Aug. 21, 2020), we reverse the final summary judgment entered in favor of Appellee, remand for further proceedings, and certify the following question to the Florida Supreme Court as one of great public importance:

DOES ARTICLE X, SECTION 4(c) OF THE FLORIDA CONSTITUTION ALLOW THE OWNER OF HOMESTEAD REAL PROPERTY, JOINED BY THE SPOUSE, IF MARRIED, TO ASSIGN POST-LOSS INSURANCE BENEFITS TO A THIRD-PARTY CONTRACTOR CONTRACTED TO MAKE REPAIRS TO THE HOMESTEAD PROPERTY?

REVERSED and REMANDED; QUESTION CERTIFIED.

HARRIS, J., concurs.
EVANDER, C.J., concurs, with opinion.
SASSO, J., dissents, with opinion.

EVANDER, C.J., concurring.

I write only to respond to the dissent's erroneous suggestion that this case was resolved on an issue that was not presented to this court.

Carmelo and Victoria Gonzalezes' home, which the parties agree is homestead property, was damaged by a hurricane. At the time, the Gonzalezes had a homeowner's insurance policy with Appellee. The Gonzalezes assigned their right to receive insurance proceeds to Appellant, the contractor hired to perform repairs on their home. After Appellee refused Appellant's demand for payment, Appellant filed suit against Appellee, seeking to recover the insurance proceeds allegedly due under the homeowner's insurance policy.

Subsequently, Appellee filed a motion for summary judgment, arguing that article X, section 4(c) of the Florida Constitution prohibited the assignment of benefits in question. The order granting Appellee's motion for summary judgment simply stated, in relevant part:

> The Defendant's Motion is Granted. *See Quiroga v. Citizens Property Ins. Co.*, 34 So. 3d 101 (Fla. 3d DCA 2010) (Insurance proceeds that result from a recovery due to damage to homestead property are "imbued" with homestead protections under the Florida Constitution.). Had the work already been completed on the property in reliance of this assignment, the Court would have agreed with the Plaintiff. However, the work had not been completed on the property in the instant case.

On appeal, Appellant titled its argument, "The Florida Constitution does not prohibit an assignment of benefits in a claim for damages to a homestead property." Appellant's argument had at least three components—1) that article X, section *4(a)* of the Florida Constitution permitted homestead property owners to assign the right to collect

insurance proceeds to contractors who were retained to perform repair work on the homestead property; 2) that article X, section *4(c)* did not prohibit these type of assignments; and 3) that the *Quiroga* opinion, referenced by the trial court in its order, was inapposite as that case dealt with the imposition of an attorney's fee lien. In response, Appellee asserted, as it did below, that article X, section *4(c)* prohibited the assignment of benefits at issue.[1]

In our recently issued *Speed Dry* opinion, we expressly rejected Appellee's argument, holding that article X, section 4(c) of the Florida Constitution does not prohibit the assignment of post-loss insurance benefits due as a result of damage to a homestead property. I acknowledge that the majority of Appellant's argument in this case (and in *Speed Dry)*[2] was addressed to the application of article X, section 4(a)—an argument that we rejected in *Speed Dry*. However, our rejection of Appellant's primary argument does not negate the fact that the proper interpretation and application of article X, section 4(c) was also squarely before this court.

[1] In its answer brief, Appellee expressly defined the issue in this case as "[w]hether an assignment of homeowner's insurance benefits violates article X, *section 4(c)* of Florida's Constitution because it is an unsecured agreement and not a 'mortgage, sale or gift.'" (Emphasis added). Thus, it is clear that Appellee recognized that the proper interpretation and application of section 4(c) was an issue before this court.

[2] The counsel of record in *Speed Dry* and the instant appeal are identical. The briefs filed in the two cases were very similar.

SASSO, J., dissenting.

Appellant seeks review of an order granting summary judgment in favor of Appellee after the trial court found that article X, section 4 of the Florida Constitution precluded the homeowners in this case from assigning the benefits of their homeowner's policy to Landmark in return for Landmark's promise to repair the hurricane damage to homeowner's homestead property. In support, Appellant raises a single argument: the trial court erred because article X, section 4(a) of the Florida Constitution excepts contracts for the purchase, improvement, or repair of property from homestead protections. The majority appears to disagree with the specific argument raised by Appellant, but nonetheless reverses the order on review. Consequently, I dissent.

A trial court's ruling is treated as correct except insofar as the appellant raises claims of error. *Doe v. Baptist Primary Care, Inc.*, 177 So. 3d 669, 673 (Fla. 1st DCA 2015) (noting an appellant who presents no argument as to why a trial court's ruling is incorrect on an issue has abandoned the issue). "This requirement of specific argument and briefing is one of the most important concepts of the appellate process," *D.H. v. Adept Community Services, Inc.*, 271 So. 3d 870, 888 (Fla. 2018) (Canady, J., dissenting), and a hallmark of the adversarial judicial system. *See, e.g.*, *United States v. Burke,* 504 U.S. 229, 246 (1992) (Scalia, J., concurring) ("The rule that points not argued will not be considered is more than just a prudential rule of convenience; its observance, at least in the vast majority of cases, distinguishes our adversary system of justice from the inquisitorial one."). Critically then, "it is not the role of the appellate court to act as standby counsel for the parties." *D.H.*, 271 So. 3d at 888.

Here, Appellant submits that **section 4(a)** permits the assignment of benefits at issue in this case because it exempts from article X's limitations and protections contracts for the improvement or repair of the homestead. But section 4(a), by its plain terms, applies only to forced sales, judgments, decrees, execution, and liens against the homestead, which has no application to the issues presented. Nonetheless, the majority reverses the order on review, citing to *Speed Dry, Inc. v. Anchor Property and Casualty Insurance Co.*, 45 Fla. L. Weekly D1999 (Fla. 5th DCA Aug. 21, 2020),[3] in which this court determined that article X, **section 4(c)** of the Florida Constitution does not prohibit the assignment of post-loss insurance benefits due as a result of damage to a homestead property.

The problem with reversing on the basis of *Speed Dry* is that Appellant did not challenge the trial court's interpretation of section 4(c). Thus, in my view, the only path to reversing on that basis is to recast Appellant's specific argument based on section 4(a) into a more general argument regarding the constitutionality of the agreement at issue. But once recast in this manner, the nature of the appeal changes entirely. The issue presented morphs from one that does not dispute the applicability of article X (but argues a specific exemption applies) into a dispute over whether article X is implicated at all. That is not an issue Appellant raised, and I decline to do so for Appellant. *Accord Greenlaw v. United States*, 554 U.S. 237, 243 (2008) ("[I]n both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation . . . we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of

[3] This case was decided on a parallel timeline to *Speed Dry,* and therefore neither the trial court, nor the advocates below or on appeal had the benefit of that decision.

matters the parties present."). And because the only issue Appellant presented to this court for adjudication does not support reversal, I would affirm the order on review.