

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

SPEED DRY, INC., AS ASSIGNEE OF
WAYNE PARKER,

Appellant,

v.

Case No. 5D19-3055

ANCHOR PROPERTY AND CASUALTY
INSURANCE COMPANY,

Appellee.

_____ /

Opinion filed August 21, 2020

Appeal from the Circuit Court
for Seminole County,
Susan Stacy, Judge.

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

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

ORFINGER, J.

Article X, section 4(c) of the Florida Constitution allows the owner of homestead real property, joined by the spouse, if married, to alienate the property by mortgage, sale or gift. The issue presented in this appeal is whether this provision prevents the owner of homestead real property from assigning post-loss insurance benefits to a third-party

contractor. We conclude that the Florida Constitution does not prohibit such an assignment and reverse the summary final judgment.

Wayne Parker's home, which the parties agree is his homestead, was insured by Anchor Property and Casualty Insurance Company.¹ In September 2017, Hurricane Irma damaged Mr. Parker's home. Mr. Parker filed a damage claim with Anchor, and soon thereafter, entered into a "Work Authorization & Assignment of Benefits Agreement" ("AOB") with Speed Dry, Inc. Pursuant to the AOB, Speed Dry was to handle the repair work and any claim negotiations with Anchor. The AOB also allowed Speed Dry to receive payment directly from Anchor according to the terms of the insurance policy.²

After Speed Dry assessed the damage to the Parker home, it sent Anchor an estimate of the cost of the necessary repairs and sought payment under the insurance policy. Anchor refused to pay and Speed Dry sued Anchor for breaching the insurance policy. Anchor answered the complaint, and, relying on the alienation restrictions contained in article X, section 4(c) of the Florida Constitution, asserted as an affirmative defense that Speed Dry lacked standing to sue. Specifically, Anchor alleged:

[Speed Dry]'s action is barred to the extent the alleged assignment is an unenforceable contract to divest the homeowner of the exemption afforded by article X, section 4 of the Florida Constitution. Pursuant to section 4(c), the homestead, including homeowner insurance policy proceeds, may only be alienated by mortgage, sale or gift. The alleged assignment of benefits is not a mortgage, sale or gift.

¹ The record does not indicate whether Mr. Parker is married.

² The Legislature made significant statutory changes regarding assignments of insurance benefits, effective July 1, 2019. See ch. 19-57, Laws of Fla. Those changes are not at issue in this case.

In time, Anchor moved for summary judgment, contending that any insurance proceeds resulting from a loss to homestead property are constitutionally protected to the same extent as the homestead property itself and cannot be assigned pursuant to an AOB. Following a hearing, the trial court agreed with Anchor's argument and entered a summary final judgment in Anchor's favor.

Article X, section 4 of the Florida Constitution provides:

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

(c) 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. 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. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

Thus, the exemption found in article X, section 4(a) prohibits the forced sale of or imposition of a lien against a homestead property, except for obligations “contracted for the purchase, improvement or repair” of the property and liens for unpaid taxes and assessments. And, article X, section 4(c), which Anchor relies on, allows a homesteader, joined by the spouse, if married, to alienate the homestead property only by “mortgage, sale or gift.”³ Moxley v. Wickes Corp., 356 So. 2d 785, 786 (Fla. 1978) (reading section 4(c) as authorization to alienate homestead rather than exception to restriction against alienation). Anchor contends that the AOB between Mr. Parker and Anchor is an unauthorized alienation of Mr. Parker’s homestead.

“When reviewing constitutional provisions, this Court ‘follows principles parallel to those of statutory interpretation.’” Lewis v. Leon Cty., 73 So. 3d 151, 153 (Fla. 2011) (quoting Zingale v. Powell, 885 So. 2d 277, 282 (Fla. 2004)). The court should look no further than the language set forth in the constitution if that language is clear, unambiguous, and addresses the issue at hand. Id. (citing Fla. Soc’y of Ophthalmology v. Fla. Optometric Ass’n, 489 So. 2d 1118, 1119 (Fla. 1986)). We adhere to the “supremacy-of-text principle”: “The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” Advisory Op. to Governor re: Implementation of Amendment 4, The Voting Restoration Amendment, 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 56 (2012)).⁴

³ Article X, section 4(c) also imposes restraints on the devise of homestead property, but that is not relevant to our consideration.

⁴ The plain language of article X, section 4 requires no further analysis. We note, however, that the Florida Supreme Court has directed us to construe this provision

Alienation is a term of art used in real property law that refers to the transfer of title to real property. See Alienation, Black's Law Dictionary (11th ed. 2019) (defining alienation as a “[c]onveyance or transfer of property to another”); 4A John Alan Appleman & Jean Appleman, Ins. Law & Practice § 2741, at 325 n.12 (rev. vol. 1969) (“[A]ny transfer of real estate short of a conveyance of the title is not an alienation of the estate.”). An assignment of post-loss insurance benefits does not transfer title of real property. Rather, it is an assignment of contract rights that places a third party in the shoes of the homeowner and in privity with the insurance company. See Ashley Square, Ltd. v. Contractors Supply of Orlando, Inc., 532 So. 2d 710, 711 (Fla. 5th DCA 1988); 17 Williston on Contracts § 49:119 (4th ed. May 2020) (“An agreement assigning an insurance policy is thus treated as an ordinary contract, and interpreted under general contract principles.”). As such, that assignment gives the third party, here, Speed Dry, the right to collect benefits under the insurance contract. See § 627.422, Fla. Stat. (2017). The AOB conveys no interest in the homestead property.

We find that Anchor’s reliance on Chames v. DeMayo, 972 So. 2d 850 (Fla. 2007), and Quiroga v. Citizens Property Insurance, 34 So. 3d 101 (Fla. 3d DCA 2010), is misplaced. In Chames, the Florida Supreme Court held that a waiver of the homestead exemption from a forced sale or liens found in article X, section 4(a) does not allow a homesteader to waive the exemptions in an unsecured agreement. 972 So. 2d at 853. Similarly, in Quiroga, the Third District Court held that a law firm could not impress a charging lien on insurance proceeds for damage to a homestead property. The court

liberally, “in the interest of the family home.” See Havoco of Am., Ltd. v. Hill, 790 So. 2d 1018, 1021 (Fla. 2001), opinion after certified question answered, 255 F.3d 1321 (11th Cir. 2001). Anchor’s construction of “alienate” is not consistent with this principle.

explained that the insurance proceeds had the same protections as the damaged homestead property and were thus exempt from the claims of creditors pursuant to article X, section 4(a) of the Florida Constitution. Quiroga, 34 So. 3d at 102.

Contrary to Anchor's assertion, Chames and Quiroga stand for the proposition that a homesteader cannot waive, through an unsecured agreement, the homestead exemption set forth in article X, section 4(a). This holding does not apply here because Mr. Parker did not waive his article X, section 4(a) homestead protections. Unlike in Chames and Quiroga, Speed Dry has not tried to lien Mr. Parker's home or force a sale of Mr. Parker's homestead. And, Anchor concedes that its argument is based on article X, section 4(c), which restricts the alienation of homestead property, not section 4(a), which is not implicated in this case.

In sum, we conclude 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. For these reasons, we reverse the summary final judgment and remand for further proceedings. However, because assignments of post-loss insurance benefits are utilized so extensively, we 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.

WALLIS and TRAVER, JJ., concur.