NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

RICHARD JAMES ANDERSON, II,

Appellant,

v.

RENEE LETOSKY and PRECIOUS PETS,

Appellees.

Case No. 2D19-2065

Opinion filed May 27, 2020.

Appeal from the Circuit Court for Pinellas County; Sherwood Coleman, Judge.

Richard James Anderson, II, pro se.

Stephen O. Cole and Nancy S. Paikoff of Macfarlane Ferguson & McMullen, Clearwater, for Appellees.

CASANUEVA, Judge.

Mr. Anderson appeals an order finding that a portion of his deceased father's home had lost its homestead protection because his father had rented out bedrooms in the home. The probate court ruled that seventy-five percent of the residence was not subject to Florida's homestead protection because Mr. Anderson's father had rented three out of the four bedrooms in the home, and therefore, seventy-

five percent of the property was subject to the claims of creditors. We reverse the order and hold that Florida's homestead exemption granted by article X, section 4, of the Florida Constitution protects the single-family residence at issue from judgment creditors so that the homestead property passes from the decedent to the decedent's heirs intact, undivided.

PROBATE PROCEEDINGS

Following the death of his father, Richard James Anderson, the appellant, Richard James Anderson II (Mr. Anderson), filed a petition seeking a determination from the probate court that the residence his father owned and occupied at the time of his passing constituted homestead property within the meaning and protection of article X, section 4. The petition also asked the probate court to enter an order "determining that the Property constituted the exempt homestead of the decedent, title to which, upon decedent's death, descended and the constitutional exemption from claims inured" pursuant to article X, section 4.

The appellees, Renee Letosky and Precious Pets (collectively referred to as Ms. Letosky), are judgment creditors of the decedent and filed a caveat by creditor and a statement of claim in the probate case, notifying the court of three judgment liens filed against the decedent totaling $38,551.

The probate court held a hearing on Mr. Anderson's petition to determine homestead and entered an order finding that at the time of his death, the decedent occupied the single-family residence as his homestead and that he had rented three bedrooms in the residence to three individuals who were permitted to use other portions

of the residence. Further, the rental leases were arranged through an LLC, Richard James Anderson Enterprises LLC, that the decedent had created.[1]

Relying on In re Bornstein, 335 B.R. 462, 466 (Bankr. M.D. Fla. 2005), the probate court found that the rented portion of the residence lost its constitutional homestead protection. Based on this finding, the court ruled that seventy-five percent of the decedent's property was not homestead at the time of his death and that "such interest is therefore subject to the judgment liens" of Ms. Letosky. The remaining twenty-five percent passed to the decedent's heirs and was unavailable to satisfy the judgment. Our review of the probate court's interpretation of the constitutional provision is performed de novo. See Zingale v. Powell, 885 So. 2d 277, 280 (Fla. 2004).

DISCUSSION

I.

We begin our review with the text of the operative constitutional provision. Article X, section 4, of the Florida Constitution reads in pertinent part:

> (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 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;
>
> . . . .

[1]There is no transcript of the hearing in the record.

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

The Florida Supreme Court has held that "[t]his provision is to be liberally construed in favor of protecting the homestead." JBK Assocs. v. Sill Bros., 191 So. 3d 879, 881 (Fla. 2016) (citing Orange Brevard Plumbing & Heating Co. v. La Croix, 137 So. 2d 201, 203-04 (Fla. 1962)). Further, "the 'burden is on the objecting party to make a strong showing that the claimant is not entitled to the claimed exemption.' " Id. (quoting In re Binko, 258 B.R. 515, 517 (Bankr. S.D. Fla. 2001)). Accordingly, the burden of persuasion rests upon Ms. Letosky.[2] Because "[i]t is well settled that homestead property devised to an heir is protected from forced sale to pay creditors' claims of the decedent and administrative expenses of the estate under Article X, Section 4 of Florida's Constitution," Estate of Shefner v. Shefner-Holden, 2 So. 3d 1076, 1078 (Fla. 3d DCA 2009), the strong burden will require heavy lifting.

To ascertain whether Ms. Letosky can meet her burden of proof we must necessarily review the pertinent case law that discusses the constitutional provision at issue. We begin our review with a case issued by this court, First Leasing & Funding of Florida, Inc. v. Fiedler, 591 So. 2d 1152 (Fla. 2d DCA 1992). The facts in that case are straightforward. The appellant obtained a monetary judgment against the appellees, including Georgia Lantis. To satisfy its judgment, the appellant sought to levy upon a triplex apartment owned by Ms. Lantis. Ms. Lantis lived in a portion of the triplex, and other portions of the triplex were rented to tenants. The trial court determined that the

---

[2]The Appellees do not contend that their judgment arises from one of the debts specifically mentioned in the constitution: the payment of assessments and taxes, obligations related to a purchase, improvement or repair, or for labor performed on the property. See Art. X, § 4(a), Fla. Const.

entire triplex was entitled to protection and insulated from the reach of the appellant creditor. This court reversed, holding that the trial court erred in allowing the entirety of the property to be afforded protection pursuant to article X, section 4. Id. at 1153. We held that "a literal reading of the provision leads us to conclude that [Ms. Lantis] is entitled to an exemption from forced sale of her residence only and not the two units leased to and occupied by tenants." Id.

The description of the rental units in First Leasing was critical to this court's holding. "The triplex in question is a one-story structure with units horizontally situated. The record reveals that separate mailing addresses were maintained at each unit." Id.[3] This court found that the facts in that case were similar to the facts in In re Aliotta, 68 B.R. 281 (Bankr. M.D. Fla. 1986), where the debtor lived in one unit of a fourplex. This court noted that Aliotta held "that the homestead exemption should not extend to the entire property because the debtor's residence is a fraction of the whole, and an imaginary line could sever the residence from the remainder of the property." First Leasing, 591 So. 2d at 1153 (citing Aliotta, 68 B.R. 281).

In First Leasing, this court suggested a two-part analytical framework in determining if the homestead exemption extends to the entire property: first, the court must determine whether the debtor's residence is a fraction of the entire property; and second, the court must determine whether the property can be severed—that is, by

[3]Also of importance was the interpretation given to the constitutional provision prior to its 1968 amendment. Prior to the amendment, the homestead exemption extended to not only the residence but also to the owner's "business house." First Leasing, 591 So. 2d at 1153 (quoting art. X, § 1, Fla. Const. (1885)). Though broader in scope than the 1968 amendment, cases interpreting the earlier version of the Florida Constitution generally held "that homestead protection should not extend to income producing portions of the debtor's property." Id. at 1153.

using an imaginary line the residence can be severed from the remainder of the property. 591 So. 2d at 1153. Applying this test to the single-family residence at issue here, the answer to each question is no. Mr. Anderson's father resided in the home and, like the tenants, shared the common areas of the house. Further, the rented bedrooms in the home cannot be severed from the residence by an imaginary line without destroying its utility as a single-family residence. Thus, under First Leasing, the probate court erred by not affording homestead protection to the entirety of the property.

As previously mentioned, the probate court relied on Bornstein, 335 B.R. 462, to support its ruling. We conclude that Bornstein is consistent with and supports our decision. In Bornstein, the debtor and her children lived on one side of a duplex, and she rented out the other side of the duplex. Id. at 463. The issue in Bornstein was whether the debtor could "claim the total value of a duplex as exempt homestead pursuant to Florida Constitution Article X, Section 4(a)(1)." Id.

The bankruptcy court concluded that the debtor's homestead exemption was limited to the portion of the duplex in which she resided with her family. Id. at 466. The court noted that the current version of article X, section 4, limits the homestead exemption "to the residence of the owner or the owner's family." Id. at 464. The court found that the intent of the drafters was to eliminate "any claim for an exemption that exceeds the residence of the owner." Id. at 465 (quoting In re Oliver, 228 B.R. 771, 772 (Bankr. M.D. Fla. 1998)). Importantly, the court also recognized that single-family residences are distinguishable from the duplex at issue in that case. Id.

Another bankruptcy case analyzed by the probate court was In re Ballato, 318 B.R. 205 (Bankr. M.D. Fla. 2004). At issue in that case was whether "the alleged

presence of persons unrelated to [the homeowner] residing at the Property . . . eliminated or invalidated [the homeowner's] claim of homestead exemption." Id. at 209-10. The Ballato court held:

> In the instant case, it is undisputed that the Property is a single-family residence, and that there are no severable portions of the Property being used for income-producing purposes. Even assuming, as [the creditor] asserts, that unrelated persons were living with [the homeowner], and further assuming that those persons were paying rent for the use and occupancy of portions of the Property, the fact that the Property is a single-family residence distinguishes it from the cases cited above.[4]

Id. at 210.

The result in Ballato is consistent with our holding here. The property of the decedent in this case is a single-family residence that is not subject to severability, as a duplex would be. Therefore, the entire residence, like the one in Ballato, was entitled to the homestead exemption that protected the property from judgment creditors. See also In re Rodriguez, 55 B.R. 519 (Bankr. S.D. Fla. 1985).

In re Makarewicz, 130 B.R. 620, 621 (Bankr. S.D. Fla. 1991), is another similar bankruptcy case involving a two-story garage of a single-family residence that was divided into different areas, "some of which the debtor uses as a laundry room and storage facility and some of which the debtor rents to third parties on a month-to-month basis." Like the present case, the rented areas each consisted of a single room.

---

[4]The court distinguished In re Englander, 95 F.3d 1028 (11th Cir. 1996), First Leasing, 591 So. 2d 1152, In re Wierschem, 152 B.R. 345 (Bankr. M.D. Fla. 1993), and Thompson v. Hibner, 705 So. 2d 36 (Fla. 3d DCA 1997), noting that those cases provide "for the partial or complete disallowance of the homestead exemption in cases where severable portions of the property, usually multi-unit properties, are used solely for income-producing or business purposes." Ballato, 318 B.R. at 210.

Noting that it did not intend to remove a homeowner's homestead exemption simply because commercial activity takes place within the homeowner's living space, the Makarewicz court held that a homeowner "does not necessarily abandon his or her homestead simply because he or she may rent or lease portions thereof." 130 B.R. at 621. The court held that a "divisibility" test should be used to determine whether the homestead exemption is available: is the rented unit "susceptible to division by perpendicular and/or horizontal lines" and is the rented unit "lawfully conveyable as an independent parcel under existing law." Id. As previously noted, the bedrooms in the single-family residence in the present case would clearly not meet a divisibility test. Further, the bedrooms are not lawfully conveyable as independent parcels.

II.

The highest court of our state has held repeatedly that "[w]here the language of the Constitution 'is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written.' " Israel v. Desantis, 269 So. 3d 491, 495 (Fla. 2019) (quoting Fla. Soc'y of Ophthalmology v. Fla. Optometric Ass'n, 489 So. 2d 1118, 1119 (Fla. 1986)); see also Pleus v. Crist, 14 So. 3d 941, 944 (Fla. 2009). We conclude that the language of article X, section 4 is clear and unambiguous. As previously noted, this section states that the homestead exemption is "limited to the residence of the owner or the owner's family." See Art. X, § 4(a), Fla. Const. In the present case, the property was the decedent's residence at the time of his death. See Friscia v. Friscia, 161 So. 3d 513, 516 (Fla. 2d DCA 2014) ("[T]he operative time frame for determining homestead status is the time of the owner's death. . . ."). Although he rented out three

individual bedrooms in the home, the decedent, along with the renters, had access to the common areas of the home. Neither the common areas nor the rented bedrooms can be severed from the residence by an imaginary line, and each area is not "lawfully conveyable as an independent parcel." Makarewicz, 130 B.R. at 621. A single-family residence that constitutes homestead is typically not subject to dividing. Therefore, the renting of the three bedrooms did not eliminate the homeowner's claim of homestead exemption to the entire property.

This conclusion finds support in the public policy purpose of this provision.

> As a matter of public policy, the purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law.

Snyder v. Davis, 699 So. 2d 999, 1002 (Fla. 1997) (quoting Pub. Health Tr. v. Lopez, 531 So. 2d 946, 948 (Fla. 1988)). And our supreme court observed: "Creditors have been on notice for many years that the plain language of the constitution protects homestead property from most creditors." Id. at 1002. Or as it was said in 1931, "because as to exempt property there are no creditors within the meaning of statutes prohibiting the conveyance of property in fraud of creditors, and as homesteads are exempt from execution, a creditor acquires no rights in regard thereto." Rigby v. Middlebrooks, 135 So. 563, 564 (Fla. 1931). We believe the same is true today.

CONCLUSION

"It is well settled that homestead property devised to an heir is protected from forced sale to pay creditors' claims of the decedent and administrative expenses of the estate under Article X, Section 4 of Florida's Constitution." Estate of Shefner, 2 So.

3d at 1078. We hold that article X, section 4, of the Florida Constitution, under the facts presented here, protects the homestead from the reach of a judgment creditor so that upon the death of the homestead property owner, the property passed directly to the heirs.

Written in 1987 and still a true representation today: "In the century which has passed since the enactment of Florida's first homestead exemption clause, in 1885, not a single reported case has declared a residential unit occupied by the owner as his family home to be non-exempt simply because the owner conducted business activities within those premises." Edward Leasing Corp. v. Uhlig, 652 F. Supp. 1409, 1416 (S.D. Fla. 1987).

Reversed and remanded with instructions to grant the petition and enter an order reflecting that the entirety of the property at issue was the homestead of the decedent.

SLEET and SALARIO, JJ., Concur.