



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-13-00271-CV

IN THE ESTATE OF JESSIE GRAY, DECEASED

On Appeal from the County Court
Bailey County, Texas
Trial Court No. 2556; Honorable Sherri Harrison, Presiding

June 10, 2014

CONCURRING OPINION

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

I concur with the opinion of the majority. I write separately, however, to express my opinion that, while the trial court's judgment, entitled *Order for Delivery of Homestead Property to Surviving Spouse* might be construed as determining that Appellee, Celia Gray, has a life-time possessory interest in the property the subject of this dispute, this Court's opinion should not be read as reaching that conclusion.

As the majority correctly states, we are faced with a situation where the record was not sufficiently developed to allow this Court, or the trial court, to determine whether the disputed property was "among the decedent's effects" and therefore, subject to an

order of delivery pursuant to section 272, or an allowance in lieu of exempt property pursuant to section 273 of the Texas Probate Code. See TEX. PROB. CODE ANN. §§ 272, 273 (West Supp. 2013).¹ However, as stated by the majority, in the absence of evidence to the contrary, we must assume the record supports the trial court's implied decision that the property was a part of the decedent's estate. Accordingly, I believe the opinion of this Court should be construed no further than saying the trial court did not err in ordering that Celia Gray holds a possessory homestead interest in whatever property interest the Estate of Jessie Gray might have owned upon his death.

Patrick A. Pirtle
Justice

¹ In 2009, the Texas Legislature repealed the Texas Probate Code with an effective date of January 1, 2014, and recodified the statutes as the Estates Code. See Act of May 26, 2009, 81st Leg., R.S., ch. 680, §§ 1, 10(a), 2009 Tex. Gen. Laws 1512, 1731-32. Section 272 is now section 353.052, and section 273 is now section 353.053. See TEXAS ESTATES CODE ANN. §§ 353.052 & 353.053 (West Pamphlet 2013).