

A09-937

STATE OF MINNESOTA
IN COURT OF APPEALS

In Re: Estate of

WILLIAM HENRY ECKLEY IV,

Deceased.

Erlinda S. Eckley,

Appellant,

v.

Alternate Decision Makers, Inc.,

Respondent.

APPELLANT'S REPLY

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ARGUMENT

I. DECEDENT'S HOUSE WAS AN EXEMPT HOMESTEAD.

A. A person under legal disability retains his homestead.

The leading case, dispositive here, is Millett v. Pearson, 143 Minn. 187, 173 N.W. 411

(1919). The court expressed the applicable law as follows:

“As a general rule of law persons under legal disability or restraint or persons in want of freedom are incapable of losing or gaining a residence by acts performed by them under the control of others. There must be an exercise of volition by persons free from restraint and capable of acting for themselves in order to acquire or lose a residence.”

Millett, 143 Minn. at 189. Legal disability suspends the homestead notice requirement of Minn. Stat. §510.07. It is settled law. Millett, supra; Eustice v Jewison, 413 N.W.2d 114 (Minn. 1987). There is no authority to the contrary.

In Re Estate of Hoffman, 354 N.W.2d 581 (Minn. App. 1984) and Muscala v. Wirtjes, 310 N.W.2d 696 (Minn. 1981), Respondent's citations, are not on point. The decedents in Hoffman and Muscala ceased to occupy their homes because of physical incapacity. Hoffman, 354 N.W.2d at 583; Muscala, 31 N.W.2d at 697. Physical incapacity is not a legal disability. Id.; Minn. Stat. §541.15. The Minnesota Supreme Court confirmed in Eustice v. Jewison, supra, that its decision in Muscala “expressly did not overrule the prior cases which granted an exemption for legal disability” for homestead purposes. Eustice at 119.

Bill Eckley had a legal disability. He suffered “insanity” by “substantial inability, by reason of mental defect or deficiency, to understand [his] legal rights, manage [his] affairs, and prosecute” his homestead claim while recovering from strokes. Minn. Stat. §541.15(a)(2); Harrington v. County of Ramsey, 279 N.W.2d 791, 795 (Minn., 1979). He was unable to

understand the need for, much less file, a homestead declaration. Legal disability excused him from the notice requirement to retain his homestead. *Millett*, supra; *Eustice*, supra.

B. Minn. Stat. §541.15 defines legal disability for homestead law.

Minn. Stat. §541.15 specifies the legal disabilities that “shall suspend the running of the period of limitation” for a cause of action. Minn. Stat. §541.15(a). It is debtor-creditor law. “[O]ur courts have consistently looked only to the law of debtor-creditor relations” in the application of homestead law in decedent’s estates. Respondent’s Brief, p. 4. With respect to Minn. Stat. §510.07, the Minnesota Supreme Court notes:

“Both insanity and imprisonment are recognized disabilities which suspend the running of statutes of limitations. Minn. Stat. §541.15(a)(2), (3) (1984).”

Eustice, 413 N.W.2d at 121, footnote 2. Decedent’s legal disability suspended the limitations period for him to re-occupy or file homestead notice under Minn. Stat. §510.07 from his first stroke in 2001 until his death in 2004. Minn. Stat. §541.15(a); *Millett*, supra; *Eustice*, supra.

C. The actions and failure to act of Bill Eckley’s conservator are irrelevant.

“[A]ppointment of a conservator for a mentally incompetent person does not remove the legal disability so as to start the running of limitations.” *Talley v. Portland Residence, Inc.*, 582 N.W.2d 590, 592 (Minn. App. 1998). Minn. Stat. §541.15 identifies the disability as “insanity,” not inability to sue. *Talley*, 582 N.W.2d at 591. Under the statute, legal disability suspends running of the applicable limitations period for five years or until the disability is removed, whichever first occurs. *Id.*

In *Eustice v. Jewison*, supra, Jewison’s guardian rented Jewison’s homestead to others from to time over a number of years. *Eustice* at 116. The guardian never filed a homestead notice. *Id.* The court declined “to impute the acts (or failure to act) of the guardian to

Jewison to find a waiver of a constitutionally based right.” *Eustice* at 119.

Bill Eckley’s conservator was “finally able, late in 2003, to find a reliable tenant for a short term lease.” A-54, paragraph 7, last sentence.¹ The homestead was rented once, for six months, before Bill Eckley died in June 2004. Neither his conservator’s decision to rent out the home, nor her failure to file homestead declaration, terminated the homestead status. *Eustice* and *Talley*, supra. The house remained an exempt homestead after his death. Minn. Stat. §510.06.

II. MARRIAGE CONFERRED OWNERSHIP AND HOMESTEAD RIGHT ON LINDA ECKLEY.

Where title is in the name of only one spouse, the homestead exemption extends to both spouses. Minn. Stat. §510.04. “Any interest in the land, whether legal or equitable, *shall constitute ownership* within the meaning of this chapter.” *Id.* (emphasis added). Linda Eckley had the same right as her husband to claim the house as her homestead. She was an owner for Chapter 510 purposes. *Id.* The homestead was last occupied in November, 2000, before Bill Eckley left it to visit Linda in the Philippines. A-24. Minn. Stat. §510.07 required re-occupancy or the filing of a notice of intent to homestead by May, 2001 in the absence of legal disability staying the limitations period.

By May, 2001, Bill Eckley had a legal disability, mental incapacity due to stroke. Minn. Stat. §541.15(a)(2). Linda Eckley was prohibited by federal immigration law and state statute from occupancy and from filing homestead declaration until she received permission to immigrate. Minn. Stat. §273.124, subd. 1. A homestead applicant must be a resident of Minnesota. *Id.* Statutory prohibition is a legal disability. Minn. Stat. §541.15(a)(4). Her

¹ “A” references a page in Appellant’s Appendix at the back of Appellant’s Brief.

disability was removed in May, 2005, and the limitations period began to run. She filed her homestead notice in September, 2005, well within the 6 month limitations period.

Linda Eckley's homestead right did not die with her spouse. Minn. Stat. §510.06. It was protected during her legal disability by suspension of the limitations period in Minn. Stat. §510.07. She timely filed homestead notice when her legal disability was removed. The house was an exempt homestead by the independent rights of Bill and Linda Eckley.

III. REAL ESTATE CLASSIFICATION DOES NOT AFFECT FAMILY ALLOWANCE AND STATUTORY SELECTION.

Respondent asserts that if decedent's house was not homestead, "the allowance and maintenance were properly paid." Respondent's Brief, p. 8. Classification of real estate is irrelevant to family allowance and personal property selection rights.

A surviving spouse is entitled to select \$10,000 in "personal property." Minn. Stat. §524.2-403(a)(1) and (c). Real estate is not personal property. Decedent's personal property available for the widow's selection consisted of \$950 in tangible personal property and \$56,778 in cash.² The widow was entitled, in addition to the \$100 in tangible personal property she selected, to the proceeds of sale of the remaining personal property (\$850) plus \$9,050 from the only remaining personal property in the estate, cash in bank accounts.

The surviving spouse is entitled to a reasonable family allowance "in money" out of the estate. Minn. Stat. §524.2-404(a). Real estate is not money. Allowance of \$8,824 is due.

There was more than enough cash in the estate to pay family allowance and statutory selection in full. Distribution of real estate does not satisfy the obligation of the estate to pay family allowance or meet statutory selection rights of the surviving spouse.

² Decedent's vehicle descended to the surviving spouse apart from selection. Minn. Stat. § 524.2-403 (a)(2).

The duty of the special administrator to provide support to the surviving spouse out of the decedent's estate, regardless of expenses of administration and other estate obligations, is paramount. Minn. Stat. § 524.2-403.; Benjamin v. LaRoche, 39 Minn. 334, 40 N.W. 156 (1888); Sammons v. Higbie's Estate, 103 Minn. 448, 115 N.W.265 (1908); McBride's Estate, 195 Minn. 319, 263 N.W.105 (1935). Claims not previously allowed by the probate court must be disallowed to the extent necessary to meet statutory allowance and selection rights.

CONCLUSION

Bill Eckley was not aged and infirm. He was only 58 years old when he died. In Eustice v. Jewison, supra, the supreme court reasoned:

“However, if respondent's proposed construction is adopted, any person involuntarily committed to a mental institution for more than 6 months would be faced with the loss of the family homestead.”

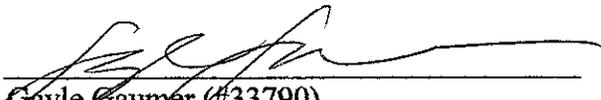
Eustice, 413 N.W.2d at 121. Here, if Respondent's argument was adopted, any person inconvalescing from a traumatic brain injury at a care facility for more than six months is faced with loss of homestead.

The general rule of law suspends homestead limitations periods for those under legal disability. Millett v. Pearson, supra; Eustice v. Jewison, supra. Bill Eckley never lost his homestead. Linda Eckley properly preserved her homestead right. The house was an exempt homestead in the estate and upon distribution to Linda Eckley.

Dated: September 19, 2009

Respectfully submitted,

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CERTIFICATION OF BRIEF LENGTH

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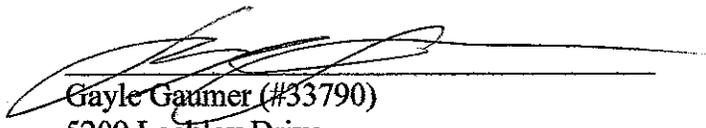
v.

Alternate Decision Makers, Inc.,

Respondent.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs.1 and 3, for a brief produced with a proportional font. The length of this brief is 3,243 words. This brief was prepared using Microsoft Word.

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