

NO. 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.

RESPONDENT'S BRIEF

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Statement of the Issue

1. Was the real estate owned by William Eckley on the date of death homestead or non-homestead?

Trial court held: The real estate was non-homestead. Minn. Stat. §§ 510.01, 510.06, 510.07. In re Estate of Hoffman, 354 N.W.2d 581 (Minn. App. 1984); Muscala v. Wirtjes, 310 N.W.2d 696 (Minn. 1981).

Statement of the Case

See the brief of the Appellant.

Statement of Facts

See the brief of the Appellant.

Argument

William Eckley owned a house and contiguous real estate at the time of his death. Although he had resided there for some time and claimed it as his homestead, he had resided continuously at a care facility, rather than his house, for some years prior to his death. It is undisputed that neither he nor his conservator filed a notice indicating his intention to preserve the homestead status of his real estate. Indeed, for some years prior to his death the house was rented out, as the accounts of the conservator filed with the Court reflect.

The real estate owned by the decedent was not his homestead. Had it been, the Appellant's claim that it passed to Erlinda Eckley free of claims of, for example, administration expenses would be correct. However, it was not his homestead. It was therefore subject to claims. The law is quite clear and quite simple on this point.

The relevant section of the Probate Code is Minn. Stat. §524.2-402. In interpreting that statute, our courts have consistently looked only to the law of debtor-creditor relations. See, for example, In re Estate of Bonde, No. A04-784 (MN 3/29/2005); In re Estate of Riggle, 654 N.W.2d 710 (Minn. App. 2002) at 714, also holding that the law of property tax classification is irrelevant in determining the homestead status for probate purposes and that applying it is reversible error. We look solely, therefore, at Minn. Stat. §§510.01, 510.06, and

510.07 to determine whether, under the facts of this case, the real estate was or was not William Eckley's homestead at the time of his death.

Minn. Stat. § 510.01 provides as follows:

The house owned and occupied by a debtor as the debtor's dwelling place, together with the land upon which it is situated to the amount of area and value hereinafter limited and defined, shall constitute the homestead of such debtor and the debtor's family, and be exempt from seizure or sale under legal process on account of any debt not lawfully charged thereon in writing, except such as are incurred for work or materials furnished in the construction, repair, or improvement of such homestead, or for services performed by laborers or servants and as is provided in section 550.175.

Minn. Stat. § 510.06 provides as follows:

If the owner dies leaving a spouse or minor children constituting the owner's family surviving, the homestead exemption shall not be affected by the death. If the owner shall abscond, or otherwise desert the family, the spouse and the minor children comprising the family may retain the homestead, with all the rights of owners therein. They shall not have power to sell or mortgage it, except in cases expressly provided for by law.

Finally, Minn. Stat. § 510.07 provides, in material part, as follows:

. . . If the owner shall cease to occupy such homestead for more than six consecutive months the owner shall be deemed to have abandoned the same unless, within such period, the owner shall file with the county recorder of the county in which it is situated a notice, executed, witnessed, and acknowledged as in the case of a deed, describing the premises and claiming the same as the owner's homestead. . . .

No notice as provided for in Minn. Stat. §510.07 was filed. William Eckley had continuously not resided at the real estate for longer than six months at the time of his death. He had abandoned the homestead. It was subject to claims in his probate estate and was wrongfully converted by the personal representative, who conveyed it to herself as the heir, sold it, and pocketed the proceeds, all in derogation of her duty to ensure that the assets of the estate be applied first to satisfy claims, one of which is the administration expenses of the Special Administrator.

Nor did his residence in a care facility somehow preserve the homestead status of his real estate. In fact, the Minnesota Court of Appeals has decided that very issue, and that decision is dispositive in this case. In re Estate of Hoffman, 354 N.W.2d 581 (Minn.App. 1984).

As stated in Hoffman, “Appellant argues that § 510.07 is not applicable in this case because her departure from the home was not voluntary. The supreme court has created two narrow exceptions to the notice requirement. (1) A person in jail suffers from a legal disability such that removal from home is not abandonment under § 510.07. (2) Involuntary commitment to a mental institution is not abandonment under § 510.07.” Op. cit. at 583. (Citations omitted.)

In Hoffman, as in the instant case, the decedent had been under conservatorship for some years prior to death, which necessarily means a court had

found the decedent to be incapacitated. That fact did not persuade the court to find involuntary absence from the house so as to preserve its homestead character, nor should it here.

This is not changed by Minn. Stat. §541.15, which provides, in relevant part, as follows:

(a) Except as provided in paragraph (b), any of the following grounds of disability, existing at the time when a cause of action accrued or arising anytime during the period of limitation, shall suspend the running of the period of limitation until the same is removed; provided that such period, except in the case of infancy, shall not be extended for more than five years, nor in any case for more than one year after the disability ceases:

- (1) that the plaintiff is within the age of 18 years;
- (2) the plaintiff's insanity;
- (3) is an alien and the subject or citizen of a country at war with the United States;
- (4) when the beginning of the action is stayed by injunction or by statutory prohibition.

If two or more disabilities shall coexist, the suspension shall continue until all are removed.

In the case before the Court, William Eckley was not prevented from filing the notice that would have been required by the statute to preserve the homestead exemption. He had a conservator. She had the legal authority to file the notice. She did not do so. Instead, she rented the house out, as her annual accounts reflect. Minn. Stat. §541.15 does not apply.

A brief word is in order as to the other two issues raised in the brief of the Appellant. First, it is, simply put, a non-issue to argue that the homestead exemption extended after William Eckley's death to his spouse and that she could effectively file the notice after his death. The question is the status of the house on the date of death. It was non-homestead.

The question of whether family allowance and maintenance were properly paid depends on the classification of the real estate. Assuming it was non-homestead, as the trial court held, the allowance and maintenance were properly paid.

Conclusion

Relying on settled authority, this court should uphold the trial court's ruling that the real estate in this case was non-homestead. That disposes of any other purported issues raised by the Appellant. The Order must be affirmed.

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Dated:

Sept. 9, 2009

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Certificate of Compliance

This brief complies with the word/line limitations of Minn. R. Civ. App. P. 132.01, subd. 3(a). The brief was prepared using Microsoft Word Office 2003, which reports that the brief contains 1,370 words.

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