WHEN A LIFE ESTATE INTEREST IN FLORIDA HOMESTEAD REAL PROPERTY IS NOT REALLY A LIFE ESTATE INTEREST

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EXECUTIVE SUMMARY:

The recent 2nd District Court of Appeals ruling in the case of *Friscia v. Friscia*, No. 2D13–412 (August 27, 2014), provides a new twist on the value of a "life estate" interest in Florida Homestead real property. *Friscia* involved a surviving second spouse's challenge to the determination that her deceased spouse's interest in his former marital residence constituted "homestead" real property, protected from the possession and control of the Personal Representative of his estate, that the former spouses marital settlement agreement granted temporary exclusive use and possession of the residence to the former spouse and precluded the surviving spouse from utilizing the "life estate" interest in the residence that she had inherited. The 2nd DCA affirmed the Probate Court ruling that held the former marital home to be entitled to the homestead exemption and that the terms of the MSA did not waive the decedent's right to the constitutional protection from claims of his creditors.

FACTS:

Friscia evolved from a petition to determine the homestead status of real property that was owned by a decedent with his former spouse. Pursuant to the couples marital settlement agreement the decedent's former spouse was granted exclusive use and possession of their residence until their youngest child graduated from high school. At that point in time, the residence was to be listed for sale and the proceeds divided equally between the former spouses. The decedent subsequently died while his youngest child was still in high school.

The homestead petition was initially filed by the oldest son of the decedent, from his first marriage, to protect the residence from any creditor claims against his estate, since there were insufficient funds available to satisfy its debts, taxes, claims, and expenses of administration. The homestead petition alleged that the residence qualified as a homestead within the meaning of Article X, Section 4 of the Florida Constitution and as a result title to the decedent's interest descended and the constitutional protection from claims inured to the decedent's heirs and surviving spouse. The decedents surviving spouse objected to the homestead petition and argued that the decedent had waived his homestead rights under the provisions of the marital settlement agreement entered into with his prior spouse and "that if the former marital home was afforded homestead protection then the Estate could not force the sale of the property and the Estate would be denied the benefits the Decedent bargained for in the MSA [marital settlement agreement]."

***Florida Homestead Provision*:**

The Florida Constitution provides:

§ 4. Homestead; exemptions
(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, . . . 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 . . . ; 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;
. . . .
(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

In addition, homestead real property is not an asset of a decedent's probate estate, and a Florida personal representative does not have jurisdiction over the homestead real property. When a Florida decedent dies intestate, the surviving spouse takes a life estate interest with a vested remainder to their lineal descendants.

"[T]he Florida Constitution does not require that the owner claiming homestead exemption reside on the property; it is sufficient that the owner's family reside on the property." As a result, the Florida Probate Court concluded that the decedent owned the residence as a "tenant in common" with his former spouse, and that the decedent's one-half (½) interest was entitled to the homestead protection. As a result, the Florida homestead exemption provided the surviving spouse with a life estate interest with a vested remainder in the decedent's children as lineal descendants.

Florida law further provides a holder of a life estate interest the right to live on the property for their lifetime, and only when they are deceased does the remainder beneficiaries receive the property. The surviving spouse then attempted to gain access to the property and "exercise her right in the life estate." However, the decedent's son denied her access and had her removed from the property by police escort.

The decedent's former spouse then argued that the marital settlement agreement granted her exclusive use and possession of the residence until the decedent's youngest child graduated from high school. The 2nd DCA affirmed that legal position and explained that although the marital settlement agreement specifically provided the former spouse exclusive use of the residence it did not operate as a waiver of the decedent's homestead rights (the Florida Constitution does not require that the owner claiming homestead exemption reside on the property; it is sufficient for the owner's family to reside on the property) and the homestead rights bestowed upon the decedent's one-half interest in the residence did not negate the terms of the marital settlement agreement, that was binding on the decedent and his heirs. As a result, the decedent's surviving spouse received a life estate interest in one-half of the residence without the ability to take advantage of it.

COMMENT:

The surviving spouse's motivation for objecting to the homestead petition was to have the value of the residence including in the calculation of her elective share and to stake a claim to control over the former marital residence as an asset of the estate. As they say, "hell hath no fury like a woman scorned."

2012 AMENDMENT TO FLORIDA STATUTES:

It is important to note that the ruling in *Friscia* is predicated upon prior Florida law. In 2012, the Florida Statutes were amended to include a new Section 732.401, Descent of homestead. Section 732.401(2) provides that "[i]n lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes." Had the new statute been in place, at the time of the decedent's death, the surviving spouse could have elected to receive an undivided one-fourth interest in the homestead property in lieu of a life estate interest. Despite this fact, the Probate Court probably would have continued to enforce the terms of the marital settlement agreement and granted temporary exclusive use and possession of the residence to the former spouse.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Marc Soss

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CITES:

Beltran v. Kalb, 63 So. 3d 783 (Fla. 3d DCA 2011)
§ 732.401(1), Fla. Stat. (2010).
McKean v. Warburton, 919 So.2d 341, 346 (Fla.2005).
§ 732.702(1) Fla. Stat. (2010).
In re Ballato, 318 B .R. 205, 209 (Bankr.M.D.Fla.2004)