Florida Law Review

Volume 4 | Issue 3 Article 10

September 1951

Homestead: Abandonment

Kenneth E. Brown

of the latter becomes burdensome on the former.[13] It accordingly behooves each state to set its own house in order in this field.

The inherent problem raised on appeal, namely, whether practical administration, convenience and saving of expense to the city justify such an exercise of police power, was not fully exploited in the instant opinion, probably because complainant expressed its willingness to pay reasonable inspection expenses. If, however, the expense of 67 separate county inspectors, or an even greater number of municipal inspectors, were forced upon a milk producer – and passed along to the consumer – state action to achieve a standard inspection would become advisable if not inevitable. *State* ex rel. *Larson v. Minneapolis*[14] outlines the weight of authority on this matter, but the Minnesota court carried the discussion of the federal question little further than did the Florida Court. In view of the fact that the Ocala ordinance was held in contravention of the Florida Constitution, a detailed analysis of the federal issue could not, of course, be expected. The tenor of *Miller v. Williams* and of the *Dean* case, however, indicates that the Florida Court has arrived at the probable conclusion of this issue.

L. C. NANCE

HOMESTEAD: ABANDONMENT

McCullough v. Forbes, 47 So.2d 780 (Fla. 1950)

Defendant tax assessor denied plaintiff a tax exemption on her alleged homestead for the stated reason, quoted in the record on appeal, "Occupancy not established by owner as of January 1, 1949." The board of equalization affirmed the ruling, and plaintiff filed proceedings in the circuit court. The special master found that she intended to resume occupancy and had received this tax exemption for several prior years under similar conditions; accordingly he recom-

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[13]*Cf., e.g.*, Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees v. Wisconsin Employment Relations Board, 340 U.S. 383 (1951); Wickard v. Filburn, 317 U.S. 111 (1942).

[14]190 Minn. 138, 251 N.W. 121 (1933).

mended allowance for 1949. The chancellor sustained defendant's exceptions and denied the exemption. On appeal, HELD, a property owner who rents her home on a month-to-month basis while living elsewhere to obtain necessary medical care, and who intends to resume occupancy when her health permits, is not entitled to the exemption for the year stated. Judgment affirmed without majority opinion, Justices Chapman, Terrell and Roberts dissenting with opinion.

The annual exemption from taxation of $5,000 of the assessed valuation of one's permanent residence[1] and the permanent exemption of homestead realty from forced sale[2] are largely different concepts,[3] but abandonment for tax-exemption purposes and abandonment for forced-sale purposes have heretofore been placed by the Supreme Court on the same basis.[4] The Attorney General, following the decisions, has summarized the law as follows:[5]

> ". . . the requirement for homestead exemption from taxation being essentially the same, . . . decisions relating to homestead exemptions from forced sale will be persuasive in determining similar questions relating to homestead tax exemptions."

The instant case turns on what constitutes physical abandonment; but, inasmuch as this phase of the law is necessarily based on domicil, the latter is analyzed first. "Residence" and "domicil" are not synonymous; the former signifies mere temporary physical location, while the latter denotes one's permanent home,[6] the center of his legal relationships.[7] An individual may have several residences, but under the law of any single jurisdiction he can have only one

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[1]FLA. CONST. Art. X, §7; family headship is not required.

[2]FLA. CONST. Art. X, §1.

[3]For an extensive analysis of these distinctions see Crosby and Miller, *Our Legal Chameleon, The Florida Homestead Exemption,* 2 U. OF FLA. L. REV. 346 (1949).

[4]See, *e.g.,* Jacksonville v. Bailey, 159 Fla. 11, 30 So.2d 529 (1947); Crosby and Miller, *supra* note 3, at 37-40, 369-370.

[5]OP. ATT'Y GEN. FLA. 050-214 (Apr. 25, 1950).

[6]See, *e.g.,* Minick v. Minick, 111 Fla. 469, 477-480, 149 So. 483, 487-488 (1933).

[7]As Holmes, J., so aptly defined the term in Williamson v. Osenton, 232 U.S. 619, 625 (1914), "The very meaning of domicil is the technically preëminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined."

domicil.[8] He must have that one, however;[9] and once established it remains his domicil until he abandons it for another. The mere intent to acquire a new domicil avails nothing unless accompanied by actual removal from the old one; neither does the fact of removal without the intent avail.[10] Both must exist.[11]

Since one domicil is essential in the law,[12] it follows that the domicil cannot possibly be abandoned without a new one being acquired. The claimant of an established domicil, including a claimant of the homestead-realty tax exemption, is not compelled to reside at all times on the property. His temporary absence for reasons of business,[13] health,[14] pleasure, or education[15] does not constitute abandonment, even though he rents the homestead and is not occupying it on January 1, the crucial date in each year.[16] The determination is one of fact, and can be reviewed in turn by the county commissioners sitting as a board of equalization, the circuit court, and the Supreme Court.[17]

In the light of the foregoing principles the facts in the record on appeal in the instant case are of especial importance. During the gasoline rationing of World War II, plaintiff, a widow then approxi-

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[8]It is recognized that the same jurisdiction may, by varying the factors evidencing domicil among different fields of law, find itself in the predicament of having fixed one domicil for one field and another for a different field; but the fact remains that as regards any single field the invariable rule is one domicil per person; *cf.* Holmes, J., *supra* note 7, at 625.

[9]Williamson v. Osenton, 232 U.S. 619 (1914); White v. Tennant, 31 W. Va. 790, 8 S.E. 596 (1888).

[10]For the various factors evidencing domicil at any given time see, *e.g.*, Croker v. Croker, 51 F.2d 11 (5th Cir. 1931); Crosby and Miller, *supra* note 3, at 30, 369-370.

[11]See, *e.g.*, Beekman v. Beekman, 53 Fla. 858, 862, 43 So. 923, 924 (1907). Both factors were established in, *e.g.*, Barlow v. Barlow, 156 Fla. 458, 23 So.2d 723 (1945).

[12]See notes 7, 9 *supra.*

[13]*E.g.*, Hillsborough Inv. Co. v. Wilcox, 152 Fla. 889, 13 So.2d 448 (1943); United States Fidelity & Guaranty Co. v. Marshall, 148 Fla. 286, 4 So.2d 337 (1941).

[14]*E.g.*, Nelson v. Hainlin, 89 Fla. 356, 104 So. 589 (1925).

[15]Reid v. Leitner, 80 Fla. 574, 86 So. 425 (1920).

[16]Jacksonville v. Bailey, 159 Fla. 11, 30 So.2d 529 (1947); see Crosby and Miller, *supra* note 3, at 369-370.

[17]FLA. STAT. §192.12 (1949); for a detailed explanation see Crosby and Miller, *supra* note 3, at 379-384.

mately 80, took a hotel room in the city because she could not get gasoline for necessary journeys into Jacksonville from her Atlantic Beach home, built by her husband and herself in 1923, and was unsuccessful in obtaining a female companion to live with her there. Later she moved back. She was allowed the homestead-realty tax exemption each year during the entire period. In 1948 she fell in a hotel room that she kept in the city, broke her wrist, and dislocated her collar bone. Nursing care was essential, and she was unable to obtain it in her home. She remained first in a hospital and then in a convalescent home; then for a short time she secured 24-hour nursing care in her own home, but found this impracticable; and then she took a room in a private home while convalescing, where the lady of the house looked after her. To help defray expenses, she stored her furniture and clothing, as well as other possessions not currently required, in the attic of her home and rented the house to tenants on a monthly basis in 1948, with the result that by reason of her poor health she was not occupying it on January 1, 1949. She always claimed it as her home, and made costly repairs to the property.

To assume that the Supreme Court of Florida, in affirming denial of exemption, intended to abolish the basic concept of domicil in Florida law is unthinkable. The only other explanation possible is that plaintiff abandoned her admittedly established home; and this in turn necessarily means that she acquired another domicil elsewhere. Yet the only other places she occupied were the hotel room,[18] the hospital, the convalescent home, and the private home where she was receiving the required dietary and nursing care in 1949. There being no dispute as to the relevant evidentiary facts, the issue presented is the legal question of whether such facts establish abandonment of the homestead, in the tax sense of domicil, under Article X of the Florida Constitution. Assuming careful study of the record by the seven justices, the conclusion is inescapable either that the decision is erroneous or that the Supreme Court in the instant case has overruled all its prior decisions on physical abandonment, including the factually similar *Nelson v. Hainlin*,[19] and has now established the rule that the domicil of an injured person is transferred with him to the hospital.

[18]For the period during which she occupied the hotel room part-time she was granted the exemption; it was not denied until her serious accident necessitated hospitalization and nursing care and she rented her home from month to month.

[19]89 Fla. 356, 104 So. 589 (1925).

For the practitioner it is most regrettable that an overburdened Court[20] finds itself compelled to execute a legal about-face by a single vote without offering even one reason for the change.[21] The fact that some assessors and judges may personally doubt the wisdom of the homestead-realty tax exemption does not in itself warrant any such change in the law. The Florida Constitution should be altered by amendment affecting all persons involved, and not by administrative and judicial fiat depriving specific individuals of their established constitutional rights.

KENNETH E. BROWN

JURISDICTION: CITIZENSHIP OF MULTI-STATE CORPORATIONS

Gavin v. Hudson & Manhattan R. R.,

185 F.2d 104 (3rd Cir. 1950)

Plaintiffs, New Jersey citizens, commenced a tort action against defendant railroad corporation in the federal district court for New Jersey, alleging that defendant was a New York corporation. Defendant moved to dismiss on the ground that there was no diversity of citizenship, since defendant was incorporated in New Jersey as well as in New York. The motion was granted, and plaintiffs appealed. HELD, the fact that defendant was incorporated in New Jersey as well as in New York did not defeat federal jurisdiction based on diversity of citizenship.

The problem involved in this and previous cases centers around the corporation's fictional status as a "citizen" of the state of incorporation. This fiction, as promulgated by the United States Supreme Court,[1] has resulted in confusion and anemic justification. It has been the subject of an immense amount of criticism.[2]

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[20]See Sebring, *The Appellate System of Florida,* 25 FLA. L.J. 141, 142-143 (1951).

[21]For a discussion of another recent decision similarly rendered, see 4 U. OF FLA. L. REV. 258 (1951).

[1]Maryland Ins. Co. v. Woods, 7 Cranch 402 (U.S. 1809); Bank of United States v. Deveaux, 5 Cranch 61 (U.S. 1809).

[2]See, *e.g.,* 1 CARSON, HISTORY OF THE SUPREME COURT 238 (1902); GRAY,