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Homestead: Determination of Status by Probate Court

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The holding in the instant case does not preclude a club from exercising its right of expulsion but provides only that some type of hearing must be granted and apparent good faith shown.

The usual concept of a hearing in administrative law is a fair hearing, the presumption being that action taken is based on evidence produced at the hearing. Under the Florida statute and its construction by the Court, this concept would not be applicable to private clubs. Once a member is afforded a hearing, the requirements of the statute are met. Hence it is not a true procedural safeguard but rather a dilatory process that permits a member to gather information in his defense. The statute appears to be aimed solely at preventing preciptious action on the part of a social club or society.

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HOMESTEAD: DETERMINATION OF STATUS BY PROBATE COURT

Wakeman v. Noble, 73 So.2d 873 (Fla. 1954)

An estate administrator petitioned a county judge's court to declare the entire estate to be homestead property and to direct distribution as authorized by Section 734.08, Florida Statutes 1953. Decedent's mother, claiming that certain amounts were due her from the estate, appeared and placed in issue the homestead character of the property. According to the statute, the court could determine whether the realty was in fact a homestead. The court declined to do so, concluding that such a determination was not within the power of the court under Article V, Section 11, of the Florida Constitution. The circuit court affirmed. On appeal, HELD, a county judge has authority to determine homestead status of property, and such a determination does not violate the constitutional provision placing in the circuit courts exclusive original jurisdiction of all actions involving title to realty. Judgment reversed.

Determination of the homestead character of land has traditionally been entrusted solely to the circuit courts,[1] pursuant to the provision of the Florida Constitution placing exclusive original jurisdiction of

[1]Spitzer v. Branning, 135 Fla. 49, 184 So. 770 (1938).

actions involving title to realty in the circuit courts.[2] Similarly, the Constitution gives exclusive original jurisdiction in equity to the circuit courts,[3] but the Florida Legislature has validly assigned to other courts matters not lying exclusively within equity jurisdiction.[4]

The Florida Supreme Court has said that county courts can not exercise a chancery power unless it is of such a nature that it may be also called a probate power.[5] The Court subsequently stated in *Spitzer v. Branning*[6] that a homestead is not an asset of a decedent's estate. The *Spitzer* case held that a county judge sitting as judge of a probate court does not have jurisdiction to determine rights in a testator's homestead property.[7] As late as 1950 the Florida Court, in a case involving title to realty – but not homestead status – said:[8]

> ". . . when . . . it is made to appear that third parties bona fides assert title adverse to the estate in real estate claimed by the personal representative or beneficiaries to constitute a part of the estate, resort must be had to the Circuit Court to settle such question of title, if this is necessary to a proper administration of the estate."

The Court clearly indicates in the instant case that a county judge may not determine title to the land. The opinion emphasizes that, although a county judge can determine a property's homestead status, he can not rule regarding title thereto. Delineating a difference between status and title, the Court said in *Bigelow v. Dunphe*[9] that homestead status is determined from a consideration of the actual use of land at the time of decedent's death. The Court further stated that this is "distinguished from the title as . . . shown on the records."[10]

The holding in the instant case was anticipated in *Our Legal Chameleon, The Florida Homestead Exemption:*[11]

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[2]FLA. CONST. art. V, §11, provides: "The Circuit Courts shall have exclusive original jurisdiction in . . . all actions involving the titles or boundaries of real estate . . . ."

[3]*Ibid.*

[4]*In re* Niernsee's Estate, 147 Fla. 388, 2 So.2d 737 (1941).

[5]Ritch v. Bellamy, 14 Fla. 537, 542 (1874) (dictum).

[6]135 Fla. 49, 56, 184 So. 770, 773 (1938) (dictum).

[7]135 Fla. 49, 184 So. 770 (1938).

[8]*In re* Lawrence's Estate, 45 So.2d 344, 345 (Fla. 1950).

[9]143 Fla. 603, 197 So. 328 (1940).

[10]*Id.* at 607, 197 So. at 330.

[11]Crosby and Miller, 2 U. FLA. L. REV. 219, 231 (1949).

> "It is difficult to discover any cogent defensive arguments against placing all probate jurisdiction, including determination of the homestead character of both realty and personalty, in the county judge's court . . . . [because] . . . Obviously the probate court is the tribunal best suited to perform this function in the first instance."

This article points out the rights of appeal to the circuit court and to the Florida Supreme Court and argues that, if hundreds of thousands of dollars worth of property can be entrusted to a county judge, surely the first thousand in personalty and the homestead status of realty can likewise be entrusted to him.[12]

In the future the Florida Supreme Court undoubtedly will favor determination by a county judge of realty's homestead status, at least regarding inclusion in, or exclusion from, an estate in the process of administration. A decision otherwise will, as in previous cases, result in suspension of probate proceedings in the county judge's court while judge and administrator await the decision of the circuit court on the status question. The rule announced in the instant case benefits both the litigants and the courts in eliminating transfer of the status question to the circuit courts, in reducing court costs to litigants, and in expediting probate proceedings. A litigant's right of appeal to the circuit court, moreover, remains unimpaired.

M. R. ADKINS

LABOR LAW: REPRESENTATION PETITION BARRED ONLY UNTIL EXPIRATION OF BARGAINING AGREEMENT

Ludlow Typograph Company, 108 N.L.R.B. No. 209 (June 25, 1954)

In October 1952, following a representation election by company employees, the National Labor Relations Board certified the International Association of Machinists as a bargaining representative. In December 1952 the employer and the IAM entered into a collective bargaining agreement effective from November 1, 1952, to November 1, 1953. A rival union, the International Union of Engravers, informed

[12] *Ibid.*