Recent Decision In Warner v. Quicken Loans, Inc. Provides That Certain Third Parties Have Standing To Challenge Invalid Homestead Orders

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Practitioners who represent third parties and wish to challenge the jurisdiction of the probate court as it relates to an invalid homestead order after the probate proceedings have concluded often find themselves prevented from mounting a successful challenge due to the third party's lack of standing. However, the recent holding in Warner v. Quicken Loans, Inc. now provides such practitioners with a road map for successfully challenging an invalid homestead order – at least as it relates to a property held as tenants by the entireties.[1]

Prior Law and Perspective:

Jurisdiction of a Probate Court:

It has long been recognized in the State of Florida that a probate court's jurisdiction only extends to property of the estate, and any judgment of the probate court is binding only on the property over which the probate court has jurisdiction.[2] The court in *Spitzer v. Branning* stated that if a probate court does not have jurisdiction over property, no party's conduct can grant jurisdiction, and the "mere inclusion of the description of property in pleadings or order in probate proceedings cannot confer jurisdiction of the rem."[3]

What about property held as tenants by the entireties? Is it included as property of the estate? No. Property held as tenants by the entireties vests in the surviving spouse by operation of law and does not pass by descent on the death of the co-owner.[4] Therefore, the probate court does not have jurisdiction over property held as tenants by the entireties because such property is not included as an asset of the decedent's estate.

Relatedly, "protected homestead" is also not an asset of the estate and does not pass by normal descent on the death of the owner. Protected Homestead is defined in Fla. Stat. § 731.201(33) as property which was the decedent's homestead as described in Art X, Section 4(a) of the Florida Constitution and on which the exemption inures to the surviving spouse or heirs under Art X, Section 4(b) of the Florida Constitution. Protected homestead is not an asset of the probate estate, it cannot be sold to pay debts or expenses, and it is not devisable (except as described in Art X, Section 4(c) of the State Constitution). Title to protected homestead vests at the moment of death.

Nonetheless, the probate court may be called upon by interested parties to determine the protected homestead status of real property owned by a decedent under Florida Probate Rule 5.405. According to the rule, the court's order "shall determine whether any of the real property constituted the protected homestead of the decedent."

Therefore, a proceeding to determine the status of "protected homestead" may properly be brought in the probate court which has jurisdiction.[5] The probate court's jurisdiction is only invoked to determine the property's status as protected homestead and not to convey title.

However, Fla. Stat. § 732.401(5) states the provisions regarding the descent and devise of homestead property do not apply to property owned by the decedent and the decedent's spouse in tenancy by the entireties. In addition, the Florida Probate Code specifically excludes real property owned as tenants by the entireties from the definition of "protected homestead."[6] Therefore, as the defendants in *Warner* learned, property owned by a decedent and his spouse as tenants by the entireties could not be the subject of a petition to determine protected homestead, and any order entered by the court is invalid.

Facts of the Warner Case:

In *Warner*, Christine Brennan Warner and Amanda Brennan ("the daughters"), sued Quicken Loans, Inc. ("Quicken") to quiet title in Jacksonville property that once belonged to their deceased parents (Joseph M. Brennan III and Carolyn J. Brennan), and to divest Quicken of its mortgage on the property.[7] The property originally belonged to Joseph and his siblings but in 1995 was deeded to Joseph and Carolyn as

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husband and wife, creating a tenancy by the entireties.[8] Joseph and Carolyn remained married until Carolyn's death in 2014.

Carolyn died intestate and was survived by Joseph, Christine and Amanda. During the probate of Carolyn's estate, Joseph petitioned the probate court to determine the homestead status of the property, utilizing "standard" FLSSI forms for determination of homestead status in an intestate estate with a surviving spouse and descendants. The probate court entered a homestead order using the standard FLSSI form provided for a situation where a decedent dies intestate with a spouse and lineal descendants, and with the exemption from creditors inuring. In other words, the court found:

1. the decedent was the owner of certain homestead real property ("the Property");
2. the decedent died intestate;
3. the decedent was survived by a spouse and one or more lineal descendants;
4. the decedent owned and resided on the Property;
5. the Property constituted the homestead of the decedent within the meaning of Section 4 of Article X of the Florida Constitution; and
6. title to the Property descended as of the decedent's date of death and the constitutional exemption from the claims of the decedent's creditors inured to the surviving spouse …as to a life estate…and a remainder interest vested in the lineal descendants in being a the time of the decedent's death (i.e., Christine and Amanda).

Several years later Joseph mortgaged the property, and that mortgage was subsequently assigned to Quicken. After Joseph's death, the daughters filed the quiet title action in state court. Upon Quicken's uncontested motion, the action was removed to federal court based on diversity jurisdiction.

The parties did not dispute (and the court held) that Joseph and Carolyn, when they were both alive, held the property as tenants by the entireties, and that when Carolyn died, the property passed by operation of law to Joseph in fee simple.[9] The issue in the case centered on the effect of the probate court's homestead order entered in Carolyn's estate.

Arguments Presented:

Quicken's argument was that the probate court did not have jurisdiction over the property because the property passed by operation of law outside of the estate, therefore the homestead order is a *brutum fulmen*[10] and has no effect as to ownership interests in the property, and thus has no effect on Quicken's mortgage.

Quicken relied in part on *Mullins v. Mullins*, decided in 2019.[11] In *Mullins*, a mother devised her property to her three children (a daughter and two sons), giving the sons each the right to live in the property as long as either of them "desires to live there," subject to an obligation to pay the expenses of maintaining the property. The probate court entered an order determining the property to be the mother's homestead and stating it passed in equal shares to the three siblings (without mentioning the additional provisions for the two brothers). Later, one brother and the sister sued the other brother for partition of the property, citing to the court Order stating they owned it co-equally (as the holder of a remainder interest cannot force a partition against a life tenant). The defendant brother argued the Will (not the order) established their property rights, and the appellate court agreed with him. The court found the homestead order could not create new rights and that mere consent to the order did not constitute an agreement among beneficiaries. Quicken argued similarly in this case.

The daughters' argument was that the order provided their father with a life estate in the property, and the daughters with the remainder interest, therefore Quicken's mortgage could encumber only their father's life estate interest, which terminated on his death.

The daughters relied on *Cavanaugh v. Cavanaugh* in their arguments.[12] In that case, a father bequeathed his homestead property to his spouse as to a life estate with the remainder to one of their four children. The property was probated in that manner and a homestead order was issued. Later, the other three children sued the fourth child contending the property was homestead and thus descended pursuant to Fla. Stat. § 732.401(1) (1977), as a life estate to the wife and a vested remainder in all four children, despite the homestead order.

While the appellate court in the *Cavanaugh* case noted that the homestead is not an asset of the estate and that the Personal Representative and estate have no jurisdiction over it, the court also found that estoppel and laches, may prevent the siblings from subsequently pursuing a claim in a collateral proceeding. In doing so, the *Warner* court observed, "[t]he appellate court effected the policy consideration that 'all questions of succession to property be authoritatively settled,' whether the property is homestead or otherwise, and emphasized the concern of allowing the three siblings to 'collaterally attack the probate judgment by asserting a homestead claim years after the probate judgment had become final.'"[13]

The Court's Analysis:

Ultimately, the appellate court in *Warner* found that Quicken was entitled to judgment on the pleadings, and its mortgage interest was valid. The court analyzed whether the original probate court had jurisdiction over the property, and whether issue preclusion applies in this case. Under Florida law, issue preclusion prevents parties from relitigating issues if an identical issue was presented in a prior proceeding and was fully litigated by the same parties or their privies and a court

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of competent jurisdiction rendered a final decision.[14] Florida courts enforce the requirement that the issues were actually adjudicated "with rigor."[15]

In the end, the court found that, because Joseph and Carolyn owned the property as tenants by the entireties, when Carolyn died the property passed by operation of law to Joseph, it was not an asset of the estate, and thus the probate court was without jurisdiction to effectuate a change in the ownership of the property.

The court also found the daughters' reliance on *Cavanaugh* was unavailing as the probate court in *Cavanaugh* was adjudicating rights under the father's will and the appellate court was considering the need for finality in probate proceedings, thus recognized estoppel and laches as defenses; whereas, the trial court in *Warner* was not adjudicating ownership interests in the property in the homestead order.[16]

Further, the court found that issue preclusion did not apply because the issue of whether the homestead order effectuated a change in ownership interest in the property was never litigated during the probate proceedings. In addition, because the probate court did not have jurisdiction over the property, the homestead order regarding the property cannot be binding as to issue preclusion.[17]

The court also addressed the daughters' argument that Quicken lacked standing to challenge the validity of the homestead order because Quicken was on notice of the order when it acquired the property due to the public nature of the order itself and the tax bills for the property noted that the property was held in the father's name as a "life estate" with a remainder to one daughter.[18]

The court stated this argument also failed holding that Quicken was not challenging the validity of the homestead order but instead was challenging "the consequences of the order on the mortgage Quicken holds."[19] The ruling may have been different if Quicken were merely challenging the validity of the order.

Lesson Learned:

In limited circumstances, it may be possible for third parties to challenge the validity of previously entered probate court orders determining homestead status. The court in *Warner* essentially provided third parties with a road map to successfully challenging homestead orders that were improperly entered by a probate court. If practitioners should find a case with non-probate homestead (which could be tenants by the entireties property but also might be protected homestead) and wish to defeat the homestead order, they should follow that road map and focus their argument on the probate court's lack of jurisdiction over the property in question.

However, practitioners should note the *Warner* case does not overturn the *Cavanaugh* decision; therefore, certain homestead orders, even if allegedly improper, may still not be subsequently challenged, if the prior order adjudicated property ownership interests and if the equitable defenses of estoppel and laches bar a subsequent challenge, depending on the equities of the case.

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Endnotes

1 *Warner v. Quicken Loans, Inc.*, 2020 WL 2097981 (M.D. Fla. May 01, 2020 Slip Copy).

2 *Spitzer v. Branning*, 135 Fla. 49, 53 (1938).

3 *Id.* at 53.

4 *Bendl v. Bendl*, 246 So. 2d 574, 576-577 (Fla. 3rd DCA 1971); *Regero v. Daugherty*, 69 So. 2d 178 (Fla. 1954); *Wilson v. Florida Nat. Bank & Trust Co. at Miami*, 64 So. 2d 309 (Fla. 1953); *Denham v. Sexton*, 48 So. 2d 416 (Fla. 1950); *Knapp v. Fredricksen*, 4 So. 2d 251 (Fla. 1941); *Norman v. Kannon*, 182 So. 903 (Fla. 1938).

5 *In re Noble's Estate*, 73 So. 2d 873 (Fla. 1954).

6 Fla. Stat. § 731.201(33).

7 The property is commonly described as 2721 Algonquin Avenue, Jacksonville, FL 32210-2905.

8 The court noted the deeds apparently transferred more than 100% of the property, but made no note of any impact of such.

9 *Bendl v. Bendl*, 246 So. 2d 574 (Fla. 3rd DCA 1971).

10 Black's Law Dictionary defines a *brutum fulmen* as "a judgment void upon its face," which is "in legal effect no judgment at all."

11 *Mullins v. Mullins*, 274 So. 3d 513 (Fla. 5th DCA 2019).

12 *Cavanaugh v. Cavanaugh*, 542 So. 2d 1345 (Fla. 1st DCA 1989).

13 Id at 1353; quoted in the ruling in *Warner v. Quicken Loans, Inc.*, 2020 WL 2097981 (M.D. Fla. May 01, 2020 Slip Copy) on page 14.

14 *Winn-Dixie Stores, Inc. v. Dolgencorp, LLC*, 746 F.3d 1008, 1036 (11th Cir. 2014) (citing *Essenson v. Polo Club Assocs.*, 688 So. 2d 981, 983 (Fla. 2d DCA 1997)); *Holt v. Brown's Repair Service, Inc.*, 780 So. 2d 180, 182 (Fla. 2d DCA 2001).

15 *Crowley Mar. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 931 F.3d 1112, 1129 (11th Cir. 2019) (citing *Brown v. R.J. Reynolds Tobacco Co.*, 611 F.3d 1324, 1334 (11th Cir. 2010)); *Gordon v. Gordon*, 59 So. 2d 40, 44 (Fla. 1952).

16 *Warner v. Quicken Loans, Inc.*, 2020 WL 2097981 (M.D. Fla. May 01, 2020 Slip Copy) pages 14-16.

17 Id.

18 Id.

19 Id.