

Reversed and Remanded and Opinion filed May 28, 2020.



In The

Fourteenth Court of Appeals

NO. 14-18-00826-CV

JENNIFER CACERES AND ROBERT PROCELL, Appellants

V.

**KERRI GRAHAM AS DEPENDENT ADMINISTRATOR OF THE ESTATE
OF ALICIA MARIBEL PROCELL, DECEASED, Appellee**

**On Appeal from the Probate Court No. 1
Harris County, Texas
Trial Court Cause No. 449210**

O P I N I O N

Decedent Alicia Maribel Procell was survived by her four children, one of whom was still a minor when her mother died. The estate was insolvent, and the trial court set aside Alicia's real property as homestead property, which, with exceptions inapplicable here, is exempt from claims against the estate. The trial court later appointed a dependent administrator and approved the administrator's inventory, appraisal, and list of claims, although the administrator had included the

homestead on the estate's inventory and represented that the estate had a claim for the rental income from the homestead. The trial court overruled the objections of two of the children to the inventory, appraisal, and list of claims, and granted the administrator's motion to terminate the property's homestead protection and to subject it, and the income it generated, to the dependent administration. Alicia's children Jennifer Caceres and Robert Procell challenge these orders.

We agree with them that because Jennifer¹ was a minor when her mother died, the homestead remains exempt as a matter of law from the claims of the estate's creditors and is not subject to administration. Further, title to the homestead vested in Alicia's four children upon her death; thus, rent due after Alicia's death is their property, not the estate's. We accordingly reverse each of the challenged orders, thereby rendering moot the trial court's subsequent orders granting the dependent administrator's application to sell the property and granting her motion to clarify that she is authorized to collect rent from the homestead's tenants and to manage the homestead as an estate asset. We remand the case for further proceedings consistent with this opinion.

I. BACKGROUND

Alicia Maribel Procell died intestate in April 2015, leaving an insolvent estate which was insufficient to satisfy the medical expenses of her final illness. At the time of her death, Alicia's primary assets were her homestead and the income she received from leasing it. According to the probate court's judgment determining heirship, Alicia was survived by her adult children Ofelia Adams, Larry Procell, and

¹ Because the names "Procell" and "Caceres" are shared by multiple individuals mentioned in this case, we refer to the children and their parents by their respective first names.

Robert Procell, and by her then-minor daughter Jennifer Caceres. After her mother's death, Jennifer continued to reside with her father Alex Caceres.

A. Order Setting Aside Homestead Property

Jennifer and Robert applied to the probate court to have their mother's homestead set aside as exempt property. They also asked the trial court to order that Jennifer have absolute title to the property in fee simple. Ofelia objected that, although the homestead is exempt property, title vested equally in all of Alicia's children upon their mother's death, subject to any post-death transfers by the heirs. Ofelia further requested a forced sale of the homestead on the ground that the property is incapable of partition. The probate court granted Jennifer's and Robert's application in part, ordering the homestead set aside as exempt from the claims of creditors, but ordering that, upon Alicia's death, fee simple title to the property vested equally in Ofelia, Larry, Robert, and Jennifer.²

B. The Dependent Administration

On Ofelia's subsequent application, the probate court appointed Kerri Graham dependent administrator of the estate and ordered Alex to provide Graham with an updated accounting of the homestead's rental proceeds. Four months later, Graham filed an inventory, appraisal and list of the estate's claims. The only property listed on the inventory was the homestead, while the rental income from the property was listed as a claim owed to the estate. Eight days later, the probate court approved the inventory, appraisal, and list of claims.

Ten days after the probate court signed the order, Jennifer and Robert moved to have the order set aside. At the same time, they filed objections to the inventory,

² Jennifer and Robert subsequently filed an amended application to set apart exempt property in which they added a request for an allowance in lieu of most exempt personal property, but the record contains no ruling on the application.

appraisal, and list of claims and moved for amendment of the document. They argued that because the homestead had been set aside, the probate court had no jurisdiction over it or the rental income from it, and that neither the homestead nor the rental income was subject to administration.

Graham then filed a "Motion to Confirm Termination of Minor Homestead Right." According to Graham, the homestead exemption terminated once Jennifer became an adult and lost the right to occupy it, at which time the rental income was to be accounted for and turned over to the dependent administrator for the benefit of the estate. In her response to Graham's motion, Jennifer argued that the status of the real property as an exempt homestead was fixed when her mother died leaving a minor child, and that its status was not subject to change merely because the minor child subsequently reached the age of majority and graduated from high school.³

On August 21, 2018, the trial court signed separate orders denying Jennifer's and Robert's motion to set aside the order approving Graham's inventory, appraisal, and list of claims, and granting Graham's motion to terminate the real property's homestead status. In the "Order Granting Motion to Terminate Homestead," the trial court stated that (1) the property "is no longer set aside as a homestead for the use and benefit of minor children," (2) "this Court no longer permits Jennifer Caceres or her prior guardian Alex Caceres to use and occupy the property as a homestead," and (3) the property's rental income is to "be accounted

³ Jennifer, Robert, and Graham all have assumed that a minor child's guardian's right to occupy the homestead, at the trial court's discretion, extended "for so long as [Jennifer] is a minor and thereafter until [she] graduates from high school." As support for this position, the parties cite Texas Family Code section 154.001. *See* TEX. FAM. CODE ANN. § 154.001(a) (a child-support order may require either or both parents to support a child until the child is 18 or graduates from high school, whichever is later). We need not decide whether the parties' assumption is correct, because in any event, Jennifer's father Alex never sought, and the trial court never granted, leave to occupy the homestead, and Jennifer had graduated from high school before any of trial court's challenged orders were signed.

for and provided to the Dependent Administrator by Jennifer Caceres and Alex Caceres (her guardian) to be distributed to the heirs at law and title vested in the heirs at law in accordance with this Court's previous Orders."

Three weeks later, Jennifer and Robert filed a notice of appeal challenging (1) the order signed July 6, 2018, approving Graham's inventory, appraisal, and list of claims; (2) the order signed August 21, 2018, denying Jennifer's and Robert's motion to set aside that order; and (3) the "Order Granting Motion to Terminate Homestead," also signed on August 21, 2018.

During the pendency of this appeal, Graham filed a motion asking the trial court to clarify whether she has the authority to (1) collect rent from the real property's tenants, and (2) "include the homestead as an Estate asset and manage it as such (including signing a lease or evicting the tenants, collecting rents, paying taxes, or selling the home if authorized by Court order, etc.)." The trial court granted Graham's motion and clarified that she is authorized to collect rent from the property's tenant's and "include the homestead as an Estate asset." Jennifer's and Robert's appeal includes their challenge to this order as well.⁴

⁴ Although the motion was titled as a motion to clarify an "Order Appointing Temporary [sic] Administrator," courts give effect to a motion's substance rather than its title. *State Bar of Tex. v. Heard*, 603 S.W.2d 829, 833 (Tex. 1980) (orig proceeding); *In re Merino*, 542 S.W.3d 745, 749 (Tex. App.-Houston [14th Dist.] 2018, orig. proceeding). In substance, Graham asked the trial court to clarify its order terminating the real property's homestead status, and she attached to the motion correspondence regarding the effect of the order, copies of which she enclosed. Whereas in the order terminating the real property's homestead status the court ordered Jennifer and her father to account for rental income and turn over rental income to Graham, in the clarifying order the court authorized Graham to collect rent directly from the real property's tenants. Because the clarifying order modifies the homestead-termination order, we have jurisdiction to consider it in this appeal as Jennifer and Robert have requested. *See* TEX. R. APP. P. 27.3.

Jennifer and Robert also have challenged the trial court's order overruling their objections to Graham's "Application for Sale of Real Property," but the record indicates that the trial court did not grant the application in any event. We therefore do not address it. *See Heckman v.*

II. GOVERNING LAW

The relevant facts are undisputed. The trial court determined, and the parties acknowledge, that (a) Alicia died intestate; (b) Jennifer was a minor when her mother Alicia died; (c) the estate is insolvent; (d) the trial court signed an order on December 28, 2017, setting aside Alicia's real property as homestead property; and (e) in the same order, the court declared that, upon Alicia's death, fee-simple title to the property had vested in equal shares to her four children. This appeal turns on the question whether the real property's homestead status became subject to termination after Jennifer reached the age of majority and graduated from high school. That is a matter of statutory construction, which, as a question of law, we review de novo. *See Sunstate Equip. Co. v. Hegar*, No. 17-0444, S.W.3d , 2020 WL 1660036, *2 (Tex. Apr. 3, 2020).

Where, as here, a parent dies leaving a minor child, an insolvent estate, and no surviving spouse, a property's status as a homestead carries with it three rights.

First, on application by a person authorized to act on the minor's behalf, the court must "set aside . . . the homestead for the use and benefit of . . . the minor children." TEX. EST. CODE ANN. § 353.051. This means that, with a few narrow exceptions not presented here, the homestead is not liable for the payment of any of the estate's debts. *See* TEX. CONST. art. XVI, § 50; TEX. EST. CODE ANN. § 102.004. Unless one of the express exceptions applies, the homestead is not subject to administration. *See, e.g., Thompson v. Thompson*, 149 Tex. 632, 648, 236 S.W.2d 779, 788 (1951); *Cline v. Niblo*, 117 Tex. 474, 481, 8 S.W.2d 633, 636 (1928); *Wassmer v. Hopper*, 463 S.W.3d 513, 526 (Tex. App.-El Paso 2014, no pet.); *Franklin v. Woods*, 598 S.W.2d 946, 950 (Tex. App.-Corpus Christi 1980, no writ);

Williamson Cty., 369 S.W.3d 137, 147 (Tex. 2012) (courts lack jurisdiction to render advisory opinions).

Padalecki v. Dreibrodt, 129 S.W.2d 481, 484 (Tex. App.-San Antonio 1939, writ dismiss'd judgment corrected) (op. on rehearing). Instead, the decedent's children share "absolute title" to the homestead. TEX. EST. CODE ANN. § 353.153.

Second, a trial court has discretion to permit a minor's guardian to "to use and occupy" the homestead under a court order. TEX. CONST. art. XVI, § 52; TEX. EST. CODE ANN. § 102.005(2); *Cline*, 117 Tex. at 477, 8 S.W.2d at 634.

Third, the homestead may not be partitioned among the decedent's heirs for so long as the trial court permits the guardian of the decedent's minor children "to use and occupy" the homestead. TEX. CONST. art. XVI, § 52; TEX. EST. CODE ANN. §§ 102.005(2), 102.006(2).

III. APPLICATION

Because Jennifer was a minor (sixteen years old) when her mother died, the trial court signed an order setting aside the decedent's homestead as exempt property in accordance with the governing law. The trial court's order setting aside the homestead was a final order⁵ from which no one appealed. Jennifer's father Alex, as her guardian, never sought, and the trial court never granted, permission for him to occupy the homestead; thus, the only homestead right at issue in this appeal is the right of the decedent's children to receive their shared fee-simple interest in the homestead and its income free of administration and free of claims by or against the estate.

A. Rulings Concerning the Inventory, Appraisal, and List of Claims

After the trial court set aside the homestead and declared that title to the property vested in equal shares in Alicia's children at the time of Alicia's death, the

⁵ See *Majeski v. Estate of Majeski*, 163 S.W.3d 102, 105-06 (Tex. App.-Austin 2005, no pet.).

trial court appointed Graham as the estate's dependent administrator. Graham filed the estate's inventory, appraisal, and list of claims (a document which we will refer to simply as "the inventory"), and eight days later, the trial court approved it, even though the document contradicted the trial court's final order setting aside the homestead and declaring that title to the property had vested in Ofelia, Larry, Robert, and Jennifer upon their mother's death.

Jennifer and Robert objected to the inventory and moved for the dependent administrator to amend it. In a separate motion, they asked the trial court to set aside its order approving the inventory. They pointed out that the inventory conflicted with the trial court's set-aside order and that the homestead was not subject to administration. The trial court denied the motion to set aside its order approving the inventory.

We conclude that the trial court erred both in initially approving the inventory and in denying Jennifer's and Robert's motion to set aside that order.

Although there is case law holding that inclusion of real property in the administrator's inventory is prima facie evidence that the property is not a homestead, and thus, a homestead should not be included on the inventory,⁶ we cannot say that the inclusion of homestead property in the administrator's inventory is per se erroneous, because the Texas Estate Code appears to permit its inclusion. "Estate" is statutorily defined to include all of a decedent's property, and the homestead falls within that broad definition. *See* TEX. EST. CODE ANN. § 22.012. The homestead is classified as "exempt property," which is defined as "the property *in a decedent's estate* that is exempt from execution or forced sale by the constitution or laws of this state." *Id.* § 22.013 (emphasis added). Moreover, the trial court can

⁶ *See, e.g., Wright v. McNatt*, 49 Tex. 425, 426-27 (1878); *Hamm v. Hutchins*, 19 Tex. Civ. App. 209, 211, 46 S.W. 873, 874 (Fort Worth 1898, no writ).

set aside the homestead property before or after the inventory is filed. *Compare id.* § 353.051(a) (requiring the trial court to issue an order setting aside the homestead immediately after the inventory is approved) *with id.* § 353.051(b) (minor child's guardian may apply to have the homestead set aside before the inventory is approved). Here, however, the trial court's order setting aside the homestead had become final well before the administrator filed the estate's inventory. Thus, even if the inclusion of the homestead real property in the inventory constituted prima facie evidence that the property is not a homestead, that evidence was rebutted by the trial court's pre-existing order setting the homestead aside as exempt property.

The more problematic error in the inventory is Graham's statement that the estate has a claim for the rental income from the homestead. The administrator has offered no explanation for this claim, which is contrary to longstanding law. Because the homestead passed to Alicia's children upon her death (subject to any post-death transfers by the children), the children are the owners of the homestead and its income. As the Supreme Court of Texas explained over a hundred years ago, "if the rent did not fall due until after the death of the [parent], then the rent would constitute no part of the estate, but would vest in the children by reason of their being the owners of the land, out of which the rents issued." *Porter v. Sweeney*, 61 Tex. 213, 216 (1884).

Because the inventory was contrary to the trial court's final order setting the real property aside as a homestead and declaring that title had vested in the decedent's children, we hold that the trial court erred as a matter of law in approving the dependent administrator's inventory and in denying Jennifer's and Robert's motion to set aside the order of approval. We accordingly reverse both of these orders.

B. The Order Terminating Homestead Rights

In the dependent administrator's motion for "termination of minor's homestead rights," Graham pointed out that Jennifer had reached the age of majority and had graduated from high school. Based on these facts, Graham asserted that "the homestead set[-]aside should be terminated, and rental income should be accounted for and turned over to the Dependent Administrator for the benefit of the Estate."

Graham has confused the homestead's status as property exempt from the claims of the estate and its creditors with a minor's right of occupancy. As previously discussed, the trial court has discretion to permit the guardian of the decedent's minor child to occupy the homestead, and the property cannot be partitioned among its owners as long as the trial court permits such occupancy. Because Jennifer is no longer a minor and no longer has a guardian, there is no longer any person to whom the trial court can grant this right of occupancy, and thus, this defense to partition of the real property is no longer available.

Both at trial and on appeal, Graham has relied on cases addressing the termination of the right of occupancy, but the loss of that right does not affect the property's homestead status. The two rights are distinct. As the Third Court of Appeals has explained, "the mere existence" of a minor child "is sufficient to cause the homestead to descend free of debt." *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Olson*, 920 S.W.2d 458, 461 (Tex. App.-Austin 1996, no writ). "Because the existence of a surviving constituent family member is the determining factor, the status of the homestead is immediately ascertainable upon the death of the decedent." *Id.* at 462. The *Olson* court therefore concluded that "[o]nce the homestead passes free of debt, it never becomes subject to the debt." *Id.*

Here, the homestead passed free of claims by or against the estate to the decedent's children upon their mother's death, and it continues to be exempt

homestead property even though Jennifer is no longer a minor. We accordingly reverse the trial court's order terminating the property's homestead status.

C. The Order Clarifying the Dependent Administrator's Authority

Probate proceedings are a continuing process in which later orders are based on the ones that have gone before. *See Garner v. Long*, 106 S.W.3d 260, 266 n.3 (Tex. App.-Fort Worth 2003, no pet.). Our reversal of the homestead-termination order therefore affects the trial court's subsequent rulings.

Because the homestead and the income from it are not subject to administration, we also must reverse the trial court's order clarifying that Graham, as dependent administrator, is authorized to treat the homestead and its income as estate property subject to administration and to claims by or against the estate. Because Graham has no authority over the homestead or the income it generates, she is not entitled to what the trial court granted-the authority to "[c]ollect rents from the Tenants on the homestead property"; the authority to "include the homestead as an Estate asset and manage it as such (including signing a lease or evicting the tenants, collecting rents, paying taxes, or selling the home)"; and the right to "an accounting [by Alex Caceres] for the rental funds. . . , [to] include verifications of funds, cancelled checks, receipts, and all relevant bank statements."

IV. CONCLUSION

We sustain the sole issue presented for appellate review. We reverse the trial court's orders (a) approving the dependent administrator's inventory, (b) denying Jennifer's and Robert's motion to set aside the order approving the inventory, (c) terminating the property's homestead status, and (d) clarifying Graham's

authority as dependent administrator. We remand the case for further proceedings consistent with this opinion.

/s/ Tracy Christopher
Justice

Panel consists of Chief Justice Frost and Justices Christopher and Bourliot.