JTWRS Trumps Homestead [Florida]

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Article X, section 4(c), of the Florida Constitution provides that "[t]he homestead shall not be subject to devise if the owner is survived by spouse or minor child." What happens if a Florida resident acquires property while he has a minor child and lives in it as his primary residence – but instead of acquiring property in his own name he acquires it as joint tenant with rights of survivorship with a third party, and then dies?

Option One – the property is not the decedent's homestead, and it passes entirely at his death to the other joint tenant.

Option Two – the property is the decedent's homestead, and his interest in the property does not pass to the joint tenant as an invalid devise under the foregoing Constitution provision.

These were the facts in *Marger v. De Rosa*, wherein the administrator ad litem for the estate of Mr. Marger asserted Option Two – that is, the homestead nature of the property trumped the JTWRS status of ownership.

Both the trial court and the Second District Court of Appeals found for Option One. The appellate court noted:

"This language [in the Constitution] does not restrict the type of interests in real property a person may acquire or how a person may title his or her property. Instead, it restricts a person's attempt to devise property he or she owns when homestead status has attached to that property."

Since the property was not homestead property at the time of the joint purchase, the homestead restriction was determined not to apply.

Marger v. De Rosa, 57 So.3d 866 (2nd DCA 2011)

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