

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

ELLEN JONES, as personal representative of the Estate of Loretta
Thomas, deceased,

Appellant,

v.

LANCE M. MCKINNEY, as curator of the Estate of Adelaide Tunnell,
deceased,

Appellee.

No. 2D21-252

April 20, 2022

Appeal from the Circuit Court for Charlotte County; Donald H.
Mason, Judge.

Patrick J. Reilly of Snyder & Reilly, Venice, for Appellant.

Stacy L. Haverfield of Stacy L. Haverfield, P.A., Cape Coral, for
Appellee.

NORTHCUTT, Judge.

Ellen Jones, as personal representative of the Estate of Loretta
Thomas (the Estate), appeals a probate court order that permits a
judgment creditor of the Estate, Adelaide Tunnell's successor in

interest,¹ to execute on an estate asset and thereby obtain payment of Tunnell's claim ahead of its statutory priority. We reverse because Tunnell's judgment did not qualify for an exception to the claims priority statute.

This case followed a circuitous course below, but the essential facts are these: During their lifetimes, Loretta Thomas exploited and committed civil theft against Adelaide Tunnell. When Thomas passed away, her personal representative filed a petition for administration of her estate. Tunnell filed a statement of claim in the Estate based on Thomas's misdeeds, to which the personal representative objected. Tunnell then filed a separate lawsuit against Thomas's estate. Tunnell prevailed in the suit and obtained a judgment against the Estate for over \$2.2 million dollars.

Tunnell recorded the judgment in Charlotte County, thereby obtaining a statutory judgment lien on the debtor's real property in the county, i.e., a home that was the Estate's only asset. The

¹ Adelaide Tunnell; Adelaide Tunnell's guardian, Margaret Tunnell; the Estate of Adelaide Tunnell; and the curator of the Estate, Lance M. McKinney, all represented the same interests at different times during the lower court proceedings and on appeal. We collectively refer to them as Tunnell in this opinion for ease of reference and to avoid confusion between the parties.

personal representative undertook to sell the home, but Tunnell filed in the probate proceeding a motion to permit it to execute on its lien. The Estate, on the other hand, maintained that Tunnell's claim was that of a Class 8 creditor, at the bottom of the priority for payment of claims and expenses set forth in the probate code at section 733.707, Florida Statutes (2016). It argued that the Estate should be permitted to sell the property without regard to the judgment lien and to apply the proceeds to the payment of expenses and claims according to their statutory priorities.

The probate court ruled for Tunnell, thus permitting Tunnell to execute pursuant to section 733.706. That statute provides:

Except upon approval by the court, no execution or other process shall issue on or be levied against property of the estate. An order approving execution or other process to be levied against property of the estate may be entered only in the estate administration proceeding. Claims on all judgments against a decedent shall be filed in the same manner as other claims against estates of decedents. This section shall not be construed to prevent the enforcement of mortgages, security interests, or liens *encumbering specific property*.

(Emphasis supplied.)

Thus, under the probate code Tunnell's judgment was of no greater dignity than any other claim against Thomas's estate. The

last sentence of section 733.706 excepting the enforcement of certain liens was of no moment because the lien of Tunnell's judgment did not encumber a *specific property*. See *Patrick v. Hess*, 212 So. 3d 1039, 1041-42 (Fla. 2017) (holding that courts need not look any further than the plain language of a statute where the statutory language is clear and unambiguous). Rather, under section 55.10, Florida Statutes (2016), upon its recordation a judgment becomes a lien generally on *any* real property of the debtor in the county where it is recorded. See *Pinellas County v. Clearwater Fed. Sav. & Loan Ass'n*, 214 So. 2d 525, 527 (Fla. 2d DCA 1968) (contrasting a mortgage, which is a lien on specific property, with a judgment lien, which is "a general lien which attaches to any property currently owned or subsequently acquired by the judgment debtor").

Finally, we acknowledge and empathize with the probate court's reliance on equitable considerations when authorizing the execution in this case. But "[c]ourts of equity have no power to overrule established law." *Orr v. Trask*, 464 So. 2d 131, 135 (Fla. 1985); see also *Mortg. Assets Mgmt., LLC v. Terraces/Banyan - 2, Inc.*, 326 So. 3d 1140, 1141 (Fla. 4th DCA 2021) (holding it was

error to apply equity to disregard statutory lienholder prioritization in a receivership case). This principle is especially important here, given the court's recognition that approving the execution would disrupt the administration of the Estate by completely draining it of assets. That would be directly contrary to the very purpose of section 733.706, which is meant to protect against such disruptions. *Murray v. Nationsbank of Fla.*, 846 So. 2d 548, 552 (Fla. 4th DCA 2003); *Brown v. Sweat*, 6 So. 2d 538, 538-39 (Fla. 1942) (discussing predecessor statute). As such, the order approving the execution was an abuse of discretion.

In conclusion, we hold that Tunnell's judgment in this case does not fall within section 733.706's exception from general probate administration procedures and claim priorities and that the probate court abused its discretion by authorizing Tunnell to execute on the judgment pursuant to that statute. On remand, the trial court shall complete the proper administration of the estate in accordance with this opinion.

Reversed and remanded.

SILBERMAN and LUCAS, JJ., Concur.

Opinion subject to revision prior to official publication.