IN THE SUPREME COURT OF TEXAS

NO. 05-0476

THOMAS EUGENE NORRIS, SR. AND KAREN LYNN NORRIS, APPELLANTS,

v.

JOHNNY W. THOMAS, TRUSTEE, APPELLEE

ON CERTIFIED QUESTION FROM THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

Argued November 15, 2005

JUSTICE O'NEILL, joined by JUSTICE WAINWRIGHT, JUSTICE BRISTER, and JUSTICE MEDINA, dissenting.

Texas homestead laws protect the homes of Texas families, a principle firmly embedded in our jurisprudence. TEX. CONST. art. XVI, §§ 50-51; *Woods v. Alvarado State Bank*, 19 S.W.2d 35 (Tex. 1929); *Clark v. Vitz*, 190 S.W.2d 736, 738 (Tex. Civ. App.—Dallas 1945, writ ref'd). The "fundamental idea connected with a homestead is . . . that of *a place of residence* for the family, . . . a secure asylum of which the family cannot be deprived by creditors." *Cocke v. Conquest*, 35 S.W.2d 673, 678 (Tex. 1931) (quoting *Iken v. Olenick*, 42 Tex. 195, 197 (1874)) (emphasis added). If a structure is owned and occupied by a household and attached to land, it is protected as a homestead. *Cullers v. James*, 1 S.W. 314, 315 (Tex. 1886); *see Capitol Aggregates, Inc. v. Walker*, 448 S.W.2d 830, 836-37 (Tex. Civ. App.—Austin 1969, writ ref'd n.r.e.). Although Norris's home

is his boat, and it is attached to land by power, water, and sewer lines, the Court nevertheless concludes that his home is not protected and subject to execution. Because the Court's decision today violates the purpose of homestead protection as we have long interpreted it, I respectfully dissent.

The Court rejects Norris's homestead claim because the boat in which he lives is not permanently affixed to the land and retains its mobile character. While I agree with the Court that it is attachment to realty that gives personal property homestead character, *Walker*, 448 S.W.2d at 835, I do not agree that, under our case law, the attachment must be permanent. If affixation to land-based systems is necessary to make a dwelling habitable, such attachment is sufficient to confer homestead status. For instance, the trailer home in *Walker* that was found to be sufficiently attached to realty to be a homestead was connected to gas, water, and sewage facilities on the lot upon which it sat. *Id*. at 832. Similarly, in *Clark*, we concluded that a house trailer on the debtor's property connected to another home's electrical system was exempt as a homestead, "even though it did not become a legal fixture attached to [the debtor's] lot." *See Clark*, 190 S.W.2d at 738.

It is difficult to distinguish between a mobile home hooked up to land-based electricity and water, and a boat hooked up to land-based electricity and water, when it is the attachment itself that makes the dwelling habitable as a residence. The common thread among cases holding that a chattel qualifies as a homestead is the land-based amenities that make the property suitable for dwelling. These amenities, in the words of the *Cullers* court, allow the personal property to form "part of the home proper" and acquire the character of realty. 1 S.W. at 315. It is Norris's boat's connection to

land-based power, sewage, and water systems, that makes it habitable as a residence, and thus provides it with sufficient affixation to land to qualify as a homestead.

Contrary to today's decision, nothing in the Texas Constitution, Texas homestead statutes, or our prior decisions supports the notion that mobility is a bar to homestead character. While several appellate courts have stated that a chattel acquires homestead status by permanent affixation to land, in each of those cases the mobile home that was granted homestead protection could have easily become mobile once again and removed from the land. *See Minnehoma Fin. Co. v. Ditto*, 566 S.W.2d 354, 356-57 (Tex. Civ. App.—Fort Worth 1978, writ ref'd n.r.e.); *Walker*, 448 S.W.2d at 832.[1] In *Walker*, the court took judicial notice that the homestead-exempt mobile home was attached to leased land only by "the law of gravity and frictional adhesion." *See Walker*, 448 S.W.2d at 832. And in *Ditto*, the court noted that the exempt mobile home could be removed from its location without damage to either the home or the realty to which it was attached. *Ditto*, 566 S.W.2d at 356. In my view, considering the homestead law's fundamental purpose to protect the family dwelling, it is of no moment whether Norris's boat is attached to land by gravity, like a mobile home on cement blocks, or instead is securely moored in a rented slip to a land-based dock with cables, as is Norris's houseboat. Indeed, in *Cullers* we specifically rejected the notion that moving a chattel, in that case a house, denied it homestead character:

> If he occupies it with his family, it is their home. He may be compelled to move it from one lot to another as fast as legal process can oust him, still, though ambulatory, unsatisfactory, and in all its appointments mean; though it advertises the thriftless

[1] In a third case involving a mobile home of some type, the court of appeals denied homestead protection to the property. *Gann v. Montgomery*, 210 S.W.2d 255 (Tex. Civ. App.—Fort Worth 1948, writ ref'd n.r.e.). There is no suggestion in that opinion that the trailer home was attached in any way to the land.

> poverty of its proprietors, and is a caricature of the princely possibility of the exemption laws,—*it is the home of a family, and is embraced in the spirit and purpose, if not the letter, of the constitution*.

1 S.W. at 315 (emphasis added). Personal property need not be rendered permanently immobile to be exempt; "[t]he ease and nominal expense with which it can be removed to another location do not alter its homestead character." *Gann*, 210 S.W.2d at 260 (Speer, J., concurring). Indeed, such a requirement would be at odds with the notion that a homestead is a permanent estate that cannot be divested except by abandonment or alienation. *See Woods*, 19 S.W.2d at 38.

Although we clearly stated in *Cullers* that personalty may be "ambulatory" and retain its homestead character, the Court concludes that personalty must be a permanent addition to realty to receive protection as a homestead. The Court cites no textual change to our Constitution that supports such a radical departure from our precedent (because none has occurred); instead, it relies on the passage of time and a totally inapposite decision, *Sonnier v. Chisholm-Ryder Co.*, 909 S.W.2d 475, 479 (Tex. 1995). In *Sonnier*, the Court interpreted a statute that created a ten-year statute of repose for persons who construct or repair improvements to real property, TEX. CIV. PRAC. & REM. CODE § 16.009; we held that a defendant who manufactured a tomato chopper that was later installed by someone else in a cannery was not subject to the statute. *Id.* at 483. We reasoned that a manufacturer of personalty does not "construct" an "improvement" within the repose statute's meaning because property must be "annexed to realty with the intent that it be a permanent addition to the realty" for it to be an improvement as the statute intended it. *Id.* at 481; *see also id*. at 479 (stating "[g]enerally, whether an attachment of personalty to realty constitutes an improvement is a question of the owner's intent"). The statute we interpreted had nothing to do with protecting the

homes of Texas families from execution. When construing the homestead provision, we are bound to "effectuate [its] beneficent purpose . . . ." *Woods*, 19 S.W.2d at 35.

Of greater import than the type of structure and its ability to move or be moved is whether the structure comes within the "overruling purpose of the constitution to secure to the family" a home. *Cullers*, 1 S.W. at 315; *see also Clark*, 190 S.W.2d at 738 (holding that a trailer set apart from a residence house was included in the homestead exemption because it "was devoted to such use as brought it within the spirit and purpose of the homestead exemption statute"). So long as there is a residence-dependent attachment to land, the salient question becomes whether granting the homestead exemption to the home would serve the policy of the exemption, to preserve the family home for a fresh start. I would hold that, because Norris's sole residence is his boat which is attached to land-based amenities that are necessary for habitation, it comes within the purpose of the homestead laws and qualifies for the homestead exemption.

By ignoring the policies underlying our homestead exemption, the Court places itself at odds with a more family-supportive "homestead" concept adopted by our Legislature and Texas administrative bodies. In the Tax Code, for example, the Legislature took a functional approach in creating a $3,000 county-tax exemption for a "'residence homestead,'" emphasizing how property is used rather than its particular form. TEX. TAX CODE § 11.13(a), (j). The Legislature defined the term as "a structure (including a mobile home) . . . (together with the land, not to exceed 20 acres . . .)," so long as the structure "is designed or adapted for human residence; is used as a residence; and is occupied as his principal residence." *Id.* at 11.13(j). Under that definition, Norris's boat would qualify as a homestead. Norris's boat would also be considered a homestead under

regulations governing eligibility for the Temporary Assistance for Needy Families program, which define "homestead" as "[a]ny structure, including a houseboat or motor home, that the household uses as its residence . . . ." TEX. ADMIN. CODE § 372.356(5). While these provisions do not govern the question before us as they are context-specific, their approach is far more protective of the family home than the Court's decision today, contrary to the constitutional intent. The Court states that these laws demonstrate that the Legislature is "adept at adopting different definitions for different purposes." ___ S.W.3d at ___. But they more likely demonstrate the Legislature's reliance on *Cullers* and our longstanding interpretation of "homestead," since our lawmakers are presumed to be acquainted with our construction of state laws. *Tex. Dep't of Protective and Regulatory Servs v. Mega Child Care, Inc.*, 145 S.W.3d 170, 176 (Tex. 2004).

The Court's cramped interpretation of homestead is inconsistent with this Court's precedents and the policies underlying the constitutional exemption. Accordingly, I respectfully dissent.

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Harriet O'Neill
Justice

OPINION DELIVERED: February 9, 2007.