

In the United States Bankruptcy Court

for the Northern District of Iowa

NORMA JANE HUSTED
a/k/a Norma J. Husted and
WAYNE DOUGLAS HUSTED
a/k/a Wayne D. Husted
Debtors.

Bankruptcy No. 87-01413-S

MEMORANDUM OF OPINION AND ORDER RE OBJECTION TO EXEMPTION

The matter before the Court is an objection by the trustee, Wil L. Forker (Trustee), to a claimed homestead exemption by Norma Jane Husted and Wayne Douglas Husted (Debtors) in certain real estate contract proceeds. A hearing was held on November 2, 1987 and stipulated facts were filed. The matter was submitted to the undersigned for consideration. This Court now issues this ruling which shall constitute Findings and Conclusions as required by Bankr. R. 7052. This is a core proceeding pursuant to 28 U.S.C. section 157(b)(2)(B).

I.

From the facts stipulated by the parties and the attachments thereto, the Court finds the following:

1. Debtors moved from their house at 1516 West Palmer, Sioux City, Iowa (old house) to another house at 2311 West Street, Sioux City, Iowa (new house) during April of 1980;
2. Debtors sold the old house on October 1, 1980 to Patrick C. Horn and Simone C. Horn (Vendees) on contract;
3. Debtors filed for bankruptcy on June 22, 1987;
4. The balance due from Vendees for Debtors' old house at the time Debtors filed for bankruptcy was \$21,954.38;
5. Debtors use the contract payment by Vendees each month to make the monthly mortgage payment on their new house.

Debtors claim their new house is exempt property under Iowa's homestead laws. [\(1\)](#) To this claim, Trustee does not object. However, Trustee does object to Debtors' claim that the contract payments due from the sale of their old house are also exempt. He argues that no statutory authority exists for this second homestead exemption.

II.

A homestead in Iowa is defined as follows:

The homestead must embrace the house used as a home by the owner, and, if he has two or more houses thus used, he may select which he will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead.

Iowa Code Ann. section 561.1. Further,

[t]he homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary, provided that persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial sale.

Iowa Code Ann. section 561.16 (Supp.)(in pertinent part). Changes in a homestead are permitted.

The owner may, from time to time, change the limits of the homestead by changing the metes and bounds, as well as the record of the plat and description, or vacate it.

Such changes shall not prejudice conveyances or liens made or created previously thereto.

Iowa Code Ann. section 561.7 (in pertinent part). The exemption for a new homestead is especially set forth:

Where there has been a change in the limits of the homestead, or a new homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former one would have been.

Iowa Code Ann. section 561.20.

The burden of proof in establishing that an exemption is not properly claimed is on the objector. Bankr. R. 4003. However, courts must liberally construe the homestead exemption in the debtor's favor. Berner V. Dellinger, 206 Iowa 1382, 1385, 222 N.W. 370, 372 (1928)(cited in Chariton Feed and Grain, Inc. v. Kinser, 794 F.2d 1329, 1331 (8th Cir. 1986)). The purposes of the exemption statutes should not be defeated by narrow construction, American Savings Bank v. Willenbrock, 209 Iowa 250, 253, 228 N.W. 295, 297 (1929), but it is not within a court's province to enlarge or extend the exemptions established by the legislature. Iowa Methodist Hospital v. Long, 234 Iowa 843, 851, 12 N.W.2d 171, 175 (1943).

III.

Based on the facts stipulated by the parties and in consideration of applicable statutes and relevant case law interpretations thereof, the Court concludes that the contract payments due from the sale of Debtors' old house are not exempt under Iowa's homestead provisions.

The proceeds of a homestead are exempt for a reasonable time after sale if they are held for the purpose of reinvestment in another homestead. Campbell v. Campbell, 129 Iowa 317, 320, 105 N.W. 583, 585 (1906). Here there is little quarrel that Debtors sold their old house with every intention to invest the proceeds in a new homestead. It also appears that the contract payments from the sale of the old house are indeed being applied to the purchase of the new house. However, these contract payments are not proceeds of a homestead since at the time the old house was sold, it was no longer a homestead. See Crail v. Jones, 206 Iowa 761, 765-66, 221 N.W. 467, 469 (1928)(proceeds of abandoned homestead not exempt from attachment); compare Fardal v. Satre, 200 Iowa 1109, 206 N.W. 22 (1925).

Debtors may hold only one homestead. Iowa Code Ann. section 561.1. Consequently, when they moved to their new home with no intention of returning to the old house, the old house ceased as their homestead. Wapello County v. Brady, 118 Iowa 482, 484-86, 92 N.W. 717, 718-19 (1902). Upon reoccupancy, however, the new house became Debtors' homestead and was clothed with an exemption "to the extent in value of the old" and it "is [now] exempt from execution in all cases where the old or former one would have been." Iowa Code Ann. section 561.20 (in pertinent part).

"The theory is that the new homestead is a continuance of the old and the exemption dates from the acquisition and occupancy as a home of the old."

American Savings Bank, 209 Iowa at 255, 228 N.W. at 298.

This transfer of the original homestead value⁽²⁾ protects the homestead holder without prejudicing the creditor. As the Iowa Supreme Court noted,

[t]he doctrine is based upon sound reason. The proceeds of the sale of the first homestead, whether money or property, are added to the other assets of the seller. If he [the debtor] uses property or money other than the proceeds of his old homestead to buy a new one, his creditors are not injured, for they may reach the proceeds of his old homestead on execution, just as they could other property, after the purchase of his new homestead. No good reason can be given why the identical money or property received for the first homestead shall be used in the purchase of the second."

Harm v. Hale, 206 Iowa 920, 923, 221 N.W. 582, 583-84 (1928) (emphasis added (quoting Benham v. Chamberlain & Co., 39 Iowa 358, 356-60 (1874); see also Elliott v. Till, 219 Iowa 834, 259 N.W. 461 (1935)⁽³⁾; Shaffer Brothers v. Chernyk, 130 Iowa 686, 687-89, 107 N.W. 001, 801 (1906).

To hold that the proceeds from the sale of the old house are exempt would require a finding that the old house retained its homestead characteristic after Debtors left with no intention to return. Such a conclusion is clearly not supported under the applicable statutes and the facts presented. A liberal interpretation of Iowa Code Ann. sections 561.7 and 561.20 leads to but one conclusion: Debtors' homestead changed at the time they moved to the new house. Consequently, it must follow that Debtors' homestead interest transferred to the new house "to the extent in the value of the old." Furman v. Dewell, 35 Iowa 170, 172-73 (1872). Further, it also follows that when Debtors moved, their old house lost its homestead characteristic and the proceeds from its sale became personal property subject to execution. Id.; see First National Bank of Thornton v. Neve, 213 Iowa 344, 235 N.W. 561, 563 (1931).

The facts presented here are distinguishable from those under which State v. Geddis, 44 Iowa 537 (1876), was decided. In Geddis, the defendant sold his homestead and took a mortgage on it. Two years later, defendant foreclosed but a year later the mortgagee redeemed. On that same day, the judgment, interest and costs were garnished. The defendant, arguing that he still intended (as he had since the initial sale) to invest the sale proceeds in a new homestead, claimed that the money was exempt from levy. The Iowa Supreme Court agreed.

If a homestead be sold and the proceeds applied to some other use, there is no doubt that the exemption would cease, but where the sale is made on a credit and with the intention of using the proceeds when collected in purchasing another homestead, the proceeds are not put to any intervening use, they are exempt while thus in transitu, so to speak, from the old homestead to the new. Any other rule would practically prohibit the changing of homesteads.

Id. at 539.

In contrast, Debtors here do not hold proceeds of a homestead since their old house lost its homestead status when Debtors moved to the new house. It is not, then, the sale on contract of the old house which defeats Debtors' homestead exemption in the proceeds. Rather, it is the transfer of Debtors' homestead to a new house and the subsequent sale of the old house which was no longer a homestead. Furman, 35 Iowa at 172-73.

ORDER

IT IS THEREFORE ORDERED that the proceeds from the contract for the sale of a house at 1516 West Palmer in Sioux City, Iowa owned by Norma Jane Husted and Wayne Douglas Husted, Debtors, are not exempt under the applicable Iowa homestead statutes. Trustee's objection to exemption is sustained. Dated January 25, 1988.

William L. Edmonds
Bankruptcy Judge

1. Iowa statutes govern Debtor's allowed exemptions in bankruptcy since the state has chosen to "opt out" of federal exemptions. See U.S.C. section 522(b)(1); Iowa Code Ann. section 627.10.
2. Only an objection to Debtors' claim that the proceeds from the sale of their old house are exempt is before the Court. A request for a determination of the value of Debtors' homestead exemption was not requested and will not be made herein.
3. This case was decided under the present language of Iowa Ann. section 561.20.