

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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ESTHER ERICKSON  
Debtor.

Bankruptcy No. X87-02428S

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### MEMORANDUM OF DECISION RE OBJECTION TO HOMESTEAD EXEMPTION

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Valley Bank and Trust objects to Debtor Esther Erickson's claim of homestead exemption.<sup>(1)</sup> Trial was held on March 24, 1988. Upon consideration of the evidence and briefs of law filed by the parties, the court now makes the following Findings of Fact and Conclusions of Law pursuant to Bankr. R. 7052 and issues the following ruling. This is a core proceeding under 28 U.S.C. 157(b)(2)(A).

#### FINDINGS OF FACT

1. Debtor Esther L. Erickson and her late husband (Ericksons) acquired real property in Cherokee, Iowa on October 30, 1974. The Cherokee property is described as follows:

Lot Four (4) in Block Three (3) of Huxford's Extension to New Cherokee, Iowa,  
Cherokee County, State of Iowa.

The property was unencumbered by any mortgage at that time.

2. On September 30, 1977, the Ericksons purchased a vacant lot in Meriden, Iowa. The Meriden property is described as follows:

The South 55 feet of Lot Six (6) in Block Nine (9), of the First Addition to the Town of Hazard, now Meriden, Cherokee County, Iowa.

3. Ericksons installed utilities and settled a new mobile home on the premises.

4. In order-to pay for the Meriden property and improvements, Ericksons obtained an unsecured loan for \$20,000.00 on April 26, 1983 from the Steele State Bank and Trust, the predecessor of Objector Valley Bank and Trust.

5. Ericksons moved to the Meriden property from the Cherokee property in the fall of 1977 and began to occupy it as their home.

6. Ericksons' unsecured loan with Steele State Bank was renewed several times. It remained unsecured until April 26, 1983, when Ericksons granted Steele State Bank a first mortgage on the Meriden property.

7. On April 26, 1978, Ericksons sold the Cherokee property by installment contract for \$23,000.00.

8. The purchasers of the Cherokee property were unable to timely meet the payments and the contract was forfeited on June 29, 1984.
9. Ericksons moved back to the Cherokee property in October, 1984. Debtor's husband died later that year.
10. Debtor filed her individual petition under Chapter 7 of the Bankruptcy Code on November 27, 1987.
11. Debtor claims the Cherokee property as exempt.
12. Prior to the filing of the bankruptcy case, Valley Bank and Trust had not obtained a judgment against Debtor nor a judgment lien against the Cherokee property.
13. There was no evidence presented on the October, 1984 value or the present value of either the Cherokee property or the Meriden property.

### **CONCLUSIONS OF LAW**

1. The Ericksons occupied the Cherokee property as their homestead from October 30, 1974 until the fall of 1977 when they moved to a home on property in Meriden.
2. Ericksons occupied the Meriden property as their homestead from the fall of 1977 until they returned to the Cherokee property in October of 1984.
3. The Cherokee property is Debtor's current homestead.
4. Under state law, Debtor's homestead interest in the Cherokee property is subject to execution for a pre-existing debt to Bank but only to the extent that a deficiency exists after other property of the Debtor which is subject to execution has been exhausted.

### **DISCUSSION**

The issue before the Court is whether Debtor's present homestead in Cherokee is exempt from execution to the extent of a debt arising from a note and mortgage given on a prior homestead. Iowa's homestead statutes provide the answer to that question:

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 561.7 (in pertinent part).

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 561.20 (emphasis added). Moreover,

[t]he homestead may be sold to satisfy debts of each of the following classes:

1. Those contracted prior to the acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.
2. Those created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledged by the same contract for the payment of the debt.

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Iowa Code 561.21 (in pertinent part).

The burden of proof in establishing that an exemption is not properly claimed is on the objector. Bankr. R. 4003. 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).

Debtor may hold only one homestead. Iowa Code Ann@ 561.1. Consequently, when Ericksons returned to their house in Cherokee with no intention of returning to the trailer house in Meriden, the Meriden trailer house ceased being-their homestead. Wapello County v. Brady, 118 Iowa 482, 484-86, 92 N.W. 717, 718-19 (1902). Upon reoccupancy, however, the Cherokee house became Debtor's 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. 561.20 (in pertinent part).

Debtors' old homestead was not exempt from the mortgage Ericksons gave because a consensual mortgage is considered a contracted-for debt for which the homestead may be sold in satisfaction under Iowa Code 561.21(2). Foley v. Cooper, 43 Iowa 376, 379 (1876). Accordingly, under Iowa Code 561.20, since the old homestead was subject to execution for the debt, the new homestead is also. See Anderson v. Renshaw, 229 Iowa 93, 99-100, 294 N.W. 274, 278 (1940); Brunsdon v. Brunsdon, 199 Iowa 1099, 200 N.W. 823, 825 (1924); Shaffer Brothers v. Chernyk, 130 Iowa 686, 107 N.W. 801 (1906).

Since the parties have failed to provide the Court with the value of the Meriden property at the time that Debtor transferred her homestead interest to the Cherokee property, the Court cannot determine the value of Debtor's present homestead exemption against the mortgage debt held by Objector, Valley Bank and Trust. However, the Court concludes that the Cherokee property is subject to execution for a debt arising from the note and mortgage given on the Meriden property to the extent that a deficiency exists after other property of the Debtor which is subject to execution, including the Meriden property, is-exhausted pursuant to Iowa Code 562.21.

## ORDER

IT IS HEREBY ORDERED that the objection by Valley Bank and Trust to Debtor Esther L. Erickson's claim of a homestead exemption in her Cherokee, Iowa property is sustained to the extent that a deficiency exists after other property of the Debtor which is subject to execution has been exhausted pursuant to Iowa Code 561.21. A judgment shall enter accordingly.

SO ORDERED THIS 10th DAY OF JUNE, 1988.

William L. Edmonds  
Bankruptcy Judge

Filed Stamped: June 10, 1988

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1. This decision answers only the question of whether Debtor's homestead exemption claim may be upheld. It does not answer the many questions which inevitably flow from this decision such as who obtains the benefit, if any, from the failure of the exemption claim and how.