

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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RALPH M. MADDOX and O. MARIE  
MADDOX

Bankruptcy No. X87-02434S

Debtors.

Chapter 7

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### **ORDER RE: MOTION FOR SUMMARY JUDGMENT; OBJECTION TO HOMESTEAD EXEMPTION**

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The matters before the court are motions for summary judgment filed by the debtors and Farmers Bank. A hearing was held in Sioux City, Iowa on September 29, 1988.

The parties have filed briefs in support of their positions. This ruling shall constitute findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).

#### **FINDINGS OF FACT**

1. Ralph Maddox and O. Marie Maddox, husband and wife, filed their joint voluntary petition under Chapter 7 of the Bankruptcy Code on November 30, 1987.
2. On Schedule B-4 to the voluntary petition, the debtors claimed as exempt under Iowa Code Ch. 561 real estate located in the city of West Okoboji, Iowa.
3. The debtors acquired title to this property pursuant to a contract dated and recorded May 11, 1961.
4. The-subject property was originally platted as a part of the town of Arnolds Park, Iowa. The property was located in Striker's Park, which was platted in 1902 by S. S. Striker, Julia H. Striker, Willie O'Farrell and Ella O'Farrell. The plat was approved and accepted by the incorporated town of Arnolds Park on July 7, 1902. The plat was filed of record on September 10, 1902.
5. The subject property was severed from the incorporated town of Arnolds Park pursuant to a court order entered by the Dickinson County District Court on January 4, 1904.
6. A resolution was entered into by the council of the town of West Lake Okoboji, Iowa annexing to the town of West Lake Okoboji the subject property on November 14, 1929.
7. The subject property is currently within the city limits of the city of West Okoboji, Iowa. The homestead claimed as exempt is a portion of Lot 7, Striker's Park.

8. The debtors resided in the house located on the subject property at the time of the filing of the bankruptcy petition.
9. The debtors have used the property for the purposes of raising hay, vegetables and fruits for personal use. Additionally, some of the products produced on the land were sold by the debtors at a vegetable stand which was located on the subject property.
10. Approximately half of the property consists of a dense growth of trees and brush. This portion of the property is used as a wood lot for obtaining burning wood.
11. The trustee and Farmers Bank both filed objections to the debtors' homestead exemption on March 7, 1988. They claim the debtors are entitled to an exemption of only one-half acre since the homestead is located in a town or city plat.
12. The debtors filed a motion for summary judgment on August 15, 1988. Farmers Bank filed a resistance to the Bank's motion for summary judgment on September 14, 1988. Bank also filed a motion for summary judgment on September 14, 1988.
13. Debtors attempted to further plat Lot F in 1981, but the town of West Okoboji did not approve the proposal.

## DISCUSSION

### I.

Summary judgment is only proper when no genuine issue of material fact exists, and the movant is entitled to judgment as a matter of law. Somers v. Budget Marketing, Inc., 667 F.2d 748, 750 (8th Cir. 1982). The court must consider the facts in the light most favorable to the non-movant, and the non-movant is entitled to all reasonable inferences which may be derived from the underlying facts as shown by the pleadings, depositions and affidavits presented. Somers, 667 F.2d at 749-50. Summary judgment will be denied if the moving party fails to show the absence of a genuine issue of material fact. Foster v. Johns-Manville Sales Corp., 787 F.2d 390, 393 (8th Cir. 1986).

### II.

The only issue before this court is whether the property being claimed as exempt by the debtors is located in a city or town plat. If a homestead is located within a city or town plat, it cannot exceed one-half acre in extent, However, if the homestead is not located within a city or town plat, the debtor can claim a homestead exemption of up to 40 acres. Iowa Code §561.2.

The subject property is currently located within the city limits of West Okoboji. However, the fact that a homestead is located within the city limits does not necessarily mean that the homestead is within a town or city plat. See In re McDowell's Estate, 237 Iowa 112, 20 N.W.2d 24 (1945). Finley v. Tietrick, 12 Iowa 516 (1861); Hatter v. Icenbice, 207 Iowa 702, 223 N.W. 527 (1929); Foster v. Rice, 126 Iowa 190, 101 N.W. 771 (1904).

"A plat is a subdivision of land into lots, streets and alleys, marked upon the earth and represented upon paper." McDaniel v. Mace, 47 Iowa 509, 510 (1877). A land owner who desires to make an addition to his town or city must follow the requirements for the making and recording of a plat. Iowa Code Ch. 409. The homestead property being claimed by the debtors as exempt was located within

the plat of Striker's Park. The plat of Striker's Park, Dickinson County, Iowa was filed by S. S. Striker and his wife and Willie O'Farrell and his wife on September 10, 1902 in the Dickinson County Recorder's office in Book 3, page 43.

A review of the requirements for platting at the time Striker's Park was platted indicate that all provisions were complied with. See Iowa Code § §914-917 (1897). The plat which was attached to the Farmers Bank's (BANK) motion for summary judgment contains a covenant of warranty which was required by §914 of the Iowa Code. The plat also contains an acknowledgment that the property was being platted with consent and desire of the proprietor as required by §915 of the Iowa Code. Additionally, the plat contains a statement from the treasurer stating the land was free from taxes as required by Iowa Code §915. A certificate of approval from the city council of Arnolds Park was also acquired by the platters. See Iowa Code §916 (1897).

The record establishes that the subject property was located within a city or town plat at one time. However, the debtors argue that the property is no longer located within a city or town plat since the property was severed from the town of Arnolds Park pursuant to a court order of the Dickinson County District Court filed on January 4, 1904. Debtors argue also that they should be allowed more than the exemption of one-half acre since the property is used for agricultural purposes.

The trustee and Bank both argue that the property is currently located within a city or town plat since Striker's Park was annexed to the town of West Okoboji, Iowa in 1929. A resolution in which the city council of the town of West Okoboji, Iowa annexed the subject property stated the following:

Be it resolved by the council of the town of West Okoboji, Dickinson Co., Ia., to hereby grant the petition of the resident voters of the territory hereinafter described and annex to the town of West Okoboji, Dickinson Co., Ia., and cause same to be made a part of West Okoboji, Dickinson Co., Ia., which territory is described as follows,- to wit,-

1. All of Gov't lot one (1), in Sect. thirty one (31) Township ninety-nine (99) North, of Range Thirty Six (36) West 5th principal Meridian, lying west of the main highway running north and south across land known as Federal Highway #71.
2. All of the plat of Striker's Park not replotted, except Lot "A" of said Striker's Park.
3. All of the plat of O'Farrell's Park not replotted
4. Lots A, B, and C of Auditor's Plat of lots 3 and 6 of O'Farrell's Park.

Bank also contends that the plat of Striker's Park continued as a town or city plat independent of whether Striker's Park was located within the city limits of some other town or city. Bank argues that a town or city plat will continue unless it is vacated by complying with the provisions of the Iowa Code.

The trustee also relies on Iowa Code § §592.2 and 592.3 to argue that the property is currently part of a city or town plat.

Section 592.2 provides:

"None of the provisions of this chapter [ch 13, title V, Code of 1897] shall be construed to require replatting in any case where plats have been made and recorded in pursuance of law; and all plats heretofore filed for record and not subsequently vacated are hereby

declared valid, notwithstanding irregularities and omissions in the required statement or plat, or in the manner or form of acknowledgment, or certificates thereof." (Footnote omitted.)

Section 593.3 provides in part:

"In all cases where, prior to January 1, 1970, any person has laid out any parcel of land into town or city lots and the plat of the lots has been recorded and the plat appears to be insufficient because of failure to show certificates of the county clerk of the district court, county treasurer, or country recorded or the affidavit and bond, if any, and the certificate of approval of the local governing body or because the certificates are defective, or because of a failure to fully comply with all of the provisions of chapter 409 of the Code of 1966 as amended to December 31, 1969, or corresponding statutes of earlier Codes, or because the plat failed to show signatures or acknowledgment of proprietors as provided by law, or because the acknowledgment was defective, and subsequent to the platting, lots or subdivisions of the lots have been sold and conveyed, all such said plats which have not been vacated, are legalized as of the date of the recording of the plat, the same as though all certificates have been attached and all the other necessary steps taken as provided by law, and the record of the plat shall be conclusive evidence that the person was the proprietor of the tract of law and the owner of the tract at the time of the platting, and that the tract of land was free and clear of all encumbrances unless an affidavit to the contrary was filed at the time of recording the plat.

These statutes were enacted in order to provide legal effect to plats which were for some reason defective. These are curative statutes which were not intended to deal with the present issue. There is no indication that the original plat was defective. The plat appears to comply with all the provisions which were in effect at the time of platting. See Iowa Code § 914 - 917 (1897).

It does not appear that the plat of Striker's Park was formally vacated when the property was severed from the town of Arnolds Park. Iowa Code 918 (1897), which was in effect at the time the property was severed, stated:

"Any such plat may be vacated by the proprietor thereof, at any time before the sale of any lots, by a written instrument declaring the same to be vacated, executed, acknowledged and recorded in the same office with the plat to be vacated, and the execution and recording of such writing shall operate to annul the plat so vacated, and to divest all public rights in the streets, alleys and public grounds described therein. In cases where any lots have been sold, the plat may be vacated as in this chapter provided by all the owners of lots joining in the execution of the writing aforesaid."

There is also no indication that the plat was vacated at any time prior to the time the subject property was annexed to the city of West Okoboji.

Article 3, Section 30 of the Iowa Constitution provides in part that "[t]he General Assembly shall not pass . . . local or special laws for vacating, . . . roads, town plats, streets, alleys, or public squares. . . ." Laws for the vacation of town plats must be general and of uniform operation throughout the state. The exclusive means for vacating the plat in 1904 was to follow the provisions set forth in Iowa Code §918 (1897). There was no evidence this was ever done.

The resolution in which the city council of West Okoboji, Iowa annexed the subject property specifically provided that [a]ll of the plat of Striker's Park not replotted, except Lot "A" of said Striker's Park . . ." was annexed to West Okoboji. This language specifically refers to the plat of Striker's Park. Therefore, this provides further evidence in support of the conclusion that the subject property, which was located in Striker's Park, continued to be part of a city or town plat.

The subject property, which was located in Striker's Park, was severed from the city of Arnolds Park by court order of January 4, 1904. There is no evidence or cited authority that the severance affected the status of the Striker's Park plat. This court is unable to find any cases or law which indicate that severance of property from a city or town can serve as vacation of a plat. The provision of the Iowa Code that provides for vacation of plats is the exclusive method for vacation.

The actual use to which land is put does not determine whether property is within or outside a town plat. McDaniel v. Mace, 47 Iowa 509, 510-11 (1877); In re McDowell's Estate, 237 Iowa 112, 20 N.W.2d 24 (1945). The fact that the property is used mainly for agricultural purposes does not mean that the property is no longer located within a city or town plat.

"[T]o secure the benevolent purposes of the homestead laws, they should be broadly and liberally construed in favor of the beneficiaries of such legislation." Olsen v. Lohman, 234 Iowa 580, 13 N.W.2d 332, 335 (1944). See also, Merchants Mutual Bonding Co. v. Underberg, 291 N.W.2d 19, 21 (Iowa 1980); American Savings of Marengo v. Willenbrock, 209 Iowa 250, 228 N.W. 295, 297 (1929). However, the property claimed as a homestead is located within a city or town plat. Therefore the debtors are limited to an exemption of one-half acre. Iowa Code §561.2.

There is no genuine issue of material fact in this case. The trustee and Bank are entitled to judgment as a matter of law.

### ORDER

IT IS ORDERED that the trustee's and Farmers Bank's Objections to Exemptions are sustained.

IT IS FURTHER ORDERED that the Farmers Bank's Motion for Summary Judgment is granted.

IT IS FURTHER ORDERED that the debtor's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that the debtors shall have 45 days to amend their claim as to the homestead exemption.

SO ORDERED THIS 30th DAY OF JANUARY, 1989.

William L. Edmonds  
Bankruptcy Judge