

IN THE IOWA SUPREME COURT

SUPREME COURT NO. 17-2009

STANDARD WATER CONTROL SYSTEMS, INC.,
Plaintiff-Appellee,

v.

MICHAEL D. JONES, CORI JONES,
Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT FOR POLK COUNTY
THE HONORABLE LAWRENCE MCLELLAN, JUDGE

FINAL BRIEF OF APPELLANTS

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MICHAEL AND CORI JONES

TABLE OF CONTENTS

TABLE OF AUTHORITIES	4
STATEMENT OF ISSUES PRESENTED FOR REVIEW	6
ROUTING STATEMENT.....	8
STATEMENT OF THE CASE	8
A. Nature of the Case.....	8
B. Course of Proceedings.....	10
STATEMENT OF FACTS	18
ARGUMENT	19
THE DISTRICT COURT ERRED BY HOLDING THAT MICHAEL AND CORI SOMEHOW WAIVED THEIR HOMESTEAD PROTECTION RIGHTS.....	19
A. Preservation of Issue for Appeal.....	19
B. Standard of Review.....	21
C. Discussion	22
1. The District Court Correctly Held that Michael and Cori’s Home Constitutes their “Homestead” and is Entitled to Iowa Code Chapter 561’s Broad Homestead Protections.....	22
2. Michael and Cori Did Not Waive Their Homestead Protection Rights.	27
i. Judicial estoppel does not apply because Michael and Cori have never taken a position inconsistent with their belief that Iowa’s homestead statute protects their home from Standard Water’s claim for attorney fees and costs.....	28

ii.	The law of the case doctrine does not apply because no appellate court in the present case has addressed the homestead issue.	30
iii.	Res judicata principles do not bar Michael and Cori’s claim, because Michael and Cori timely asserted their homestead rights prior to the sheriff’s sale of their home.	32
3.	The District Court’s Waiver Theory Precluded Relief on the Basis of a Statutory Redemption.	36
	CONCLUSION.....	38
	REQUEST FOR ORAL ARGUMENT	39
	CERTIFICATE OF COST.....	40
	CERTIFICATE OF SERVICE	40
	CERTIFICATE OF FILING.....	41
	CERTIFICATE OF COMPLIANCE.....	41

TABLE OF AUTHORITIES

Cases

<i>Bahl v. City of Asbury</i> , 725 N.W.2d 317 (Iowa 2006)	31
<i>First Am. Bank v. Urbandale Laser Wash, LLC</i> , 894 N.W.2d 24 (Iowa Ct. App. 2017).....	23, 25
<i>Francksen v. Miller</i> , 297 N.W.2d 375 (Iowa 1980)	32, 33, 34, 35
<i>Harden v. State</i> , 434 N.W.2d 881 (Iowa 1989).....	21
<i>In re Estate of Waterman</i> , 847 N.W.2d 560 (Iowa 2014)	23, 24, 35, 38
<i>In re Lone Tree Cmty. Sch. Dist.</i> , 159 N.W.2d 522 (Iowa 1968).....	31
<i>In re Marriage of Lenz</i> , No. 02-1022, 2003 WL 21458484 (Iowa Ct. App. June 25, 2003)	28
<i>In re Wipperling</i> , 286 B.R. 106 (N.D. Iowa 2002).....	24
<i>Lee v. State</i> , 874 N.W.2d 631 (Iowa 2016)	31
<i>Meier v. Senecaut</i> , 641 N.W.2d 532 (Iowa 2002)	21
<i>Scheffert v. Scheffert</i> , No. 12-2147, 2013 WL 5508538 (Iowa Ct. App. Oct. 2, 2013).....	32, 33, 34, 35
<i>Standard Water Control Sys., Inc. v. Jones</i> , 888 N.W.2d 673 (Iowa Ct. App. 2016).....	9, 11, 12, 18, 19, 32
<i>Standard Water Control Sys., Inc. v. Jones</i> , No. 17-0854, 2018 WL 739330 (Iowa Ct. App. Feb. 7, 2018)	13, 32
<i>State v. Meyer</i> , 705 N.W.2d 676 (Iowa Ct. App. 2005).....	21
<i>State v. Stanford</i> , 474 N.W.2d 573 (Iowa 1991)	21
<i>United Fire and Cas. Co. v. Iowa Dist. Court for Sioux County</i> , 612 N.W. 2d 101 (Iowa 2000).....	31
<i>Vennerberg Farms, Inc. v. IGF Ins. Co.</i> , 405 N.W.2d 810 (Iowa 1987)	29

Wilson v. Liberty Mut. Group, 666 N.W.2d 163 (Iowa 2003) 28, 29

Statutes

IOWA CODE § 561.16 (2017) 9, 15, 16, 20, 22, 26

IOWA CODE § 561.21 (2017) 16, 22

IOWA CODE § 561.21(3) (2017) 10, 14, 15, 24, 25, 26

IOWA CODE § 561.22 (2017) 35

IOWA CODE § 561.5 (2017) 27, 37

IOWA CODE § 561.6 (2017) 27, 37

IOWA CODE § 561.7 (2017) 37

IOWA CODE § 572.2(1) (2017) 26

IOWA CODE § 625A (2017) 30

IOWA CODE § 625A.15 (2017) 14

IOWA CODE § 628.21 (2017) 36, 37

Iowa Code Chapter 561 (2017)..... 8, 14, 15, 17, 18, 21, 25, 27, 35, 36, 38

Iowa Code Chapter 572 (2017)..... 8, 25, 26, 27

Iowa Code Chapter 628 (2017)..... 36

Iowa R. App. P. 6.1101(2)(c) (2017)..... 8

Iowa R. App. P. 6.1101(2)(d) (2017)..... 8

STATEMENT OF ISSUES PRESENTED FOR REVIEW

THE DISTRICT COURT ERRED BY HOLDING THAT MICHAEL AND CORI SOMEHOW WAIVED THEIR HOMESTEAD PROTECTION RIGHTS.

Standard Water Control Sys., Inc. v. Jones, 888 N.W.2d 673
(Iowa Ct. App. 2016)

IOWA CODE § 561.16 (2017)

Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002)

Iowa Code Chapter 561 (2017)

State v. Stanford, 474 N.W.2d 573 (Iowa 1991)

Harden v. State, 434 N.W.2d 881 (Iowa 1989)

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First Am. Bank v. Urbandale Laser Wash, LLC, 894 N.W.2d 24
(Iowa Ct. App. 2017)

In re Estate of Waterman, 847 N.W.2d 560 (Iowa 2014)

In re Wipperling, 286 B.R. 106 (N.D. Iowa 2002)

IOWA CODE § 561.21(3) (2017)

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IOWA CODE § 561.5 (2017)

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In re Marriage of Lenz, No. 02-1022, 2003 WL 21458484
(Iowa Ct. App. June 25, 2003)

Wilson v. Liberty Mut. Group, 666 N.W.2d 163 (Iowa 2003)

Vennerberg Farms, Inc. v. IGF Ins. Co., 405 N.W.2d 810 (Iowa 1987)

IOWA CODE § 625A (2017)

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612 N.W. 2d 101 (Iowa 2000)

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Standard Water Control Sys., Inc. v. Jones, No. 17-0854, 2018 WL 739330
(Iowa Ct. App. Feb. 7, 2018)

Francksen v. Miller, 297 N.W.2d 375 (Iowa 1980)

Scheffert v. Scheffert, No. 12-2147, 2013 WL 5508538
(Iowa Ct. App. Oct. 2, 2013)

IOWA CODE § 561.22 (2017)

Iowa Code Chapter 628 (2017)

IOWA CODE § 628.21 (2017)

IOWA CODE § 561.7 (2017)

ROUTING STATEMENT

This appeal should be retained by the Iowa Supreme Court because the case involves the important legal principals of the interplay between the mechanic's lien statute (Iowa Code chapter 572) and the Iowa homestead protections (Iowa Code chapter 561). Moreover, given the broad statutory protection given to homestead rights in Iowa, the case is of broad public importance. Iowa Rule of Appellate Procedure 6.1101(2)(c), (d).

STATEMENT OF THE CASE

A. Nature of the Case

Defendants-Appellants, Michael and Cori Jones ("Michael and Cori") hired Standard Water Control Systems, Inc. ("Standard Water") to waterproof their home's basement. (Tr. 216:1-18)(App. 22). During the course of Standard Water's work, Standard Water damaged Michael and Cori's water and sewer line, causing damage to the basement. (Tr. 221:4-9)(App. 22). After Michael and Cori refused to pay the full amount for the work that resulted in flooding and damaged water and sewer lines, Standard Water filed a petition to foreclose a mechanic's lien on Michael and Cori's home. (Petition)(App. 7-20). The Iowa District Court for Polk County ("District Court") ruled in favor of Standard Water. (Ruling 11/5/2014)(App. 23-35). The District Court's ruling (1) authorized Standard Water to foreclose its lien

in the amount of \$5,400 plus interest, while (2) requiring Standard Water to either complete the approximately \$500 worth of work remaining to be done on Michael and Cori's basement, or reduce the \$5,400 judgment by \$500. *Id.* at 12 (App. 34). Despite Standard Water receiving a judgment of only \$5,400, plus interest, minus \$500 worth of unfinished work (\$4,900 the "Judgment Amount"), the District Court additionally awarded Standard Water \$43,835.25 in attorney fees and \$479.04 in costs. (Order 2/11/2015)(App. 75-88).

An appeal followed. The Court of Appeals vacated the attorney fee award and remanded for further fact finding on the attorney fee issue. *Standard Water Control Sys., Inc. v. Jones*, 888 N.W.2d 673 (Iowa Ct. App. 2016). Following remand from the Court of Appeals, the District Court held that Standard Water may collect its judgment, including trial attorney fees, appellate attorney fees, and costs, by foreclosing on Michael and Cori's home at a sheriff's sale, despite all parties agreeing that Michael and Cori's home constitutes their "homestead" under Iowa's homestead statute. (Order 11/12/2017 at 3)(App. 376). The statute states, "The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary." Iowa Code § 561.16¹; (Order 11/12/2017

¹ All references to the Iowa Code are for the 2017 edition.

at 7)(App. 380). As a result of the District Court's ruling, challenged here, Standard Water may collect both its judgment for materials and labor and also its judgment for attorney fees, interest, and costs directly against the homestead notwithstanding the language of section 561.21(3) limiting such amounts.

The present appeal does not concern the merits of the underlying mechanic's lien judgment but instead is focused on the allowance of an attorney fee award as a lien on a homestead.

B. Course of Proceedings

Given the lengthy procedural history here, it is best to start with the end in mind. Here the District Court concluded that Michael and Cori were entitled to maintain their homestead rights against Standard Water's judgment for labor, materials, costs and attorney fees but that the argument had been waived. (Order 11/12/2017 at 11-12)(App. 384-385). Michael and Cori maintain this was error on behalf of the District Court.

The procedural history starts much earlier when Standard Water filed a petition to foreclose a mechanic's lien back on October 30, 2013. (Petition)(App. 7-20). The District Court entered its Findings of Fact and Conclusions of Law on November 5, 2014. (Ruling 11/5/2014)(App. 23-35). The District Court granted Standard Water's mechanic's lien claim and denied

Michael and Cori's counterclaims. *Id.* at 9-10 (App. 31-32). Following Standard Water's application for attorney fees and costs, (Aff. of Fees and Costs 11/12/2014)(App. 36-74), the District Court awarded Standard Water the following:

- (1) \$5,400 plus interest on its mechanic's lien, with the caveat that Standard Water must either complete the approximately \$500 worth of work remaining to be done on Michael and Cori's basement, or reduce the \$5,400 judgment by \$500. (Ruling 11/5/2014 at 12)(App. 34).
- (2) \$43,835.25 in attorney fees and \$479.04 in costs. (Order 2/11/2015)(App. 75-88).

On March 13, 2015, Michael and Cori appealed the District Court's rulings. (Notice of Appeal 3/13/2015)(App. 95-97). The Court of Appeals filed its decision on August 31, 2016. *Standard Water Control Systems, Inc. v. Jones*, 888 N.W.2d 673 (Iowa Ct. App. 2016) ("*Standard Water I*"). The Court of Appeals affirmed on the merits, but held that the District Court abused its discretion by entering an attorney fee award that "exceeded 800% of the underlying judgment." *Id.* at 679. The Court of Appeals then remanded the case for a recalculation of an appropriate fee award. *Id.*

While the first appeal was pending, Standard Water attempted to collect its judgment by levying on Michael and Cori's home. (Praecipe 8/3/2015;

Execution 8/4/2015)(App. 102-103; 104-106). The sheriff levied on Michael and Cori's home on October 21, 2015. (Return on Execution 10/21/2015)(App. 107-119). Iowa law provided Michael and Cori the right to redeem their home from the sheriff's sale, with this redemption right expiring on October 20, 2016. *Id.*

Shortly after the *Standard Water I* ruling, Michael and Cori filed their Motion to Set Aside Sale (of their home). (Motion to Set Aside 9/1/2016)(App. 120-147). Michael and Cori argued that “[p]art of the basis of the execution on the Joneses’ property was the attorney fee award,” and “[i]n light of the appellate court vacating the attorney fee award, the execution and Sheriff’s sale should likewise be set aside.” *Id.* ¶¶ 8-9 (App. 121). The identification of the subject property as homestead was raised as part of the motion. (Reply Sppt. Motion to Set Aside Sale 9/20/2016, ¶ 6)(App. 150). The District Court granted this motion on the basis that “[t]he court of appeals’ decision reversed a substantial amount of the judgment which precipitated the sheriff’s sale. Since the underlying judgment which made the sheriff’s sale possible has been eliminated equity demands that the sheriff’s sale which was authorized by the judgment should likewise be set aside until the court has the opportunity to address the court of appeals’ decision.” (Order 9/28/2016 at 4)(App. 158). On March 24, 2017, the District Court further clarified that in

light of its order vacating the sheriff's sale, "[i]f a sheriff's sale is to occur Standard will need to initiate a new one in *accordance with the requirements under Iowa law.*" (Order 3/24/2017 at 24)(App. 183) (emphasis added).

After substantial briefing by the parties, on March 24, 2017, the District Court entered an order granting Standard Water \$41,670.25 for trial fees and \$17,283.44 for appellate fees for a total fee award of \$58,953.69. (Order 3/24/2017)(App. 160-184). On June 1, 2017, Michael and Cori appealed the District Court's decision to award \$58,953.69 in trial and appellate attorney fees. (Notice of Appeal 6/1/2017)(App. 187-189). The Court of Appeals affirmed the District Court's order on February 7, 2018. *Standard Water Control Sys., Inc. v. Jones*, No. 17-0854, 2018 WL 739330 (Iowa Ct. App. Feb. 7, 2018) ("*Standard Water II*"). However, no further award was made for appellate attorney fees in Standard Water's favor.² *Id.*

At the same time, during the second appeal regarding the District Court's fee award, Standard Water resumed the process of collecting its judgment by attempting to levy on Michael and Cori's home by sheriff's sale. On June 6, 2017, Standard Water again moved to foreclose its lien on Michael and Cori's home. (Special Execution 6/6/2017)(App. 190-192). This new execution was made necessary by the District Court's order vacating Standard

² Application for Further Review pending.

Water's previous execution and sheriff's sale. The sheriff's sale of Michael and Cori's home was then scheduled for August 22, 2017. *Id.*

On August 10, 2017 (*prior* to the sheriff's sale of their home), Michael and Cori again asserted their homestead rights in their Motion to Vacate. (Mot. to Vacate 8/10/2017)(App. 193-198). The gist of the Motion to Vacate was that Standard Water's praecipe was erroneous in that it included amounts not allowable by Iowa Code section 561.21(3) against the homestead. *Id.*

Michael and Cori also attempted to tender the judgment amount, less attorney fees, to redeem their home. (Aff. of Cori Jones 8/22/2017) (App. 322-323).³ That is, Cori attempted to tender the amount due under Iowa Code section 561.21(3) for work done and material furnished: \$4,900. *Id.* The tender was refused by the Sheriff's Office. *Id.*

It was undisputed by the parties that the subject property was the homestead of Michael and Cori. (Aff. of Cori Jones 8/22/2017; Resist. to Motion to Reconsider/Alternative Motion 9/5/2017 ¶ 31)(App. 322-323; 346).

³ Michael and Cori have since redeemed their home for the full amount of the bid against the homestead under a reservation of rights. (Notice of Redemption 11/17/2017)(App. 387-388). However, if Michael and Cori are successful in demonstrating that Iowa's homestead statute does not allow Standard Water to collect attorney fees from Michael and Cori's homestead, Michael and Cori will have a claim for restitution pursuant to Iowa Code section 625A.15 for the amount paid to redeem their home beyond the maximum amount allowed by Iowa's homestead statute, Iowa Code chapter 561.

As a result of Michael and Cori’s timely assertion of their homestead protection rights under Iowa Code chapter 561, Standard Water could not collect the full amount of its judgment by foreclosing on Michael and Cori’s home; instead, Standard Water could only collect the portion of its judgment that was specifically “incurred for work done or material furnished exclusively for the improvement of the homestead,” i.e. the \$4,900 mechanic’s lien. IOWA CODE §§ 561.16 (“The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary”), 561.21(3) (“The homestead may be sold to satisfy debts ... incurred for work done or material furnished *exclusively* for the improvement of the homestead”) (emphasis added).

On August 21, 2017, the District Court ruled on Michael and Cori’s Motion to Vacate. (Order 8/21/2017)(App. 316-318). The District Court held that it did not have sufficient factual findings to rule that Michael and Cori’s home constituted their “homestead” under Iowa Code chapter 561. *Id.* However, the District Court also explained that if Michael and Cori were able to provide additional factual support for their home’s “homestead” status, Michael and Cori could argue for their homestead rights at that time. *Id.* Otherwise, the sale was allowed to proceed.

On August 22, 2017, Cori filed an affidavit stating that the home “is the homestead of my family.” (Aff. of Cori Jones 8/22/2017 ¶ 2)(App. 322). On August 24, 2017, Michael and Cori filed a Notice of Recording Selection of Homestead and Plat of Homestead. (Notice 8/24/2017)(App. 334-335). This affidavit included an attached exhibit, titled “Selection of Homestead and Plat of Homestead,” that Michael and Cori had filed with the Polk County, Iowa Recorder on August 21, 2017. (Notice 8/24/2017 Ex. 1)(App. 335).

On August 22, 2017, Michael and Cori also filed their Motion to Reconsider Order Re: Motion to Vacate Writ of Special Execution and Alternative Motion Pursuant to Iowa Code section 628.21 (“Motion to Reconsider/Alternative Motion”). (Motion to Reconsider/Alternative Motion 8/22/2017)(App. 319-321). This motion explained that, in light of Cori’s affidavit and Michael and Cori’s Selection of Homestead and Plat of Homestead, the District Court now had sufficient factual basis to (1) vacate Standard Water’s writ of execution on Michael and Cori’s home, and (2) enter an order clarifying that Michael and Cori could redeem their home by paying \$4,900 (i.e. the amount that is actually collectible from Michael and Cori’s homestead pursuant to Iowa Code sections 561.16 and 561.21). (Motion to Reconsider/Alternative Motion 8/22/2017)(App. 319-321). Standard Water filed a resistance that “stipulate[d] that the Property in this litigation is the

Joneses' homestead," but argued (1) that the Jones should not be entitled to their homestead right "pursuant to the doctrine of judicial estoppel" and "law of the case," and (2) that the entire judgment was somehow collectible from Michael and Cori's home despite Iowa Code chapter 561's homestead protections. (Resist. Motion to Reconsider/Alternative Motion 9/5/2017 ¶¶ 31, 37)(App. 346, 347-348). Recall that the District Court allowed the sale to proceed. (Order 8/21/2017)(App. 316-318).

Approximately two weeks after Michael and Cori documented the homestead status of the property, the sheriff's sale of Michael and Cori's home occurred, with Standard Water the successful bidder. (Sheriff's Return on Execution 8/22/2017)(App. 324-333).

On November 12, 2017, the District Court ruled on Michael and Cori's Motion to Reconsider/Alternative Motion. (Order 11/12/2017)(App. 374-386). The District Court agreed that Michael and Cori's home was entitled to Iowa Code chapter 561's homestead protections, explaining:

Our Supreme Court determined long ago that the homestead statute was to be construed "liberally in favor of the owner of the home." It is evident to this court that the legislature passed the statute for the purpose of protecting the homes of individuals from execution except in certain limited cases. In this case the exception is that an execution may be brought against a homestead to satisfy debts for [t]hose incurred for work done or material furnished exclusively for the improvement of the homestead. The statute does not state that the homestead may be

executed upon to satisfy interest, court costs, costs of the action or attorney fees.

Id. at 6-7(App. 379-380) (internal citations omitted).

Despite recognizing Iowa Code chapter 561's broad protection for a family's "homestead," the District Court ultimately held that Michael and Cori "waived" their homestead rights. *Id.* at 11-12(App. 384-385). A rule 1.904(2) motion was unsuccessful. (Motion per IRCP 1.904(2) 11/27/2017; Order 12/10/2017)(App. 398-403; 404-405). On December 12, 2017, Michael and Cori filed their Notice of Appeal from the District Court's refusal to recognize Michael and Cori's homestead rights. (Notice of Appeal 12/12/2017)(App. 410-411).

STATEMENT OF FACTS

Michael and Cori own a small home at 2910 Mahaska Avenue in Des Moines, Iowa. (Pet. ¶¶ 5-7)(App. 7-8). The subject property is the family's home and Michael and Cori have children. (Aff. of Cori Jones 8/22/2017 at 1; Jones Def. Reply In Sppt. of Mot. to Quash Garnishment 11/3/2017 ¶¶ 6-7)(App. 322; 368-369). In June 2013, Michael and Cori hired Standard Water to install drain tile in their basement in response to water intrusion issues in the home. *Standard Water I* at 674. Standard Water began work on July 15, 2013. *Id.* While installing drain tile in the basement, a Standard Water employee struck a water line and sewer line with a

jackhammer, causing flooding and other damage in Michael and Cori's home.

Id.

That same day (while the water and sewer lines remained damaged), Standard Water tendered a bill to Michael and Cori seeking payment for the \$5,400 balance of the contract. *Id.* at 674-675. Michael and Cori refused to pay the bill on the basis that Standard Water had jackhammered Michael and Cori's sewer line and had not repaired the damage or completed the waterproofing work. *Id.* at 675.

Standard Water then filed an action to foreclose a mechanic's lien. *Standard Water I.* at 675. As reflected by the Course of Proceedings above, a lengthy procedurally history unfolds.

ARGUMENT

THE DISTRICT COURT ERRED BY HOLDING THAT MICHAEL AND CORI SOMEHOW WAIVED THEIR HOMESTEAD PROTECTION RIGHTS.

A. Preservation of Issue for Appeal

The homestead issue has been preserved for review. The issue was first raised in 2016 following the first the *Standard Water I* decision. (Reply Sppt. Motion to Set Aside Sale 9/20/2016, ¶ 6)(App. 150). Indeed, the District Court was well aware of the homestead nature of the property. (Order 9/28/2016 at 3)(App. 157) ("This is their home and they cannot financially

afford to post an appeal bond...”). See also *id.* (inability to redeem their home from sheriff’s sale “would effectively make them homeless”).

After the District Court awarded Standard Water *additional* attorney fees Michael and Cori reasserted their homestead rights via their Motion to Vacate Writ. (Mot. to Vacate 8/10/2017 ¶ 4)(App. 193). Michael and Cori asserted these rights prior to the judicial sale of their home that is at issue on this appeal. *See id.*; Iowa Code § 561.16. Michael and Cori again asserted their homestead rights in Cori’s Affidavit and Michael and Cori’s Motion to Reconsider/Alternative Motion. (Motion to Reconsider/Alternative Motion 8/22/2017; Aff. of Cori Jones 8/22/2017)(App. 319-321; 322-324).

The statute does not require Michael and Cori to assert their homestead protection at a particular time. *See* Iowa Code § 561.16. Instead, Iowa Code section 561.16 declares the rights of a person in their homestead. This section reads, “The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary.” *Id.* Nevertheless, Michael and Cori asserted their homestead protection at the district court level on several occasions, thereby preserving the homestead issue for review. (Reply Sppt. Motion to Set Aside Sale 9/20/2016, ¶ 6; Motion to Vacate 8/10/2017 ¶ 4; Motion to Reconsider/Alternative Motion 8/22/2017) (App. 150; 193; 319-321).

“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.” *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Ultimately, the District Court ruled that Michael and Cory were not entitled to protect their homestead from execution. (Order 11/12/2017; Order 12/10/2017)(App. 374-386; 404-405).

B. Standard of Review

This appeal concerns the interpretation of Iowa’s homestead statute, Iowa Code chapter 561. Issues of statutory interpretation are reviewed for correction of errors at law. *State v. Stanford*, 474 N.W.2d 573, 575 (Iowa 1991). “[O]ur ultimate goal is to ascertain and give effect to the intention of the legislature.” *Harden v. State*, 434 N.W.2d 881, 884 (Iowa 1989). “We look first to the language of the statute itself, reading the statute as a whole. In doing so, we accord the language its plain and obvious meaning as well as its most sensible and logical construction. Additionally, we will not construe a statute in such a way that would produce impractical or absurd results.” *State v. Meyer*, 705 N.W.2d 676, 677 (Iowa Ct. App. 2005) (internal citations omitted).

C. Discussion

1. *The District Court Correctly Held that Michael and Cori's Home Constitutes their "Homestead" and is Entitled to Iowa Code Chapter 561's Broad Homestead Protections.*

Before a discussion of the District Court's error on the waiver of homestead issue, a discussion is warranted which demonstrates the District Court correctly concluded the subject property was homestead. Indeed, the District Court was well aware of the homestead nature of the property. (Order 9/28/2016 at 3)(App. 157) ("This is their home and they cannot financially afford to post an appeal bond..."). See also *Id.* (inability to redeem their home from sheriff's sale "would effectively make them homeless.")

Iowa Code section 561.16 states, "The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary." Iowa Code section 561.21 is one such "special declaration of statute to the contrary." Section 561.21 outlines four limited exceptions to the homestead statute's prohibition on collecting a judgment against a family's homestead:

(1) Those [debts] contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.

(2) Those [debts] 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.

(3) Those [debts] incurred for work done or material furnished exclusively for the improvement of the homestead.

(4) If there is no survivor or issue, for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead.

Other “special declaration[s] of statute to the contrary” may be found elsewhere; however, to qualify as an exception to the homestead statute’s protections for a family’s homestead, the statute must contain “specific language abrogating homestead rights.” *First Am. Bank v. Urbandale Laser Wash, LLC*, 894 N.W.2d 24, 29 (Iowa Ct. App. 2017). This is because inferring an intent to limit homestead rights “without the legislature’s use of specific language abrogating homestead rights would be contrary to century-old case law that extolls the ‘important public purpose of the protections established for the homestead interest.’” *Id.* (quoting *In re Estate of Waterman*, 847 N.W.2d 560, 566-67 (Iowa 2014)).

“The purpose of homestead statutes is to provide a margin of safety to the family, not only for the benefit of the family, but for the public welfare and social benefit which accrues to the State by having families secure in their homes.” *In re Estate of Waterman*, 847 N.W.2d at 566-67 (internal quotation

marks omitted). “Recognizing the important public purpose of the protections established for the homestead interest, we construe our homestead statute broadly and liberally to favor homestead owners.” *Id.* at 567; *see also In re Wipperlring*, 286 B.R. 106, 108 (N.D. Iowa 2002) (“The law regarding improvements to a homestead should be construed liberally in favor of the debtor so as to effect the purpose and policy of the homestead statutes.”).

In this case, Standard Water admits that Michael and Cori’s home is their “homestead.” (Resist. Motion to Reconsider/Alternative Motion 9/5/2017 ¶¶ 31, 37)(App. 346, 347-348). However, Standard Water argues that (1) Iowa Code section 561.21(3) allows Standard Water to collect its full judgment from Michael and Cori’s homestead, and (2) Iowa’s mechanic’s lien statute constitutes a “special declaration of statute” that allows Standard Water to collect its judgment from Michael and Cori’s homestead. (Resist. Mot. to Vacate 8/16/2017)(App. 199-208). These arguments are incorrect.

The operative subsection here is subsection 3. Iowa Code section 561.21(3) allows collection against a homestead for debts incurred “*exclusively* for the improvement of the homestead.” IOWA CODE § 561.21(3) (2017) (emphasis added). However, this does not authorize Standard Water to collect its *entire* judgment against Michael and Cori’s homestead. This is because the only part of the District Court’s judgment that qualifies as “work

done or material furnished *exclusively* for the improvement of the homestead” is the \$4,900 mechanic’s lien that represents the amount Michael and Cori refused to pay for Standard Water’s basement waterproofing services. This means that Iowa Code section 561.21(3) allows Standard Water to collect no more than \$4,900 from the foreclosure of Michael and Cori’s home. Therefore, Michael and Cori have the statutory right to redeem their home from foreclosure by tendering \$4,900.

Standard Water additionally argues that Iowa’s mechanic’s lien statute somehow limits these homestead protections. (Resist. Mot. to Vacate 8/16/2017)(App. 199-208). However, Iowa’s mechanic’s lien statute (Iowa Code chapter 572) does not contain any provision that, when interpreted “broadly and liberally to favor homestead owners,” constitutes “specific language abrogating homestead rights.” *See Urbandale Laser Wash, LLC*, 894 N.W.2d at 29. Stated another way, there is nothing in Iowa’s mechanic’s lien statute that alters Iowa Code chapter 561’s prohibition on a contractor foreclosing on a family’s homestead for amounts beyond “work done or material furnished exclusively for the improvement of the homestead.” Therefore, Iowa’s mechanic’s lien statute does not alter the express language of Iowa’s homestead statute, which prohibits Standard Water from foreclosing on Michael and Cori’s homestead for any judgment debt beyond the \$4,900

debt incurred “for work done or material furnished exclusively for the improvement of the homestead.” Iowa Code §§ 561.16, 561.21(3).

This is not to say that a mechanic’s lien can never be enforced against a property. Iowa Code section 572.2(1) explains that the mechanic’s lien statute applies when a person “furnishes any material or labor for, or performs any labor upon, any building or land for improvement, alteration, or repair . . . by virtue of any contract with the owner, owner-builder, general contractor, or subcontractor.” This includes any number of residential and non-residential construction projects that do not involve a “homestead.” Therefore, the attorney fee and cost shifting provisions of Iowa Code chapter 572 will, in most cases, be completely unaffected by Iowa’s homestead statute. Thus, the homestead statute’s protections apply only to prohibit collection of *attorney fees* against the homestead – not the amount of labor or materials supplied.

The District Court correctly held “that the house in question is [Michael and Cori’s] homestead.” (Order 11/12/2017 at 3)(App. 376). The District Court also correctly determined that “section 561.21(3) does not allow a homestead to be sold to recover attorney fees, costs of the action or interest that may have been entered as a judgment against the home in [a] foreclosure action under chapter 572,” because (1) the homestead statute “does not state

that the homestead may be executed upon to satisfy interest, court costs, costs of the action or attorney fees,” and (2) there is “no language in chapter 572 that could be interpreted as a ‘special declaration of statute’” that specifically limits chapter 561 homestead rights. *Id.* at 7-8 (App. 380-381).

2. *Michael and Cori Did Not Waive Their Homestead Protection Rights.*

Despite recognizing that Iowa’s homestead statute prohibits Standard Water from foreclosing on Michael and Cori’s home for anything beyond \$4,900, the District Court found that Michael and Cori had waived these rights. The District Court held as follows: “The court concludes that the Jones failed to timely raise their homestead rights as a defense. Accordingly, the Jones waived this defense.” (Order 11/12/2017 at 12)(App. 385). It is difficult to determine the exact rationale for the District Court’s conclusion.⁴ This is especially the case when, consistent with the statute, Michael and Cori timely raised the homestead issue. Iowa Code §§ 561.5, .6.

The District Court presents three independent theories as apparent support for its holding: (1) judicial estoppel, (2) the law of the case doctrine, and (3) res judicata. *Id.* at 12 (App. 385). Each of these theories will be

⁴ The District Court found this was an issue of first impression in Iowa. Nonetheless, the District Court found waiver of an argument not heretofore made in a published decision in Iowa. (Order 11/12/2017 at 4)(App. 377).

discussed below. The District Court analysis of the parties' conduct in conjunction with an order and sale that were vacated, to support a finding of waiver was, itself, erroneous. A vacated judgment restores the parties to their prior position. "[B]y vacating the dissolution decree, the parties are placed in the positions they held prior to the entry of the decree." *In re Marriage of Lenz*, No. 02-1022, 2003 WL 21458484 at *5 (Iowa Ct. App. June 25, 2003).

- i. **Judicial estoppel does not apply because Michael and Cori have never taken a position inconsistent with their belief that Iowa's homestead statute protects their home from Standard Water's claim for attorney fees and costs.**

The District Court erred by concluding that Michael and Cori somehow waived their statutory homestead protections. Judicial estoppel does not apply to the homestead issue in this case, because judicial estoppel prevents a party from taking inconsistent positions in the same litigation, and Michael and Cori have never taken a position inconsistent with their belief that Iowa's homestead statute protects their home from Standard Water's claim for attorney fees and costs. *Wilson v. Liberty Mut. Group*, 666 N.W.2d 163, 166 (Iowa 2003).

The District Court's full analysis of the judicial estoppel doctrine reads as follows: "Judicial estoppel and the law of the case doctrine preclude the raising of [the homestead] defense at this time." (Order 11/12/2017 at

12)(App. 385). The District Court’s analysis is incorrect. “The doctrine [of judicial estoppel] ‘prohibits a party who has successfully and unequivocally asserted a position in one proceeding from asserting an *inconsistent* position in a subsequent proceeding.’” *Wilson*, 666 N.W.2d at 166 (quoting *Vennerberg Farms, Inc. v. IGF Ins. Co.*, 405 N.W.2d 810, 814 (Iowa 1987)) (emphasis added). Michael and Cori have not, at any point, taken inconsistent positions in this litigation. Certainly, Michael and Cori never argued that the property was not their homestead.

Michael and Cori’s overall litigation strategy and procedure can be summarized as follows:

- 1) Michael and Cori did their best to contest Standard Water’s claim for unpaid fees related to the basement waterproofing work that resulted in broken water and sewer pipes and flooding;
- 2) Michael and Cori appealed the judgment against them and argued that the attorney fee judgment in particular was excessive;
- 3) After receiving a favorable ruling on appeal that ordered the District Court to reduce Standard Water’s attorney fee judgment, Michael and Cori moved to vacate a sheriff’s sale that was based on a judgment amount that the Court of Appeals had determined was inappropriate;

4) After the District Court vacated the prior sheriff's sale and amended its judgment based on the Court of Appeals' ruling, Michael and Cori asserted their homestead rights prior to sheriff's sale.

There is nothing "inconsistent" with these positions.

In this context, the District Court found that Mike and Cori's assertion of homestead was prejudicial to Standard Water. (Order 11/12/2017 at 10)(App. 383). The District Court's prejudice determination was incorrect as it did not take into account the actual absence of prejudice to Standard Water "as the right of restitution under Iowa Code section 625A renders any position ... [Standard Water] may have taken with respect to the 2015 sheriff sale not prejudicial to Standard Water." (Motion per IRCP 1.904(2) 11/27/2017 at 2; Order 12/10/2017)(App. 399; 404-405). At the end of the day, it is difficult for Standard Water to argue that the loss of Michael and Cori's homestead is prejudicial to Standard Water. (Order 9/28/2016 at 3)(App. 157) (inability to redeem their home from sheriff's sale "would effectively make them homeless").

ii. The law of the case doctrine does not apply because no appellate court in the present case has addressed the homestead issue.

The law of the case doctrine holds that "an appellate decision becomes the law of the case and is controlling on both the trial court and on any further

appeals in the same case.” *United Fire and Cas. Co. v. Iowa Dist. Court for Sioux County*, 612 N.W. 2d 101, 103 (Iowa 2000). However, “[t]he doctrine generally applies only to issues ***raised and passed on in a prior appeal.***” *Lee v. State*, 874 N.W.2d 631, 646 (Iowa 2016) (emphasis added); *see also Bahl v. City of Asbury*, 725 N.W.2d 317, 321 (Iowa 2006) (quoting *In re Lone Tree Cmty. Sch. Dist.*, 159 N.W.2d 522, 526 (Iowa 1968) (explaining, “The [law of the case] doctrine applies ‘only to those questions that were properly before us for consideration and passed on’ and ‘[a] question not passed on is not included’ under the doctrine.”)).

In *Bahl*, a party argued that the other party was precluded from arguing the definition of a “manufactured home” under a city ordinance at issue because the other party failed to raise the argument in a prior appeal. 725 N.W.2d at 320. The Iowa Supreme Court disagreed, and held instead, that the law of the case doctrine did not apply because the appellate court in the prior appeal was “not asked to determine the meaning of ‘manufactured home.’” *Id.* at 322.

The present case is nearly identical to *Bahl*. Neither party has asked an appellate court to decide whether Iowa’s homestead statute protects Michael and Cori’s homestead from Standard Water’s judgment. There is not a single statement in the prior appellate record in this case that references Michael and

Cori's homestead protection rights. *See Standard Water I; Standard Water II.* Therefore, no appellate court has addressed this issue, and the law of the case doctrine does not apply.

Again, Standard Water failed to demonstrate prejudice or injury to Standard Water here. (Order 9/28/2016 at 3; Statement Regarding Proposed Order of the Jones, Exhibit A at 3)(App. 157; 393). At the end of the day, it is difficult for Standard Water to argue that the loss of Michael and Cori's homestead is prejudicial to Standard Water. (Order 9/28/2016 at 3)(App. 157) (inability to redeem their home from sheriff's sale "would effectively make them homeless").

iii. Res judicata principles do not bar Michael and Cori's claim, because Michael and Cori timely asserted their homestead rights prior to the sheriff's sale of their home.

In a final attempt to explain its denial of Michael and Cori's homestead rights, the District Court stated that it "adopts the position in *[Francksen v. Miller]* where the court denied the [homestead] defense based upon the principles of res judicata." (Order 11/12/2017 at 12)(App. 385). The District Court additionally cited to *Scheffert v. Scheffert*, No. 12-2147, 2013 WL 5508538 (Iowa Ct. App. Oct. 2, 2013) in support of this argument. *Id.* at fn. 30. However, res judicata principles do not apply in this case, based upon these distinguishable cases relied upon by the District Court. Michael and

Cori had the procedural option of asserting homestead following levy but prior to the sheriff's sale. Unlike the procedural history in the cases cited by the District Court, Michael and Cori have always contested the judgment and the prior levy was vacated by the District Court. In fact, this record demonstrates that Michael and Cori raised their homestead rights *prior* to an ultimate resolution of the proper judgment amount that is collectible from Michael and Cori's homestead, and *prior* to the sheriff's sale of their home. (Mot. to Vacate 8/10/2017 at 1)(App. 193). This is in sharp contrast to the cases the District Court cites in support of its holding that Michael and Cori somehow waived their homestead rights (*Francksen* and *Scheffert*). In those cases, the parties asserting their homestead rights did so *after* the underlying litigation (including appeals, rulings on summary judgment, etc.) had resolved, and *after* the sheriff's sales were complete. *Francksen v. Miller*, 297 N.W.2d 375 (Iowa 1980); *Scheffert*, 2013 WL 5508538.

In *Francksen*, a mechanic's lienholder brought an action to foreclose a mechanic's lien. 297 N.W.2d at 376. The "[d]efendant did not assert homestead rights in defending the action" and additionally did not follow through with an appeal (the defendant filed a notice of appeal, but ultimately dismissed it). *Id.* The judgment holder then executed on the defendant's home and successfully completed a sheriff's sale of the home. *Id.* The

defendant did not notify the court of his intention to assert his homestead rights until *after* the sheriff's sale of the home was complete. *Id.* The Iowa Supreme Court held that the defendant's failure to "assert his homestead claim until after the sheriff's sale...precluded [the defendant] from raising a homestead defense" in a subsequent forcible entry and detainer action "based on the principle of res judicata." *Id.* at 377.

In *Scheffert*, the respondent in a partition action did not object to a motion for summary judgment partitioning land that included his homestead; in fact, "[i]n the order for summary judgment the court note[d] [the respondent] 'consents to the entry of summary judgment and does not contest' the motion for summary judgment." 2013 WL 5508538 at *1. The respondent did not appeal the district court's order granting the motion for partition. *Id.* The district court then "appointed a referee to make private or public sale of the premises." *Id.* "[T]he referee reported the sale of the property ... and sought court authorization to finalize the sale." *Id.* Subsequently, the respondent "resisted the referee's petition, claiming for the first time that the property was his homestead." *Id.* The district court and Court of Appeals held that res judicata principles prohibited the respondent from asserting his homestead rights for the first time *after* consenting to summary judgment for

the sale of his home and *after* a referee conducted the sale of the home. *Id.* at *3.

Iowa's homestead statute does not include a requirement that a family assert its homestead rights at a particular time. *See* Iowa Code ch. 561. Instead, the issue must be raised before the sheriff's sale. *Francksen*, 297 N.W.2d at 376-77; *Scheffert*, 2013 WL 5508538 at *1-3. This rule is also consistent with Iowa's strong public policy favoring a family's homestead protection rights and disfavoring waivers of these rights except in very narrow circumstances. *See In re Estate of Waterman*, 847 N.W.2d at 566-67; *see also* Iowa Code § 561.22 (prohibiting contractual waivers of homestead rights except where the waiver complies with strict format requirements [including "boldface type of a minimum size of ten points"] and is "signed and dated by the person waiving the exemption."). In this case, Michael and Cori raised their homestead rights prior to the sheriff's sale of their home as required by the statute and at a point in the litigation where they were still contesting the underlying judgment amount. This is far different than the homeowners in *Francksen* and *Scheffert*, each of whom failed to assert their homestead rights until *after* the underlying judgment was established and no longer contested, and *after* their homes were sold pursuant to judicial decree. Michael and Cori's assertion of their homestead rights prior to the sheriff's sale of their

home satisfies the timing requirement for asserting homestead rights under Iowa Code chapter 561 and related case law. The District Court erred by holding otherwise.

3. *The District Court’s Waiver Theory Precluded Relief on the Basis of a Statutory Redemption.*

The District Court had previously held the matter could be resolved as a redemption under Iowa Code chapter 628, found that it had the authority to pursue the matter as a *redemption* under Iowa Code section 628.21 (2017), and allowed the Sheriff’s sale to proceed. (Order 8/21/2017)(App. 316-318). The District Court further ruled “[i]f [Jones] move to redeem and want to challenge the lien the issues as to whether the property is subject to section 561.21(3), the mount [sic] of the lien and whether the Jones may raise the issue presently raised in their motion to vacate the special execution can all be addressed by the court as provided under section 628.21.” *Id.* at p. 2 (App. 317).⁵

In keeping with the District Court’s command, Michael and Cori then filed a Motion to Reconsider/Alternative Motion on August 22, 2017. (Motion to Reconsider/Alternative Motion 8/22/2017)(App. 319-321).

⁵ The same order identified that Michael and Cori had not established the property was, in fact, their homestead. (Order Re: Motion to Vacate 8/21/2017 at 2)(App. 317)

Therein Michael and Cori stated “[t]his motion is captioned as a motion to reconsider that ruling [the August 21, 2017 Order] as well as an alternative motion pursuant to Iowa Code § 628.21 so as to preserve all rights and remedies in the event the Court’s assessment of the availability of the procedural remedies or the similarity of those remedies is inaccurate.” (Motion to Reconsider/Alternative Motion 8/22/2017 ¶ 3)(App. 319). Again, in support of their reply to the resistance to the Motion to Reconsider/Alternative Motion, Michael and Cory again raised the issue of timeliness because the “homestead protection may be (and is expected to be) raised after the sheriff levy as part of the an attempted sale. See Iowa Code section 561.5 et seq.” (Reply to Resist. Motion to Reconsider/Alternative Motion at 4)(App. 360).

The District Court in its November 12, 2017, Order on the Motion to Reconsider/Alternative Motion did not address the issue of timeliness under Iowa Code sections 561.5, .6, and .7 (2017) nor did it take up the issue of a redemption under section 628.21. (Order 11/12/2017)(App. 374-386). Instead, it determined the matters were barred by the law of the case doctrine and the doctrine of judicial estoppel. (Order 11/12/2017 at 8-12)(App. 381-385). But see *id.* at p. 3 (App. 376) (identifying district courts have jurisdiction to determine the amount of the redemption under section 628.21).

Michael and Cori further moved for relief pursuant to Iowa R. Civ. P. 1.904 on the redemption issue (among other things), which was denied. (Motion per IRCP 1.904(2) 11/27/2017; Order 12/10/2017)(App. 398-403; 404-405). Consequently, the District Court erred by not resolving the instant homestead dispute as a redemption. The abrupt change in the District Court's position regarding redemption and the lack of case law to support the District Court's conclusion as to waiver of the right of redemption demonstrates the District Court's error.

CONCLUSION

This Court should reverse the District Court and hold that Iowa Code chapter 561 prohibits Standard Water from collecting the entire amount of its judgment through the forced sale of Michael and Cori's homestead. Any other result will contradict the clear language of Iowa Code chapter 561 and the Iowa legislature's intent to "provide a margin of safety to the family, not only for the benefit of the family, but for the public welfare and social benefit which accrues to the State by having families secure in their homes." *In re Estate of Waterman*, 847 N.W.2d at 566-67.

REQUEST FOR ORAL ARGUMENT

Appellants respectfully request to be heard at oral argument regarding the issues set forth above.

Respectfully submitted,

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CERTIFICATE OF COST

The undersigned hereby certifies that the cost of printing the foregoing Appellant’s Final Brief is \$ 0.00

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Appellant Final Brief was served upon the attorneys of record listed below by electronic filing and electronic delivery to the parties via the EDMS system on May 14, 2018, pursuant to Iowa R. App. P. 6.901(1), (8) (2017) and Iowa Ct. R. 16.315(1)(b) (2017).

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CERTIFICATE OF FILING

The undersigned hereby certifies that the foregoing Appellants' Final Brief was filed with the Iowa Supreme Court by electronically filing the same on May 14, 2018, pursuant to Iowa R. App. P. 6.901(1), (8) (2017) and Iowa Ct. R. 16.302(1).

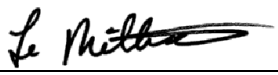
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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

This forgoing Final Brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 pt and contains 6813 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



Signature

May 14, 2018
Date