IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 17-2009

STANDARD WATER CONTROL SYSTEMS, INC.

Plaintiff/Counterclaim Defendant-Appellee,

v.

MICHAEL D. JONES and CORI JONES,

Defendants/Counterclaim Plaintiffs-Appellants.

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

APPELLEE'S PROOF BRIEF

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ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals because it presents the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a) (2018).

STATEMENT OF THE CASE

A. Nature of the Case

As noted by the Joneses, this case originated from work performed by Appellee Standard Water Control Systems, Inc. ("Standard") to waterproof a home ("the Property") owned by Appellants Michael and Cori Jones ("the Joneses").

This case is now before the appellate court on a *third* appeal in this matter. In their first appeal, the Joneses challenged the District Court's judgment in favor of Standard *in personam* and *in rem*, based upon Standard's mechanic's lien and the Joneses' breach of contract and the District Court's award of attorney fees through trial. See Standard Water Control Systems, Inc. v. Jones, 888 N.W.2d 673, 675 (Iowa Ct. App. 2016). In the first appeal, the Court of Appeals affirmed the District Court's judgment on the merits, but remanded to the District Court on the issue of attorney fees. Id. at 679.

The Joneses' second appeal concerned the District Court's award, after remand, of attorney fees through trial, and attorney fees associated with the first appeal. Standard Water Control Systems, Inc. v. Jones, 2018 WL 739330 at * 1 (Iowa Ct. App. Feb. 7, 2017)(Slip Opinion)("Standard II"). The Iowa Court of Appeals affirmed on both issues. Id.

This third appeal by the Joneses concerns Standard Water's efforts to execute on its judgment against the Joneses in district court. In short, the Joneses—

after never appealing inclusion of attorney fees in the *in rem* judgment against their Property in the first appeal, and having previously successfully argued that uncertainty regarding the amount of attorney fees should cause the District Court to set aside the first sheriff's sale of the Property—argued that attorney fees should never have been allowed as a lien on a homestead. The Joneses' homestead argument was raised for the first time over *two years* after the Court's judgment entry. They now claim that the District Court improperly rejected their argument.

B. Course of Proceedings

Though the Joneses' "Course of Proceedings" is generally accurate, it omits details relevant to Standard's successful arguments in District Court. Relevant proceedings are detailed below.

1. The District Court's Judgment Entry

On February 16, 2015, the District Court entered a Judgment Entry ("Judgment Entry") in this matter for an *in personam* money judgment against the Joneses inclusive of the following amounts: (1) the principal amount of $5,400, plus prejudgment interest at the rate of 12% per annum from July 15, 2013 through the date of judgment; (2) Standard Water's attorney fees in the amount of $43,835.25; (3) costs of $299.04; (4) all other accruing attorney fees and costs related to sale of the Joneses' Property via sheriff's sale; and (5) post-judgment interest. (App. 90-91)

The Judgment Entry further stated in relevant part as follows:

> FURTHER, IT IS ORDERED, ADJUDGED, AND DECREED that Standard is entitled to foreclosure of its mechanic's lien dated July 21, 2013. . .on the single family dwelling owned by the Joneses with the locally known address of 2910 Mahaska Ave., Des Moines, Polk County, Iowa 50317 ("Property"); that Standard is entitled to an *in rem* judgment and a foreclosure of the Mechanic's Lien **in the full and total amount of the aforementioned money judgment**, together with all accruing interest, costs and fees. . .

(App. 91 (emphasis added))

The Judgment Entry further stated that:

> FURTHER, IT IS HEREBY ORDERED that this court shall issue Special Execution for sale of the Property; that a Sheriff's Sale shall be held for the sale of the Property; that a Sheriff's Deed shall issue to the purchaser at such Sale; that all proceeds from the Sheriff's Sale of the property shall be used to satisfy, in part or in whole, the judgment in favor of standard set forth herein. . .IT IS FURTHER ORDERED that all rights, titles or interests of whatever kind or nature of all Defendants shall be forever barred and foreclosed, subject only to the rights of redemption as provided by law and the rights of the appearing junior lienholders to any surplus funds.

(App. 91-92)

The Joneses did not challenge the validity of the Court's entry of an *in rem* judgment against the Property in an amount inclusive of fees and costs, nor did they challenge the Court's express directive that a sheriff's sale of the Property occur, with the proceeds used to cover the full and total amount of the judgment.

2. The Joneses' First Appeal

As noted above, in their first appeal the Joneses did not appeal the Court's judgment with regard to the Court's entry of an *in rem* judgment and entry of a decree of foreclosure covering the full amount of Standard Water's judgment, including interest, costs, and its attorney fees. In its decision on the first appeal dated August 31, 2016, the Iowa Court of Appeals noted that:

> [t]he district court found the Joneses were in breach of contract and entered judgment in personam against the defendants for $5400 plus interest at twelve percent and attorney fees in the amount of $43,835.25. The district court concluded Standard Water was entitled to in rem judgment against the property for the same amount and entitled to foreclose the mechanic's lien.

Standard, 888 N.W.2d at 675. The Court of Appeals remanded this matter to the District Court only for further consideration of the amount of attorney fees awarded and affirmed the remainder of the District Court's Judgment Entry. Id. at 679.

3. Initial Litigation Regarding the Sheriff's Sale

On October 21, 2015, and after the required period for publication of the sale, a sheriff's sale of the Property occurred ("First Sheriff's Sale"). (App. 107) Prior to the First Sheriff's Sale, and likewise following the First Sheriff's Sale, the Joneses did not raise any objection to the First Praecipe or First Writ being inclusive of principal, interest, costs, and attorney fees. At the First Sheriff's Sale,

Standard Water submitted the winning bid of $45,000; and thereafter, the one-year redemption period began. (See id.)

When the one-year redemption period was nearing its end, and just after the Court of Appeals entered its Decision on the First Appeal, the Joneses filed a Motion to Set Aside Sale ("Motion to Set Aside Sale") on August 31, 2016. (App. 120) Nowhere in their Motion to Vacate Sale, or in their Supplemental Memorandum of Authorities in support of such motion filed on September 27, 2016, did the Joneses challenge the inclusion of attorney fees, or interest or costs, in the *in rem* judgment against the Property, the First Praecipe, or the First Writ of Execution. (Id.; App. 152) Instead, in the Motion to Vacate Sale, the Joneses argued that the First Sheriff's Sale should be set aside because the issue of the amount of attorney fees had been remanded, expressly noting that "[p]art of the basis of the execution on the Joneses' Property was the attorney fee award." (Id.)

The Joneses argued specifically that the First Sheriff's Sale must be vacated and set aside because they could not know the amount necessary to redeem the Property until the District Court re-determined the amount of attorney fees that would be awarded to Standard. The Court detailed the Joneses' position in its later Order on the Motion to Set Aside Sale, expressly stating, in pertinent part, as follows:

> The Joneses argue that depending upon the district court's review of the request for attorney fees the Jones might have the ability to

> redeem the property as provided under Iowa Code 528.3. Presently the Jones state that they cannot financially afford to redeem with the present attorney fee award.
>
> * * * *
>
> Jones counter by noting that . . . [t]his is their home and they cannot financially afford to post an appeal bond or pay the disputed amount to the clerk of court under Iowa Code section 628.21. They further argue that the amount to be paid to the clerk of court is not known in light of the court of appeals' decision. They further argue that depending upon the supreme court's decision and/or the district court's decision upon remand the Jones would be entitled to a new bidding process. . . . Depending upon the new ruling the Jones may be able to bid on the property. Finally, this is the Jones' home and to allow the sheriff's sale to stand knowing they cannot afford to exercise their right to redeem effectively makes them homeless.

(App. 156-57)

Thus, in their Motion to Set Aside Sale, the Joneses were clearly taking the position that attorney fees, interests, and costs were a proper part of the judgment being foreclosed and of the judgment amount that the Joneses would need to pay the Clerk of Court to redeem the Property.

The Joneses were successful in their position. On September 28, 2016, the Court granted the Joneses' Motion to Vacate Sale ("Order on Motion to Vacate Sale"). Therein, the Court vacated the First Sheriff's Sale and ordered that a new sheriff's sale must after the amount of attorney's fees had been finally determined, thereby requiring Standard Water to start over in its execution efforts, and incur additional time and costs for a second sheriff's sale. (App. 158)

4. The District Court's New Award of Attorney Fees

As noted above, on remand, Standard Water and the Joneses further litigated the amount of attorney fees that should be awarded to Standard Water. On March 24, 2017, the Court entered its Order Re: Trial Attorney Fees, Appellate Attorney Fees and Sheriff's Sale ("March 24 Order"). In its March 24 Order, the Court also addressed the issue of a new sheriff's sale, requiring that Standard Water follow normal statutory procedures to foreclose, but reducing the Joneses redemption period to 90 days. (App. 182-83)

The Joneses appealed the March 24 Order, with regard to the amount of attorney fees awarded to Standard following remand for work through trial, and with regard to appellate attorney fees. Throughout their appellate filings in the second appeal, the Joneses implicitly acknowledged the fact that attorney fees awarded would be a part of the judgment satisfied from sale of their home, arguing repeatedly that they will face homelessness due to the amount of fees awarded. (App. 246, 295)

As noted above, the Court of Appeals affirmed the District Court's March 24, 2017 Order with regard to fees awarded. Standard II, 2018 WL 739330 at *3.

5. Second Special Execution and Motion to Vacate Writ

On May 9, 2017, Standard Water filed a Praecipe for Special Execution. (App. 185) A Special Execution was issued on June 6, 2017, and a sheriff's sale scheduled for August 22, 2017. (App. 190)

On August 10, 2017, just twelve days before the scheduled sheriff's sale, the Joneses filed a Motion to Vacate Writ of Special Execution, arguing **for the very first time since the February 16, 2015 Judgment Entry was entered in this matter**, that the attorney fees, interest, and costs that were plainly included in the *in rem* judgment entered on the Property cannot be recovered via special execution, because the Property is the Joneses' homestead.

As noted in the Joneses' Brief, Standard resisted their Motion to Vacate Writ, and the District Court first denied the Motion because the Joneses had not established the Property was their homestead. (App. 316-17)

On August 22, 2017, a second sheriff's sale took place. Standard was the successful bidder, with a credit bid of $45,000. (App. 324-27)

On August 22, 2017, the Joneses filed a 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"). (App. 319) Standard resisted the Motion to Reconsider, arguing that (1) the Joneses' requested relief should be denied pursuant to the doctrines of judicial estoppel and law of the case due to their

failure to timely object to or appeal inclusion of attorney fees in the *in rem* judgment; and (2) attorney fees permitted to be awarded under Chapter 572 may be included in an *in rem* judgment on a homestead. (App. 336)

On November 12, 2017, the District Court entered its Order denying the Joneses' Motion to Reconsider on the grounds of judicial estoppel, law of the case, and waiver/res judicata. (App. 374)

STATEMENT OF FACTS

Basic facts of the underlying litigation in this matter are set forth in the Court of Appeals' opinions in the first two appeals in this case. See Standard, 888 N.W.2d at 675; Standard II, 2018 WL 739330 at *1-2 ; Facts relevant to the present appeal are procedural in nature, and have been detailed above in the Course of Proceedings.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DETERMINED THAT THE JONESES WERE BARRED FROM ARGUING THAT STANDARD WATER'S ATTORNEY FEES COULD NOT BE A PART OF THE LIEN ATTACHED TO THE PROPERTY

A. Preservation of Error

Standard agrees that error has been preserved with regard to the Court's determination that the doctrines of judicial estoppel, law of the case, and res judicata merited denial of the Joneses' Motion to Reconsider relating to claimed homestead protection.

B. Standard of Review

The Joneses failed to cite a standard of review relating to application of the doctrines of judicial estoppel, law of the case, and res judicata to their Motion to Reconsider.

Standard notes that the Joneses' Motion to Vacate Writ and Motion to Reconsider the District Court's denial of the Motion to Vacate Writ essentially asked the District Court to vacate its judgment, which specifically provided that "all proceeds from the Sheriff's Sale of the [Joneses'] property shall be used to satisfy. . .the judgment in favor of Standard," and which included attorney fees, costs, and interest in the amount of the judgment. (App. 91-92) As such, the Joneses' motions should be considered motions to vacate a judgment pursuant to Iowa Rule of Civil Procedure 1.1012. Orders on such motions are reviewed for correction of errors at law. Kraus v. Mummau, 2018 WL 542628 at *2 (Iowa Ct. App. Jan. 24, 2018)(Slip Copy)(citing In re Marriage of Kinnard, 512 N.W.2d 821, 823 (Iowa Ct. App. 1993)(applying prior Rule 252)). However, Iowa district courts have wide discretion in ruling on motions to vacate, and an order on a motion to vacate will be reversed only if an abuse of discretion is shown. Id. (citing In re Adoption of B.J.H., 564 N.W.2d 387, 391 (Iowa 1997)).

The Iowa Supreme Court has also recognized that because judicial estoppel is an equitable doctrine invoked by a court at its discretion, "the appropriate

standard of appellate review [is] normally [] for an abuse of discretion." Tyson Foods, Inc. v. Hedlund, 740 N.W.2d 192, 195 (Iowa 2007)(recognizing that abuse of discretion is normal standard, but reviewing court of appeals' decision for errors at law on an application for further review).

C. Argument

The District Court ultimately denied the Joneses' Motion to Reconsider relating to the claim of homestead protection on the grounds of judicial estoppel, law of the case doctrine, and res judicata. The District Court's denial should be affirmed.

1. The District Court Correctly Denied the Joneses' Motion on the Basis of Judicial Estoppel

As recognized by the District Court, under Iowa law, a party is judicially estopped from asserting a position that is inconsistent with a prior position that was successfully raised. The Iowa Supreme Court has explained the doctrine of judicial estoppel as follows:

> 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. It is a 'common sense' rule, designed to protect the integrity of the judicial process by preventing deliberately inconsistent—and potentially misleading—assertions from being successfully urged in succeeding tribunals. The doctrine is properly limited in its application to cases involving privity with, or prejudice to, the party invoking the doctrine.

Winnebago Indus., Inc. v. Haverly, 727 N.W.2d 567, 573 (Iowa 2006) (quoting Wilson v. Liberty Mut. Group, 666 N.W.2d 163, 166 (Iowa 2003), quoting Vennerberg Farms, Inc. v. IGF Ins. Co., 405 N.W.2d 810, 814 (Iowa 1987)) (internal quotations and citations omitted). "Judicial estoppel also applies when inconsistent positions otherwise meeting the requirements of the doctrine are taken in the same proceeding." Rath v. Matthias, 2013 WL 85782 at *6 (Iowa Ct. App. Jan. 9, 2013) (recognizing that judicial estoppel may apply to prevent party from taking inconsistent position within same proceeding) (citing Duder v. Shanks, 689 N.W.2d 214, 221 (Iowa 2004) ("Judicial estoppel also applies when inconsistent positions otherwise meeting the requirements of the doctrine are taken in the same proceeding").

In Wellmark, Inc. v. Iowa District Court for Polk County, 890 N.W.2d 636, n. 5 (Iowa 2017), the Iowa Supreme Court explained as follows regarding the doctrine of judicial estoppel:

> Plaintiffs' stipulation that their pleadings included no rule-of-reason claim had its intended effect of inducing Wellmark to withdraw its motion to stay, thereby allowing plaintiffs to avoid a possible stay order. We will not second-guess that strategic decision by experienced lawyers. But it would be unfair to allow plaintiffs to retract their stipulation after they got what they wanted from it. And it would prejudice Wellmark to allow plaintiffs to prolong this case by belatedly adding the rule-of-reason claim they stipulated out of the case. We have applied the doctrine of judicial estoppel to prevent a party from taking inconsistent positions in litigation. See Winnebago

> Indus., Inc. v. Haverly, 727 N.W.2d 567, 573–75 (Iowa 2006) (concluding employer estopped from denying liability in workers' compensation claim when it admitted liability in a prior proceeding to control the care provided); Wilson v. Liberty Mut. Grp., 666 N.W.2d 163, 167 (Iowa 2003) (employee who alleged "a bona fide dispute" to obtain approval of workers' compensation claim was estopped from pursing bad-faith claim against insurer).

Wellmark, 890 N.W.2d at n. 5.

As correctly recognized by the District Court, the relevant question in considering the Joneses' Motion to Reconsider was "whether the Jones[es] took an inconsistent position that was accepted by the court previously in this case." (App. 385) As discussed in the Course of Proceedings herein, and as recognized by the District Court, in seeking to set aside the first sheriff's sale, the Joneses specifically argued that the District Court should vacate the sheriff's sale in light of an expected adjustment to Standard's attorney fee following the first appeal, pleading that they could not financially afford to redeem with the present attorney fee award, and arguing that such inability to redeem would render them homeless. (App. 120-21, 152-53, 383) Had the Joneses believed that only the amount of the principal judgment should ever have been recoverable through sheriff's sale of their homestead, then the attorney fee award would have been irrelevant.

As correctly noted by the District Court, "the court in granting the motion to set aside the first sheriff's sale did so in light of the court of appeals' decision reversing the court's award of attorney fees" as advocated by the Joneses. (App.

383) The District Court correctly concluded that the Joneses, having previously succeeded based on the argument that attorney fees were a part of the judgment that dictate the redemption amount, were judicially estopped from arguing that such fees could never have formed a part of such judgment. Accordingly, the District Court's Order denying the Joneses' Motion to Reconsider should be affirmed.

2. The District Court Correctly Denied the Joneses' Motion to Reconsider Due to Law of the Case

"The doctrine of the law of the case represents the practice of courts to refuse to reconsider what has once been decided." State v. Grosvenor, 402 N.W.2d 402, 405 (Iowa 1987); accord State ex rel. Goettsch v. Diacide Distrib., Inc., 596 N.W.2d 532, 537 (Iowa 1999). As explained by the Iowa Supreme Court:

> Pursuant to this [law of the case] principle, legal principles announced and the views expressed by a reviewing court in an opinion, right or wrong, are binding throughout further progress of the case upon the litigants, the trial court and this court in later appeals.

Winnebago, 727 N.W.2d at 573 (Iowa 2006) (citing Grosvenor, 402 N.W.2d at 405; 5 Am.Jur.2d Appellate Review § 605, at 300–01 (1995)); see also Spiker v. Spiker, 708 N.W.2d 347, 352, n. 1 (Iowa 2006) (citing United Fire & Cas. Co. v. Iowa Dist. Ct., 612 N.W.2d 101, 103 (Iowa 2000) and In re Lone Tree Cmty. Sch. Dist., 159 N.W.2d 522, 526 (Iowa 1968) (holding that the "law of the case doctrine

says: 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. Like res judicata, the law of the case doctrine is founded on a public policy against reopening matters which have been decided. Thus, issues decided by an appellate court generally cannot be reheard, reconsidered, or relitigated in the trial court." (internal quotations and citations omitted)).

In this case, the District Court declared in its February 16, 2015 Judgment and Foreclosure Decree that "Standard is entitled to an *in rem* judgment and a foreclosure of the Mechanic's Lien in the full and total amount of [Standard Water's] money judgment, together with all accruing interest, costs and fees. . ." and ordered that the Property should be sold to satisfy the judgment. (Judgment Entry, pp. 3-4) The only changes that have occurred to the Court's Judgment and Foreclosure Decree since February 16, 2015 is the change in the amount of attorney fees included in Standard Water's Judgment, as well as a $500 reduction in the principal amount based upon the Joneses' refusal to let Standard Water back onto to the Property. (See App. 100)

As aptly stated by the District Court in its Order denying the Motion to Reconsider:

> At no time prior to trial, after the court entered its findings of fact and conclusions of law or before the court entered judgment did the Jones ever assert their homestead rights. In their appeal they did not challenge the court's judgment entry allowing the sheriff's sale to

> satisfy the entire money judgment which included not only the costs of the improvements but also attorney fees, interest and the costs of the action. Nor did they raise it at the time they requested that the court set aside the first sheriff's sale even though in their arguments to the court they were asserting that the house in question was their home.

(App. 384)

Here, the Court of Appeals plainly affirmed all aspects of the Court's Judgment Entry other than the amount of attorney fees awarded through trial, thus barring any further litigation relating to the Judgment Entry beyond that limited issue. See, e.g., Spahn & Rose Lumber Co. v. Jones, 2009 WL 605825, n. 5 (Iowa Ct. App. Mar. 11, 2009)(holding that foreclosure decree as written became the law of the case where decree was silent on issue of redemption and litigant did not appeal this issue). Accordingly, the District Court correctly concluded that pursuant to law of the case doctrine, the Joneses had waived the right to preclude Standard from collecting attorney fees through judicial sale of the Property. (App. 384)

3. The District Court Correctly Denied the Joneses Motion to Reconsider Due to Their Waiver of the Homestead Defense

The District Court also found denial of the Joneses' Motion to Reconsider was proper based on principles of res judicata and waiver. (App. 385) As explained by the District Court:

> The homestead exemption is a personal defense which is waived if not raised initially in the foreclosure action. The Jones[es] never raised their homestead exemption rights in their answer, affirmative defenses and counterclaim filed on November 30, 2013. They never raised the defense when they requested that the court set aside the first sheriff's sale. The court concludes that the Jones[es] failed to timely raise their homestead rights as a defense. Accordingly, the Jones[es] waived this defense.

(Id.)(citing Franksen v. Miller, 297 N.W.2d 375, 377 (Iowa 1980); Scheffert v. Scheffert, 840 N.W.2d 726, 2013 WL 5508538, *2 (Iowa Ct. App. Oct. 2, 2013)).

The Joneses argue in their Brief that the cases cited by the District Court require merely that the party seeking to raise the homestead exemption raise the issue before a sheriff's sale. (Joneses' Brief, p. 35) Their reading of these cases is too narrow. As recognized by the District Court, both Franksen and Scheffert recognize that where a party fails to raise the personal defense of homestead exemption in an action to foreclose a lien on or partition real estate prior to entry of judgment, that defense is lost. Franksen v. Miller, 297 N.W.2d 375, 377 (Iowa 1980)(holding that judgment for foreclosure in mechanic's lien action was valid against party that failed to raise homestead exemption, a personal defense, as

defense to foreclosure action, and such determination was binding in subsequent forcible entry and detainer action on res judicata principles); Scheffert v. Scheffert, 840 N.W.2d 726, 2013 WL 5508538, *2-3 (Iowa Ct. App. Oct. 2, 2013)(holding that where party failed to raise homestead exemption prior to entry of summary judgment in partition action, such defense was not available in subsequent forcible entry and detainer action under res judicata principles).

Here, like the parties in Franksen and Scheffert, the Joneses failed to raise the issue of homestead exemption as a defense in the mechanic's lien action. As noted by the District Court, in its Petition, Standard requested judgment inclusive of attorney fees and costs, and requested that the Court issue special execution for sale of the Property necessary to satisfy such judgment. (App. 10, 384) In entering judgment, the Court ordered sale of the Property to satisfy the entire judgment, inclusive of attorney fees. (App. 91-92) The Joneses' failure to raise homestead exemption as a defense constituted a waiver of that defense. Franksen, 297 N.W.2d at 377. Accordingly, the District Court correctly denied the Joneses' Motion to Reconsider.

II. THE DISTRICT COURT CORRECTLY DENIED THE JONESES RELIEF UNDER IOWA'S HOMESTEAD STATUTE, BUT ERRED IN DETERMINING THAT THE PROPERTY WAS SUBJECT TO PROTECTION UNDER CHAPTER 561

A. Preservation of Error

Standard agrees that error has been preserved with regard to the Court's determination that the Property could be subject to protection under Iowa Code Chapter 561.

B. Standard of Review

Standard agrees that a district court's interpretation of statutory provisions is reviewed for correction of errors at law.

As noted above, the District Court's Order denying the Motion to Reconsider should be considered under the standard applicable to an order on a motion to vacate judgment. Orders on such motions are reviewed for correction of errors at law. Kraus, 2018 WL 542628 at *2. However, Iowa district courts have wide discretion in ruling on motions to vacate, and an order on a motion to vacate will only be set aside if an abuse of discretion is shown. Id. (citing In re Adoption of B.J.H., 564 N.W.2d 387, 391 (Iowa 1997).

C. Argument

1. Iowa Code Chapters 561 and 572 Permit Attorney Fees Awarded in a Mechanic's Lien Action to be Part of a Judgment In Rem Against a Homestead

Although the District Court ultimately reached the correct conclusion, and determined that Standard's attorney fees, interest and costs were properly taxed against the Joneses' Property, the Court should also have denied the Joneses' Motion to Reconsider by determining the Property was not subject to protection under Iowa's homestead statute.

The District Court determined that Iowa Code Section 561.21 prohibits the collection of attorney fees, costs of the action and interest included in a mechanic's lien judgment through judicial sale of a homestead. (App. 380) The District Court reasoned that (1) Iowa's homestead statute is more specific than the mechanic's lien statute, and thus trumps the more general mechanic's lien statute; and (2) that Iowa Code Chapter 572 does not provide a special declaration to the contrary of Iowa's homestead rules. (Id.) The District Court's conclusions were erroneous.

a. The District Court's Interpretation of Section 561.21(3) Renders Other Applicable Law Meaningless

Iowa Code section 561.16 provides that "[t]he homestead of every person is exempt from judicial sale where there is no special declaration to the contrary." Iowa Code § 561.16 (2018). Certain exceptions to homestead protection are included in Chapter 561, while others are found in additional provisions of the

Iowa Code. Iowa Code section 561.21 specifically provides that "[t]he homestead may be sold to satisfy **debts** of each of the following **classes**: . . .Those incurred for work done or material furnished exclusively for the improvement of the homestead." Iowa Code § 561.21 (emphasis added).

It has long been recognized that homesteads are subject to mechanic's liens under Iowa law. See Aalfs Wall Paper & Paint Co. v. Bowker, 162 N.W.33 (Iowa 1917). Section 561.21 has been interpreted to allow broader invasion into homestead rights, permitting collection for debts relating to improvements to a homestead even where mechanic's lien rights have been lost. See Moffitt, 294 N.W. at 732. Accordingly, the District Court need not have looked beyond Iowa Code section 561.21 to find that a mechanic's lien judgment is enforceable against a homestead.

Additionally, Iowa Code Chapter 572 plainly establishes the right to a mechanic's lien on residential properties, many of which will be homesteads, and provides for the remedy of foreclosure on such liens. See Iowa Code §§ 572.2, 572.21. Generally, unless a counterclaim is filed, a mechanic's lien claimant is entitled to bring only an action to foreclose the lien, and may not join other causes of action with that claim. Iowa Code § 572.26. Most importantly, it is clear under Iowa law that the remedies under Iowa Code Chapter 572 are *in rem*, and do not alone give rise to *in personam* liability of the property owner. This principle has

been recognized in several cases and secondary authorities. W.P. Barber Lumber Co. v. Celania, 674 N.W.2d 62, 64 (Iowa 2003) ("A judgment of foreclosure on a mechanic's lien is not a personal judgment."); City Drywall Corp. v. C.G. Smith Constr. Co., 270 N.W.2d 608, 613 (Iowa 1978) (in an action to foreclose mechanic's lien, there was no basis for a personal judgment against owner); Willverding v. Offineer, 87 Iowa 475, 478–79, 54 N.W. 592, 593 (1893) (in the absence of a contract with owner, a mechanic's lien does not impose personal liability); see Roger W. Stone, Mechanic's Liens in Iowa, 30 Drake L.Rev. 39, 44 (1980) (citing various authorities) (footnotes omitted) ("The [mechanic's lien] statute does not impose personal liability on the owner for the amount of the lien, but rather limits the remedy of the lienholder to foreclosure of the lien and sale of the owner's property interest."); see Note, Owners' Liability to Subcontractors Under the Iowa Mechanic's Lien Law, 47 Iowa L. Rev. 144, 144 (1961) (emphasis added, footnotes omitted) ("The mechanic's lien is a statutory security device. It may be defined as a statutory charge *imposed upon real property* in favor of one who has furnished labor or material for its improvement.").

Thus, Iowa Code Chapter 572—which provides for a lien claimant recover the amount owed for its furnished labor and materials plus attorney fees, interest, and costs—is plainly the type of statutory scheme contemplated by Iowa Code

section 561.16, and provides a remedy that supersedes the protection ordinarily granted by Iowa's homestead exemption.

Numerous courts have also found that the extent of a mechanic's lien includes the entire contract price. Rohlin Const. Co., Inc. v. Lakes, Inc., 252 N.W.2d 403, 406 (Iowa 1977)("section 572.2 does not restrict the dollar amount of a mechanic's lien to the reasonable value of services provided. . .[but] permits a mechanic's lien to secure the entire contract price"); S. Hanson Lumber Co. v. De Moss, 111 N.W.2d 681, 684 (Iowa 1961)(recognizing that contractor is entitled to recover contract price in mechanic's lien foreclosure). Here, Standard Water's attorney fees were a part of the contract price, given that the Joneses expressly agreed to be liable for Standard Water's attorney fees in any collection action on the contract. (App. 13)

Courts have also explicitly recognized that interest is included in the amount of a lien which may be foreclosed on. See Deerfield Construction Co. v. Crisman Corp., 616 N.W.2d 630, 633 (Iowa 2000)(holding that contractor was entitled to foreclose on mechanic's lien where only interest owed to contractor remained unpaid, and recognizing that interest may be recovered in mechanic's lien actions); Rohlin, 252 N.W.2d at 408 ("our cases indicate that interest may be recovered in mechanic's lien foreclosure actions") see also S. Hanson, 111 N.W.2d at 684

(ordering that interest be included in the amount of the mechanic's lien and *in rem* judgment against the homestead property being foreclosed).

Furthermore, Iowa Code section 572.32 provides that "in an action to enforce a mechanic's lien, a prevailing party may be awarded reasonable attorney fees." Iowa Code § 572.32. As noted above, Iowa courts have explained that a judgment in a mechanic's lien foreclosure is only *in rem*. It follows that attorney fees awarded *must* be a part of the judgment *in rem* that attaches to the foreclosed property. Under the Joneses' position, a successful mechanic's lien claimant would never be entitled to actually recover the statutorily allowed interest, cost, and attorney fees under Iowa law whenever the property was a homestead, and all three of those awarded amounts would simply go away.

b. The Legislative History of Section 561.21(3) Establishes That It Was Intended to Permit Sale of a Homestead Pursuant to a Mechanic's Lien

Cases interpreting the legislative history of Iowa Code section 561.21(3) also support the conclusion that a mechanic's lien is within the category of debts described therein for which a homestead is liable. See In re Keane, 7 B.R. 844, 851 (N.D. Iowa Bankruptcy 1980); Moffitt, 294 N.W. at 732-34.

In Keane, the United States Bankruptcy Court for the Northern District of Iowa addressed the question of whether a lender who had provided financing for home improvements, and obtained a judgment lien on the borrower's home

flowing from a default on that debt, had a lien that could be satisfied by judicial sale of the homestead, such that the lien was exempt from discharge. 7. B.R. at 844. In performing its analysis, the Keane Court explored the legislative history for section 561.21(3). The court first noted:

> [i]t is noteworthy that the present language of Chapter 561.21(3) closely follows the language of Chapter 572.2, which describes the class of persons entitled to a mechanic's lien:
>
> 572.2 Persons entitled to lien.
> Every person who shall furnish any material or labor for, or perform any labor upon, any building or land for improvement, alteration, or repair thereof. . .shall have a lien upon such building or improvement . . .to secure payment for material or labor furnished or labor performed.

Id. at 851 (quoting Iowa Code § 572.2). The Court went on to explain that "[t]he purpose of subparagraph (3) of Chapter 561.21 is reflected by its historical derivation." Id. The court outlined the 130 year history of the statute as follows, noting the language of each succeeding statute:

Code of Iowa 1851, Section 1248:	"the homestead is liable for taxes accruing exclusively thereon, and . . . may be sold to pay the same. It is also subject to mechanics' liens in the cases provided by law."
Code of Iowa 1897, Section 2975:	"The homestead is subject to mechanic's liens for work, labor or material done or furnished exclusively for the improvement of the same."
Code of Iowa 1923, Section 6417:	"debts. . .incurred for work done or materials furnished exclusively for the improvement of the homestead"

Id. The Keane court further noted that legislative history reflected in the 1919 Report of the Code Commission indicated that the change in language between the 1897 and 1923 versions of the statute "was a mere codification, without change in subject matter, of the former provision." Id. at 852 (citing Report of Code Commission at 2, 918 (919)).

Having reviewed the legislative history of section 561.21(3) in detail, the Keane court concluded that "[i]t is clear that **had Defendant perfected a Chapter 572 mechanic's lien for work, labor or materials furnished for the improvement of Plaintiff's homestead, said homestead would be subject to the mechanic's lien and could be sold to satisfy the debt under Chapter 561.21(3)**." Id., n. 5 (citing Aalfs Wall Paper & Paint Co. v. Bowker, 162 N.W.33 (1917)). The Keane court further recognized that section 561.21(3), as revised, permits a "'would be' mechanic's lienor" (i.e. a party that would have been eligible for a mechanic's lien but did not perfect its rights under Chapter 572) to execute against a homestead. Id. at 852-53 (citing Moffitt, 294 N.W. at 731)). The Keane court declined to extend application of section 561.21(3) to a lender that had merely financed home improvements, however, finding that the legislative history did not support the conclusion that lenders are afforded the same protection historically granted to materialmen and laborers under the relevant Iowa statutes. Id. at 853.

In Moffitt, the Iowa Supreme Court also examined the legislative history of section 561.23(3) (then codified as section 10155 of the 1939 Code of Iowa) to determine whether a party that had performed work or furnished materials for improvement of a homestead could executed on the homestead for that debt, despite not having perfected a mechanic's lien. Moffitt, 294 N.W.2d at 732. At that time, as now, the statute provided that a homestead could be sold to satisfy a debt ". . .incurred for work done or material furnished exclusively for the improvement of the homestead." Id. (quoting Iowa Code § 10155 (1939)). The homeowners argued that the section 561.21(3) permitted sale of a homestead *only* to satisfy a mechanic's lien. Id. The court rejected this argument, finding that a "judgment . . .for materials used in the improvement of a homestead" could be satisfied through sale of a homestead, even where a mechanic's lien was not perfected. Id. at 733-34. The Moffitt court determined that the legislature's intent was "to make the homestead liable for improvements that were furnished for it." Id. at 734.

In short, Keane and Moffitt demonstrate that changes in the statutory language were not made in order to exclude part of a mechanic's lien judgment from collection through sale of a homestead, but rather to expand the ability of parties furnishing labor or materials for improvement of a homestead to collect, whether a mechanic's lien has been perfected or not. Based upon the foregoing, the District Court should have concluded that the "classes" of "debts" for which

homestead can be sold to satisfy under 561.21(3) includes the entire debt and amount under a mechanic's lien, inclusive of principal, interest, costs, and attorney fees. See Iowa Code § 561.21.

CONCLUSION AND REQUEST FOR NON-ORAL SUBMISSION

In conclusion, Standard Water Control Systems, Inc. prays that the District Court's denial of the Joneses' Motion to Reconsider be affirmed.

Standard requests that this case be submitted without oral argument.

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Date: May 8, 2018

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CERTIFICATE OF FILING AND CERTIFICATE OF SERVICE

I, Jodie C. McDougal, hereby certify that on the 8th day of May, 2018, I electronically filed the foregoing Appellee's Final Brief with the Clerk of the Iowa Supreme Court by using the EDMS system and all persons who have filed appearances are registered EDMS users and that service will be accomplished by the EDMS system on the following:

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