

**IN THE COURT OF APPEALS OF IOWA**

No. 0-800 / 10-0390  
Filed December 22, 2010

**ESTATE OF TOMMY RAY LYON  
and RONDA LYON,**  
Plaintiffs-Appellees,

**vs.**

**RODNEY N. HEEMSTRA, et al.,**  
Defendants-Appellants.

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Appeal from the Iowa District Court for Warren County, Paul R. Huscher,  
Judge.

The Heemstra Revocable Trust appeals a district court order declaring the Trust's purported redemption of real estate and garnishment of rents in the possession of a referee void and of no effect. **AFFIRMED.**

Jerry L. Schnurr III and Ernest Kersten, Fort Dodge, for appellants.

Donald G. Beattie of Beattie Law Firm, P.C., Des Moines, and Carly R. Smith and Phillip H. Myers of Myers, Myers, Danks & Smith, Pleasantville, for appellees.

Heard by Eisenhauer, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

**DOYLE, J.**

This appeal presents the question of whether, during a refereeship, a senior judgment lienholder may redeem property from a junior judgment creditor who purchased the debtor's property at an execution sale. To answer this question we must wade into the murky waters of our state's statutory redemption provisions, which our supreme court long ago described as "philological monstrosities, illustrating how successfully ideas may be obscured by language." *Goode v. Cummings*, 35 Iowa 67, 69 (1872). More than a century later, the court aptly observed, "The passage of time has not made the provisions any clearer." *Blue v. Oehlert*, 331 N.W.2d 112, 113 (Iowa 1983).

**I. Background Facts and Proceedings.**

The events leading up to this appeal begin with the death of Tommy Lyon on January 13, 2003, at the hands of Rodney Heemstra. In the days following Heemstra's arrest for Lyon's death, Heemstra and his wife, Berta, began transferring their substantial real estate holdings to various family trusts and entities. Lyon's widow, Ronda, and his estate (collectively the Estate) filed a wrongful death suit against Heemstra and secured writs of attachment on some of that real estate.<sup>1</sup>

Heemstra was convicted of first-degree murder in October 2003. Wells Fargo Bank then sued Heemstra and his wife for multiple defaulted loans. In January 2004, Wells Fargo secured a judgment against the Heemstras totaling

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<sup>1</sup> Those writs were later set aside by this court in *Estate of Lyon ex rel. Lyon v. Heemstra*, No. 09-0164 (Iowa Ct. App. Jan. 22, 2010).

\$637,208.62. On December 6, 2005, Wells Fargo assigned all of its interest in that judgment to the Heemstra Revocable Trust (the Trust).

On February 3, 2006, the Estate secured a judgment against Heemstra on its wrongful death suit for close to \$9 million. That judgment was vacated and the case remanded for a new trial after our supreme court reversed Heemstra's first-degree murder conviction in *State v. Heemstra*, 721 N.W.2d 549, 559 (Iowa 2006). Following a second criminal trial, a jury convicted Heemstra of voluntary manslaughter. A new trial on the Estate's wrongful death suit was held in November 2008. The Estate again secured a judgment against Heemstra, this time for approximately \$5.7 million. That judgment was entered on December 19, 2008, in Warren County.

The Estate immediately sought to collect on the judgment by directing the district court clerk for Warren County to issue writs of execution on land owned by Heemstra in Guthrie, Hancock, Humboldt, Warren, and Wright Counties. General executions were issued in those counties, and sheriff's sales were held in March and April 2009. The Estate purchased all of the property auctioned at the sheriff's sales, credited its judgment against Heemstra a total of \$1.6 million, and obtained sheriff's sale deeds.<sup>2</sup>

Meanwhile, the Estate initiated another lawsuit against Heemstra, his wife, and other family members, trusts, and entities, alleging claims for conspiracy to commit fraud, conspiracy to commit abuse of process, fraudulent transfer,

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<sup>2</sup> In June 2009, the Trust, as assignee of the Wells Fargo senior judgment lien, executed on some of the land owned by the Heemstras in Guthrie and Hancock Counties. The Trust now purports to hold sheriff's sale certificates on those parcels of land "representing Berta J. Heemstra's interests in the . . . property."

intentional infliction of emotional distress, and fraudulent preference of creditors. The thrust of the suit was that Heemstra and his family had conspired to defeat the Estate's collection efforts on its wrongful-death judgment by fraudulently transferring Heemstra's real estate and other assets. See Iowa Code § 684.4 (2009). A trial on that suit was held after the criminal and wrongful death actions ended.

On September 18, 2009, the district court entered a detailed seventy-page ruling, finding in favor of the Estate on the fraudulent transfer claims against Rodney and Berta Heemstra but rejecting the other claims. The court found the Heemstras "transferred assets with the actual intent to hinder, delay and defraud [Rodney's] creditors, specifically Ronda Lyon and the Estate of Tommy Lyon." The court voided the conveyances of ten parcels of land<sup>3</sup> and appointed a referee to take control of the properties

to collect debts, receive the rents and profits, and to partition and sell the real estate after notice to, and an opportunity for hearing by, any interested entity, including any mortgage or lienholders. Upon such hearing, the court will determine the extent and priority of any claims, the manner of sale, and the distribution of any proceeds.

The court also awarded the Estate compensatory damages against Heemstra and others totaling \$203,895 and \$750,000 in punitive damages against Heemstra and his wife. No appeal was taken from that ruling.

In December 2009, the Heemstra Revocable Trust, as assignee of the Wells Fargo senior judgment lien, began redeeming the property placed in the

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<sup>3</sup> As for the other parcels, the court determined that although the real estate was fraudulently conveyed, the Estate did not suffer any prejudice from the conveyances and was not entitled to relief. See *C. Mac Chambers Co. v. Iowa Tae Kwon Do Acad., Inc.*, 412 N.W.2d 593, 596 (Iowa 1987).

refereeship from the Estate as a junior judgment creditor. The Trust did not reimburse the Estate for its bids on the property or the court costs the Estate accrued. Instead, the Trust credited the Wells Fargo judgment against Heemstra a total of \$15,000 for all of the properties the Estate had previously bid a total of \$1.6 million.

The Trust filed a verified claim in the refereeship on January 13, 2010, asserting, with the exception of two tracts of land in Hamilton and Warren Counties, the referee had “no further interest in any of the properties” due to the Trust’s redemption. The Estate filed an objection to the verified claim, and the matter came before the district court for a hearing. As to the parcels of real estate in the refereeship, the court found “the Heemstra Revocable Trust did not have the ability through levy, execution, redemption, garnishment, or otherwise, to remove custody of that real estate from the referee.” The court accordingly concluded “the purported redemption of real estate from sheriff’s sales, and garnishment of rents, attempted after this court’s Judgment of September 18, 2009, are void and of no effect.” The Trust appeals from this ruling.

## ***II. Scope and Standards of Review.***

The parties agree that because this is an equitable proceeding, our review is de novo. See Iowa R. App. P. 6.907; *In re Estate of Johnson*, 739 N.W.2d 493, 496 (Iowa 2007).

## ***III. Discussion.***

The Trust argues the district court erred in concluding it could not redeem the property the court had placed in the control of a referee, because to do so

violates its statutory right of redemption arising from its assumption of the Wells Fargo senior judgment lien. We conclude otherwise.

We begin our analysis by examining the nature of a refereeship. Iowa Rule of Civil Procedure 1.1210 provides in relevant part that a “decree ordering a sale [of real or personal property] shall appoint one or more referees, and three disinterested freeholders to appraise the property, and may direct either a public or private sale.” Rule 1.1213 authorizes the court, as it did in this case, to “order the referee to lease or take possession of any property involved in the action.” Pursuant to these provisions, a referee is “an officer of court appointed for the purpose of selling or making contracts for the sale of the land and to divide the proceeds among the owners.” *In re Boyd*, 138 Iowa 583, 587, 116 N.W. 700, 702 (1908), *overruled on other grounds by Cook v. Todd’s Estate*, 249 Iowa 1274, 90 N.W.2d 23 (1958); *see also* Iowa Code § 602.6602 (“A person who is appointed as a referee . . . is subject to the supervision of the judicial officer making the appointment.”).

Because a referee is an officer of the court, property in the referee’s hands is in *custodia legis*, or in the custody and control of the law. *See Lincoln Joint Stock Land Bank v. Bundt*, 234 Iowa 1011, 1017, 14 N.W.2d 865, 868 (1944) (stating a receiver is an officer of the court and property “in the possession of a receiver is in custodia legis”); *see also Damrow v. Iowa & O.S.L. Ry.*, 190 Iowa 996, 998, 181 N.W. 271, 272 (1921) (“The power of a receiver is analogous to that of a referee.”). It is the general rule that “a referee appointed to sell land in a partition proceeding is not subject to garnishment.” *Carson, Pirie, Scott & Co. v. Long*, 219 Iowa 444, 449, 257 N.W. 815, 818 (1934); *see also Connell & Duffy*,

*P.C. v. Veninga*, 439 N.W.2d 203, 206 (Iowa 1989) (“As a general rule, ‘[l]evy of . . . property in receivership, without the consent of the court appointing a receiver, . . . is not permissible and has no effect other than to constitute contempt of court.’” (quoting 65 Am. Jur. 2d *Receivers* § 168, at 992 (1972)); *Lincoln Joint Stock Bank*, 234 Iowa at 1017, 14 N.W.2d at 868 (“A receiver is ordinarily exempt from garnishment because the funds in his possession are in custodia legis.” (citation omitted)); *Martin & Bro. v. Davis & Co.*, 21 Iowa 535, 537 (1866) (stating property levied upon by judgment creditors “was, at the time of their levy, in the hands of a receiver appointed by the court. It was therefore in the custody of the law, and not properly or legally liable to seizure by an officer under execution”).

The Trust argues the general rule does not apply to its statutory right to redeem property as a senior judgment lienholder. It contends the holdings of the cases cited above are limited to creditors’ attempts to garnish, levy, or otherwise execute on property in the control of receivers or referees and do not extend to redemption, which is a property right favored by the law. See *Federal Land Bank v. Bollin*, 408 N.W.2d 56, 59 (Iowa 1987). But see Patrick B. Bauer, *Statutory Redemption Reconsidered: The Operation of Iowa’s Redemption Statute in Two Counties Between 1881 & 1980*, 70 Iowa L. Rev. 343, 348 n.23 (1985) [hereinafter Bauer] (“Within the past ten years, statutory redemption generally has been viewed unfavorably.”). According to the Trust, “[t]his, of course, makes some sense since cash and personal property can disappear. Whereas, real estate will not disappear.”

We disagree, seeing no such distinction made in the foregoing cases. Indeed, the rationale for the rule—“that a ‘receivership operates to protect a receiver against interference with the receivership property by suit’”—appears to apply with equal force to a creditor’s statutory redemption right.<sup>4</sup> *Connell & Duffy, P.C.*, 439 N.W.2d at 206. It is axiomatic that property in *custodia legis* is

in the custody of the court, charged with responsibility therefor, and subject to its orders. It, of course, cannot be taken from the custody and responsibility of that court, and placed under the control of some other court, or officer or arm of the law, until released from the custody first attaching.

*Hopping*, 233 Iowa at 1006, 10 N.W.2d at 94; see also J.E. Heiserman, *Procedures Available for Implementation of a Judgment in Iowa*, 42 Iowa L. Rev. 265, 272 (1957) (stating property in the hands of a receiver “may not be levied upon under execution or attachment, or reached by garnishment. The procedure for subjecting such property to the judgment is by application to the court for direction to the fiduciary to pay it over to the creditor”). Moreover, we question whether the Trust as a senior judgment lienholder even had the right to redeem the property from the Estate as a junior judgment creditor.

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<sup>4</sup> Our conclusion in this regard is informed in part by the similarities between garnishments, levies, executions, and redemptions. Black’s Law Dictionary defines “redemption” as a “repurchase; a buying back.” Black’s Law Dict. 1149 (5th ed. 1979). “Execution” upon a money judgment is defined as “the legal process of enforcing the judgment, usually by seizing and selling property of the debtor.” *Id.* at 510. “Garnishment” is defined as a “statutory proceeding whereby person’s property, money, or credits in possession or under control of, or owing by, another are applied to payment of former’s debt.” *Id.* at 612. Finally, “levy” is defined as a “seizure. The obtaining of money by legal process through seizure and sale of property.” *Id.* at 816. Each is a remedy available to a judgment creditor to satisfy a money judgment. See Stefan A. Riesenfeld, *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 Iowa L. Rev. 155, 156, 162-63 (1957). In all cases, the remedy involves a seizure of property, real or personal, which we believe is foreclosed when the property is placed in the custody of the law. See, e.g., *Hopping v. Hopping*, 233 Iowa 993, 1006, 10 N.W.2d 87, 94 (1943).



In *Blue v. Oehlert*, 331 N.W.2d 112, 113 (Iowa 1983), our supreme court considered whether “a senior judgment lienholder who seeks to redeem from a junior judgment lienholder who purchased the debtor’s property at execution sale can do so by only reimbursing the junior lienholder for execution costs.” In determining the answer to that question was no, the court examined our state’s statutory redemption provisions, which allow lien creditors to redeem a debtor’s real property if the debtor does not. See Iowa Code § 628.5.

“Creditors having the right of redemption may redeem from each other within the time above limited and in the manner herein provided.” *Id.* § 628.8.

Section 628.9 provides that when

a senior creditor thus redeems from the senior creditor’s junior, the senior creditor is required to pay off only the amount of those liens which are paramount to the senior creditor’s own, with the interest and costs appertaining to those liens.

However, under section 628.10, a junior creditor

may in all such cases prevent a redemption by the holder of the paramount lien by paying off the lien, or by leaving with the clerk beforehand the amount necessary therefor, and a junior judgment creditor may redeem from a senior judgment creditor.

The terms of redemption, when made by a creditor,

in all cases shall be the reimbursement of the amount bid or paid by the holder of the certificate, including all costs, with interest the same as the lien redeemed from bears on the amount of such bid or payment, from the time thereof.

*Id.* § 628.11. Finally, when “a senior redeems from a junior creditor, the latter may, in return, redeem from the former, and so on, as often as the land is taken from the creditor by virtue of the paramount lien.” *Id.* § 628.14.

In interpreting these provisions, the court in *Blue* relied heavily on its decision in *Lysinger v. Hayer*, 87 Iowa 335, 54 N.W. 145 (1893), in which a junior judgment lienholder

purchased property at an execution sale. A mortgagee held a prior lien. The mortgagee filed an affidavit with the clerk purporting to redeem from the certificate holder, based on the priority of the mortgage lien, without payment of any money. The court held against the mortgagee on the ground that the provision now appearing as section 628.9 did not authorize a senior creditor to redeem from a junior lien.

*Blue*, 331 N.W.2d at 114 (citing *Lysinger*, 87 Iowa at 338, 54 N.W. at 146). The *Lysinger* court rejected the mortgagee's argument under what is now section 628.9 that she was entitled to redeem from the defendants' junior lien, reasoning:

In our opinion no such redemption is contemplated in or authorized by the statute. The purpose of redemption is to insure to the debtor and to his creditors the full value of the debtor's property. If a junior creditor thinks the property of sufficient value to warrant it, he redeems from the senior, and holds the property for both liens, thereby realizing to the debtor and to himself the greater value for the property. There is no possible benefit gained to any one by a senior creditor redeeming from a junior lien. True, the statute says creditors may redeem from each other, and that a senior creditor may redeem from a junior creditor; but it does not say that a senior creditor may redeem from a junior lien.

*Lysinger*, 87 Iowa at 338, 54 N.W. at 146 (citation omitted).

The court in *Blue* stated its decision in *Lysinger* turned on the distinction between a junior lien and a junior creditor.

The distinction is that a junior creditor is not necessarily the holder of only a junior lien. A junior creditor can acquire senior liens in two ways under section 628.10. One is by paying off a senior lien to prevent redemption, and the other is by redeeming from a senior creditor. Under *Lysinger* a junior creditor would be in a position to pay off a senior lien to prevent redemption only if the junior creditor held a lien superior to that of the redemptioner. *A senior creditor, according to the Lysinger court, can redeem only from a junior creditor who "by redemption or otherwise" becomes the holder of a*

*paramount lien*. See 87 Iowa at 338-39, 54 N.W. at 146. In order to redeem, the senior creditor must pay the junior creditor the amount of any lien held by the junior creditor that is paramount to the lien of the senior creditor as well as the amount paid by the successful bidder for the certificate of sale, including costs and interest, as required “in all cases” by section 628.11.

*Blue*, 331 N.W.2d at 115 (emphasis added). Thus, if a senior creditor redeems from a junior, he needs to pay the amount bid at the sale plus the amounts allowed by redemptioners holding liens superior to his own. *Id.* While the court in *Blue* stated it did not need to decide “whether technically the statute would allow a senior creditor to redeem from a junior lien by paying what the junior creditor bid at the execution sale plus interest and costs,” the court noted it would make no sense for a senior lienholder to do so. *Id.* at 116; *Lysinger*, 87 Iowa at 338, 57 N.W. at 146 (characterizing such an act as “useless and fruitless”).

In this case, the Estate did not hold a lien paramount to the lien of the Trust.<sup>5</sup> It would accordingly seem under the holdings of *Blue* and *Lysinger* that the Trust could not redeem from the Estate. See also Bauer, 70 Iowa L. Rev. at 362 n.82 (“Although the holdings of the two cases which have addressed the question are not entirely clear, a senior lienholder, that is, a person who has a lien which is senior to the creditor’s lien, probably does not have any right of redemption since his lien is not affected by a sale enforcing the creditor’s lien.”). Furthermore, in purporting to redeem the property from the Estate, the Trust did not pay the Estate the amount it bid at the sheriffs’ sales, including costs and interest, as required by section 628.11. See *Blue*, 331 N.W.2d at 115 (“In order

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<sup>5</sup> The Trust questions whether the Estate held liens on property outside of Warren County because it did not file attested copies of the wrongful death judgment in Guthrie, Hancock, Humboldt, and Wright Counties as required by Iowa Code section 624.24.

to redeem, the senior creditor must pay the junior creditor . . . the amount paid by the successful bidder for the certificate of sale, including costs and interest, as required 'in all cases' by section 628.11.").

The Trust's argument that the district court's holding voiding its redemption of the property in the refereeship turns "the statutory rules regarding priority of liens and creditors upside down" is without merit. See *id.* at 114 (stating if a senior creditor cannot redeem, the creditor may nevertheless execute separately on his senior judgment). The Trust contends that if the court's decision is affirmed, the Estate will have "leapfrog[ged] over the superior Wells Fargo judgment lien" held by the Trust. We cannot agree.

The district court's September 18, 2009 ruling specifically stated that "[u]pon notice to claimants and creditors, the court shall decide the nature, extent, priority, or validity of any party's lien not previously determined," as required by Iowa Rule of Civil Procedure 1.1211. Its later ruling in January 2010 that voided the Trust's purported redemption ordered the referee to "partition the real estate and sell the same in accordance with the court's Judgment, and the claims of the Heemstra Revocable Trust shall be paid from the proceeds of sale in accordance with their priority as it existed on September 18, 2009." Rule 1.1209 additionally provides that after a partition sale, which must first be approved by the court, see Iowa R. Civ. P. 1.1222(2), "holders of liens from which the property has been freed by the sale, shall have the same rights or interests in the proceeds as they had in the property sold, subject to a prior charge for costs." The Trust's superior judgment lien on the real estate has therefore been preserved.

***IV. Conclusion.***

For the foregoing reasons, we affirm the judgment of the district court finding the Trust's purported redemption of real estate in the possession of the referee appointed by the court to be void and of no effect.

**AFFIRMED.**