

**IN THE COURT OF APPEALS OF IOWA**

No. 1-029 / 10-1025  
Filed February 9, 2011

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

**vs.**

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

---

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

Defendants appeal the district court's ruling denying their motion to nullify,  
vacate, discharge, or release a judgment entered against defendants in 2009.

**AFFIRMED.**

Joseph J. Hrvol of Joseph J. Hrvol, P.C., Council Bluffs, for appellants.

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

Considered by Vogel, P.J., and Vaitheswaran and Doyle, JJ. Tabor, J.,  
takes no part.

**DOYLE, J.**

The defendants appeal the district court's ruling denying their motion to nullify, vacate, discharge, or release a 2009 judgment premised upon a finding that the defendants fraudulently transferred Rodney Heemstra's assets in an effort to hinder and delay his creditors. We affirm.

On January 13, 2003, Rodney Heemstra shot and killed Tommy Lyon. 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.

On January 27, 2003, Lyon's widow, Ronda Lyon, and the Estate of Lyon (collectively the Estate) filed a wrongful death suit against Rodney Heemstra. The Estate's petition requested that writs of attachment be issued securing certain parcels of real estate owned by the Heemstras. The district court subsequently entered an order issuing the requested writs of attachment.

Heemstra was convicted of first-degree murder in October 2003. Thereafter, Wells Fargo Bank sued the Heemstras for multiple defaulted loans. In January 2004, the district court entered a judgment in Well Fargo's favor against the Heemstras. Wells Fargo Bank then intervened in the Estate's wrongful death case, and it filed a motion to quash the writs of attachment obtained by the Estate. In September 2005, the district court entered a ruling in Well Fargo's favor, finding the Estate's lien by virtue of writs of attachment was junior and inferior to Wells Fargo Bank's judgment lien. The Estate appealed.

Meanwhile, in December 2003, summary judgment was granted partially in favor of the Estate on the issue of liability in the wrongful death suit. In

February 2006, the Estate was awarded over \$8.9 million in compensatory and punitive damages. Judgment was then entered against Heemstra. 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 several counties. Thereafter, the Estate initiated another lawsuit in March 2006 against Heemstra, his wife, and other family members, trusts, and entities (collectively defendants), alleging, among other things, that the defendants conspired together to fraudulently transfer and conceal the Heemstras' real estate from creditors.

In August 2006, 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. Our supreme court subsequently vacated the December 2003 partial summary judgment which had been based upon Heemstra's first-degree murder conviction, and consequently vacated the February 2006 wrongful death damages judgment. The wrongful death suit was remanded to the district court for a new trial.

The new trial on the Estate's wrongful death suit was held in November 2008. The Estate was again awarded damages, this time for approximately \$5.7 million. Judgment was entered against Heemstra on December 19, 2008, in Warren County.

The fraudulent transfer suit was tried in July 2009. 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 referenced the writs of attachment multiple times in its ruling issued in 2003 after the wrongful death suit was filed. The court ultimately voided the conveyances of ten parcels of land and appointed a referee to take control of the properties. 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. The court’s ruling stated it “retain[ed] jurisdiction of this proceeding with power to instruct the Referee, and to make such further orders and decrees as may be necessary and incident to carry the foregoing into effect.” No appeal was taken from that ruling.

On January 22, 2010, this court filed an opinion in the Estate’s appeal from the district court’s September 2005 ruling finding the Estate’s lien by virtue of writs of attachment was junior and inferior to Wells Fargo Bank’s judgment lien. *See Estate of Lyon ex rel. Lyon v. Heemstra*, No. 09-0164 (Iowa Ct. App. Jan. 22, 2010). This court affirmed the district court’s ruling on a proper ground urged but not relied upon by the district court. *Id.* This court held the writs of attachment were improperly granted in the first instance because pre-judgment attachments are not permitted in tort actions in Iowa. *See id.* (citing *Raver v. Webster*, 3 Iowa 502, 511–12 (1856)). The court therefore found the Estate “did not have a right of attachment in [the] wrongful death action.” *Id.*

On May 7, 2010, the defendants filed a “motion to nullify, vacate, discharge, or release judgment, and to recover restitution” in the fraudulent

transfer suit pursuant to Iowa Rules of Civil Procedure 1.2012(2) and 1.1016 (2009). The defendants asserted, based upon our January 2010 decision, that the liens secured by the Estate by virtue of the writs of attachment were improperly granted. Because the fraudulent transfer suit relied upon those liens in finding the defendants had, in fact, fraudulently transferred property, the defendants argued the judgment in that suit should be nullified, vacated, discharged, or released. Essentially, the defendants argued they could not have fraudulently transferred property when there was no pre-judgment attachment.

Following a hearing, the district court denied the defendants' motion. The court found:

The defendants did not raise the issue of the invalidity of writs of attachments in this case. To the extent that the attachments were in issue, the defendants did not appeal from any finding of the court. The court's findings regarding the claims of fraudulent conveyances, and the judgment for damages awarded as a result thereof, are final. The conclusions of law made by the court, whether right or wrong, are now the law of the case and binding upon the parties. The motion must be denied.

The defendants appeal, asserting our 2010 decision in the wrongful death case should be considered to be the law of the fraudulent transfer case because that case relies upon the same writs of attachment issued in the wrongful death case. The defendants argue that no conspiracy to defraud could have existed because the writs were improperly granted, and until a judgment lien attached on December 19, 2008, Heemstra

was free to dispose of his property as he saw fit with the risk that any fraudulent conveyance could be set aside to satisfy the eventual judgment lien. Likewise, any family members or other transferees would be free to dispose of their property subject to the possibility that any transfer from Rodney could be voided.

Additionally, the defendants assert that the district court's order in the fraudulent transfer case retaining jurisdiction permitted the court to enter a "nullified" ruling based upon our 2010 decision. The Estate argues the district court correctly concluded that the defendants failed to preserve error because they never appealed the district court's decision in the fraudulent transfer case. We agree.

Iowa Rule of Civil Procedure 6.101(1)(b) provides that in civil cases, "[a] notice of appeal must be filed within [thirty] days after the filing of the final order or judgment." Such a rule is mandatory and jurisdictional. *See, e.g., Eaton v. Meester*, 464 N.W.2d 691, 692 (Iowa Ct. App. 1990) (holding former Iowa Rule of Appellate Procedure 5(a), which required appeal within thirty days, was "mandatory and jurisdictional"). The September 18, 2009 ruling was a "final judgment" for appeal purposes under rule 6.101(1)(b). "[A] final judgment is conclusive on collateral attack, even if the judgment was erroneous, unless the court that entered the judgment lacked jurisdiction over the person or the subject matter." *See Schott v. Schott*, 744 N.W.2d 85, 88 (Iowa 2008).

Here, the defendants concede that they did not appeal the district court's ruling in the fraudulent transfer suit. Moreover, there is no evidence presented here that the defendants ever challenged the validity of writs of attachment prior to our January 2010 opinion. Instead, they assert Iowa Rules of Civil Procedure 1.1012(2), grounds for vacating or modifying judgment, and 1.1016, judgment discharged on motion, apply to allow them another bite at the apple.

Rule 1.1012(2) provides:

Upon timely petition and notice under rule 1.1013 the court may correct, vacate or modify a final judgment or order, or grant a new trial on any of the following grounds:

1.1012(2) Irregularity or fraud practiced in obtaining it.

The question for the court under the rule is whether the judgment was obtained following some action or inaction of the court or court personnel in violation of a recognized rule or procedure of the court. *In re Marriage of Cutler*, 588 N.W.2d 425, 429 (Iowa 1999). An irregularity does not arise when, as here, a defendant misapprehends the merits of a lawsuit and permits an adverse judgment to be entered. *See Embassy Tower Care, Inc. v. Tweedy*, 516 N.W.2d 831, 834 (Iowa 1994). The challenges posed by the defendants to the judgment go directly to the merits of the Estate's claim and could have been raised before entry of the judgment. The judgment obtained here was not a product of an irregularity.

Additionally, the defendants misconstrue the purpose of Rule 1.1016. Rule 1.1016 provides: "Where matter in discharge of a judgment has arisen since its entry, the defendant or any interested person may, on motion, have the same discharged in whole or in part, according to the circumstances." The rule is not concerned with the impropriety of the judgment as an original proposition. *See Iowa R. Civ. P. 1.1016 official cmt.* ("[I]t is assumed that the judgment was perfectly proper; and this rule deals only with matters which may later have discharged it."). The rule concerns matters transpiring subsequent to the judgment that go towards satisfaction of the judgment which warrant its discharge in part or in full. *See, e.g., Dunton v. McCook*, 120 Iowa 444, 446, 94 N.W. 942, 944 (1903) (citing the rule then codified at Iowa Code section 3769).

Here, defendants attack the propriety of the judgment itself, not whether subsequent matters transpired toward satisfaction of the judgment. Clearly that rule is inapplicable here.

It was not until the filing of their motion to vacate or discharge judgment that the defendants first challenged the validity of the issuance of the writs and the judgment founded thereon. By that time, the findings of the court regarding the fraudulent conveyance claims and the judgment were final and the time for appeal had expired. Accordingly, the district properly denied the defendants' motion. We therefore affirm the decision of the district court.

**AFFIRMED.**