IN THE COURT OF APPEALS OF IOWA

No. 1-311 / 10-1820
Filed July 13, 2011

AGVANTAGE FS, INC.,
Plaintiff-Appellant,

vs.

WESTERN FARMING, INC.,
MICHAEL J. BOOTH, and
KIMBERLY BOOTH,
Defendants-Appellees.

Appeal from the Iowa District Court for Franklin County, James M. Drew, Judge.

AgVantage FS, Inc. appeals from the district court's ruling which granted the Booths' motion to quash execution. **AFFIRMED.**

Tara Z. Hall and Mark D. Walz of Davis, Brown, Koehn, Shors & Roberts, P.C., West Des Moines, for appellant.

Christopher O'Donohoe and Thais Ann Folta of Elwood, O'Donohoe, Braun & White, L.L.P., Cresco, for appellees.

Heard by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

In April and May 2006, Western Farming, Inc. entered into four separate Hedge to Arrive Purchase Agreements (HTAs) with AgVantage FS, Inc. promising to deliver corn by December 2007 and March 2008. In August 2007, Western Farming exercised its right under the agreements to "roll" the four HTAs to extend the delivery date to July 31, 2008. In July 2008, Western Farming had sold all of its corn on the open market, and had none with which to honor its rolled HTAs with AgVantage FS.

Michael and Kimberly Booth own the farming corporation known as Western Farming, Inc. In July 2006, they obtained an interest in Chickasaw County real estate, which they claimed as their homestead. They later sold this property and purchased property in Franklin County, which they intended to be their homestead.

In February 2007, the Booths entered into a "FS Agri-Finance Line of Credit Note and Security Agreement" with AgVantage FS to finance their farming operations, and agreed to be jointly and severally liable for "all indebtedness" of Western Farming.

When Western Farming failed to honor its rolled HTAs with AgVantage, AgVantage sued both Western Farming and the Booths in Chickasaw County district court: Western Farming for breach of contract; the Booths on the 2007 Line of Credit Note and Security Agreement in which they guaranteed the debt of Western Farming, Inc. AgVantage obtained summary judgment against Western Farming in January 2010, and obtained a judgment against the Booths in April 2010.

AgVantage sought to execute on the April 9, 2010 judgment it obtained against the Booths in Chickasaw County. AgVantage levied upon real estate owned by the Booths in Franklin County and a sheriff's sale was set for September 8, 2010. The Booths moved to quash execution claiming the real estate was their homestead and therefore exempt. Because we agree with the district court that the debt upon which AgVantage bases its right to execution did not precede the Booths' acquisition of their homestead, the district court did not err in granting the motion to quash.

I. Background Facts and Proceedings.

On July 31, 2006, the Trustee of the Franklin and Patsy Booth Revocable Trust (Trust), conveyed to Michael J. Booth and Kimberly Booth an undivided one-half interest[1] in real property in Chickasaw County, upon which was the Booths' homestead. The Booths and the Trust began attempting to sell the Chickasaw County property in July 2009. In February 2010, the Booths purchased an undivided one-half interest in a 41.65-acre tract of undeveloped timberland in Franklin County,[2] which they intended to be their homestead upon the sale of the Chickasaw County property. The Chickasaw County property was sold at auction on March 12, 2010; closing was in April.

On April 9, 2010, AgVantage was granted judgment in a Chickasaw County action against the Booths based upon their guarantee of indebtedness of Western Farming, Inc.

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[1] The other one-half interest is in the Trust (Patsy Booth is Michael's mother).
[2] Again, the other one-half is in the Trust.

On April 13, 2010, AgVantage filed a "Praecipe—Request for Execution" against the Booths in Chickasaw County, which, with a minor exception, was returned unsatisfied.

On April 19, 2010, the Chickasaw County judgment was transcribed to Franklin County.

On June 17, 2010, AgVantage filed a Praecipe—Request for Execution with the Franklin County Clerk .

On July 14, 2010, notice was issued of a September 8, 2010 sheriff's levy and sale of the Franklin County property in which the Booths had a one-half interest.

On August 13, 2010, the Booths moved to quash execution, claiming the Franklin County property was acquired with the proceeds from the sale of their previous homestead and that "Patsy Booth, beneficial owner of the other one-half undivided interest also has her homestead on the premises to be sold." AgVantage resisted, arguing that by way of the Line of Credit Note and Security Agreement and Western Farming's four 2006 HTAs the Booths' were indebted to AgVantage in April and May 2006, before the Booths obtained interest in the Chickasaw County property. AgVantage contended this was an antecedent debt for which the homestead could be sold under Iowa Code section 561.21.[3]

After hearing testimony and arguments, receiving exhibits, and taking judicial notice of the Chickasaw action, the Franklin County district court granted the motion to quash. With respect to the claim that the Booths' debt was incurred prior to acquisition of the homestead, the district court noted AgVantage's petition

[3] All references are to the 2009 Iowa Code unless otherwise indicated.

in Chickasaw County against Western Farming and the Booths "alleged a breach of certain hedge to arrive contracts executed in 2007" and "contained no reference to any prior agreements," and the Chickasaw County trial court "based its ruling on a February 6, 2007 Line of Credit Agreement." The court ruled the debt was incurred in 2007, which was after the time the Booths acquired their homestead in Chickasaw County.

As to the Booths' claim that the Franklin County property was protected by their homestead rights, the district court found:

> The Booths have not yet lived on the Franklin County property. A modular home, that was purchased prior to the sale of the Chickasaw County property, has been placed on the property but is not yet ready to occupy. The Booths intend to reside in the new home once it is ready.

The court concluded:

> A delay between selling a homestead and erecting a new one does not negate a homestead claim in the property being developed. *Magel v. Hunt*, 265 N.W. 119 (Iowa 1936); *Elliott v. Till*, 259 N.W. 460 (Iowa 1935). The Booths purchased the structure to be erected on the Franklin County property prior to selling the Chickasaw County property. They have not taken any other residence and it is clear they have always intended to live on the Franklin County property. Accordingly, the court concludes the property at issue is the Booths' homestead.

AgVantage filed an Iowa Rule of Civil Procedure 1.904 motion to expand, which was denied.

AgVantage appeals, arguing the district court erred in finding: (1) the Booths' guarantee did not constitute an antecedent debt under Iowa Code section 561.21(1); (2) the Franklin County property is exempt as homestead; and (3) the Franklin County property is entirely exempt from execution.

II. Scope of Review.

AgVantage argues our review of this action is de novo because "the basis of the Booths' action was to enjoin the sheriff's sale scheduled to satisfy AgVantage's judgment." The Booths, however, contend the action was tried at law and thus our review is on error. They also assert that because the grant of the motion to quash was based on statutory construction, our review is for errors of law. While the result is not entirely clear, we find the Booths have the better argument.

The disposition of this case turns on the construction of sections 561.16 and 561.21(1). The question before us is whether the district court erred in concluding the Franklin County property was "exempt from judicial sale" because it did not fit into a "special declaration of statute to the contrary." Iowa Code § 561.16. We review a district court's ruling on a motion to quash based on statutory construction for errors at law. *See War Eagle Village Apartments v. Plummer*, 775 N.W.2d 714, 717 (Iowa 2009); *Estate of Ryan v. Heritage Trails Assocs., Inc.*, 745 N.W.2d 724, 728 (Iowa 2008) ("We also review questions of statutory construction for correction of errors at law."). Consequently, our review is for correction of errors at law.

III. Discussion.

AgVantage obtained a judgment against the Booths in Chickasaw County in April 2010. The judgment was transcribed to Franklin County and AgVantage attempted to execute on its judgment against the Franklin County property in which the Booths have an undivided one-half interest. *See* Iowa Code § 626.12 ("If [the execution] is against the property of the judgment debtor, it shall require

the sheriff to satisfy the judgment and interest out of the property of the debtor subject to execution.").

Under Iowa Code section 624.23(1), judgments in the district court "are liens upon the real estate owned by the defendant at the time of such rendition." However, "[a] judgment lien must properly attach to property before that property can be used to satisfy the judgment." *Barrata v. Polk Co. Health Servs.*, 588 N.W.2d 107, 112 (Iowa 1999); *see also* Iowa Code §§ 624.23, .24. "[A] judgment lien generally cannot attach to land used and occupied as a homestead and land designated as a homestead generally cannot be executed upon to enforce a judgment lien." *Barrata*, 588 N.W.2d at 110; *see also* 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.").

AgVantage relies on the statutory exception to this general rule of exemption from judicial sale: "[t]he homestead may be sold to satisfy debts . . . contracted prior to its acquisition." Iowa Code § 561.21(1). Thus, the timing of the Booths' indebtedness is crucial.

A. Was the debt contracted prior to July 2006 when the Booths acquired their homestead in Chickasaw County?

AgVantage argues the Booths' debts arose when Western Farming entered into HTA contracts in 2006. We reject this contention for several reasons.

First, the HTA contracts upon which AgVantage now relies are between Western Farming and AgVantage, not the Booths and AgVantage. AgVantage does not claim the Booths are directly liable under those contracts. Rather,

AgVantage's suit against the Booths was founded upon the personal guarantee in the 2007 Line of Credit Note and Security Agreement.

Second, while AgVantage now attempts to invoke the Booths' execution of line of credit notes in 2005 and 2006 as antecedent debts, it is clear that AgVantage obtained its Chickasaw County judgment based upon the 2007 agreement.

The following are the April 9, 2010 findings of fact and conclusions of law of the Chickasaw County District Court, which resulted in the judgment upon which AgVantage seeks execution:

> The plaintiff, AgVantage FS, Inc. is an Iowa corporation.
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> The defendant, Western Farming, Inc., is an Iowa corporation, and the defendants, Michael J. Booth and Kimberly Booth, are husband and wife, live in Chickasaw County, and are the sole owners of the stock in the defendant, Western Farming, Inc.
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> The plaintiff AgVantage FS filed suit against the defendants Western Farming and its owners the Booths on December 30, 2008 seeking a money judgment based upon several ag business transactions. Original notice was served and defendants filed a timely answer asserting a counterclaim. The counterclaim was later dismissed by the court on a summary judgment motion filed March 31, 2010 by this judge.
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> An Order was issued by Judge Richard Stochl on January 29, 2010 granting AgVantage FS's second motion for summary judgment as to defendant Western Farming. The order directed the clerk to enter judgment in favor of AgVantage FS and against the defendant Western Farming in the amount of $198,200.00, plus interest . . . [based upon the following].
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> On May 11, 2006, Western Farming entered into a Hedge-to-Arrive Purchase Agreement [Contract No. 3319] pursuant to which it committed to deliver on or before December 31, 2007 to AgVantage 10,000 Bushels of corn at a price of $3.00 per bushel.
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> On April 27, 2006, Western Farming entered into a Hedge-to-Arrive Purchase Agreement [Contract No. 3292] pursuant to which it committed to deliver on or before December 31, 2007 to AgVantage 10,000 Bushels of corn at a price of $2.90 per bushel.
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> On May 4, 2006, Defendant Western Farming entered into a Hedge-to-Arrive Purchase Agreement [Contract No. 3369] pursuant

to which it committed to deliver on or before March 31, 2008 to AgVantage 20,000 Bushels of corn at a price of $3.04 per bushel.

On April 28, 2006, Defendant Western Farming entered into a Hedge-to-Arrive Purchase Agreement [Contract No. 3297] pursuant to which it committed to deliver on or before December 31, 2007 to AgVantage 10,000 Bushels of corn at a price of $2.95 per bushel.

On or about August 3, 2007, Defendant Western Farming entered into four Hedge-to-Arrive Purchase Agreements [Contract 3369] pursuant to which it committed to deliver on or before July 31, 2008 for sale to AgVantage, the certain quantity of corn listed below:

Contract No. W00003292, 10,000 bu. @$3.25
Contract No. W00003297, 10,000 bu. @$3.30
Contract No. W00003219, 10,000 bu. @$3.35
Contract No. W00003269, 20,000 bu. @$3.24

Each of the four HTA Contracts for delivery state that these contracts were an intra crop year roll from the HTA Contracts executed by Western Farming previously in April and May 2006 for delivery in December 2007 and March 2008.

The Rolled HTA Contracts of August 3, 2007 represented the one intra crop year roll to a later delivery date that Western Farming was permitted under the terms of the four Original HTA Contracts.

. . . .

Western Farming failed to deliver corn to AgVantage FS in July of 2008 as required by the four HTA contracts.

. . . .

AgVantage FS was damaged by Western Farming's breach of the HTA contracts. The damage suffered by AgVantage as a foreseeable consequence of the failure of Western Farming to perform the HTA Contracts is $1,500.00, being the 3 cents per bushel called for in the HTA Contracts times the 50,000 bu. that were the subject of those contracts plus $196,700.00 being the amount owing to close out the four HTA contracts.

On February 6, 2007 Western Farming entered into a FS Agri-Finance Line of Credit Note and Security Agreement with AgVantage FS in order to finance [its] farming operation for the 2007 crop year.

The Line of Credit Agreement provides that: "ANYONE WHO CO-SIGNS THIS AGREEMENT WILL BE JOINTLY AND SEVERALLY LIABLE FOR ALL INDEBTEDNESS OF DEBTOR TO COMPANY."

Below the heading Debtors, defendant Michael and Kimberly Booth, As Individuals, each executed the Line of Credit Agreement.

. . . .

> *AgVantage FS asserts that the Booths are jointly and severally liable to it for all judgments entered in this case against Western Farming, based upon the terms of the guarantee contained in the Line of Credit Agreement*.
>
> . . . .
>
> . . . [T]he court finds that the guarantee terms of this contract are clear and unambiguous. The terms of guarantee used in the case at bar are not susceptible of different interpretations. . . .
>
> . . . .
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> The plaintiff AgVantage FS, Inc. shall have and recover judgment against the defendants Michael J. Booth and Kimberly Booth, jointly and severally, in the amount of $198,200.00 plus interest from June 23, 2008, with attorney fees as previously determined by Order of March 23, 2010. The defendants are jointly and severally liable for this same debt with the defendant Western Farming, Inc., per the Order of January 29, 2010.

(Emphasis added.)

Neither the Booths nor AgVantage appealed this decision. Consequently, the court's findings are binding upon the parties. *See Spiker v. Spiker*, 708 N.W.2d 347, 353 (Iowa 2006) (citing with approval Restatement (Second) Judgments § 27, at 250 (1982) ("When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.")). AgVantage may not now present a different theory of recovery. *See Arnevik v. Univ. of Minn. Bd. of Regents*, 642 N.W.2d 315, 320 (2002) (concluding claim preclusion barred present theory of indemnification based on contract; party "was required to bring all theories of recovery" at the time of the first action and was bound when the prior court rendered judgment on the merits and no appeal was taken).

Third, the Chickasaw County court grounded the Booths' liability on their guaranty dated February 6, 2007. A guaranty is a contract by one party to

another party for the fulfillment of the promise of a third party. *See City of Davenport v. Shewry Corp.*, 674 N.W.2d 79, 86 (Iowa 2004). The extent of a guarantor's obligation must be determined from the parties' written contract. *See Bankers Trust Co. v. Woltz*, 326 N.W.2d 274, 276 (Iowa 1982). The indebtedness AgVantage proved in its Chicksaw County action arose from Western Farming's breach of the HTA contracts, but the Booths' liability stems from the 2007 guaranty.

In the case before us, the district court concluded the date the Booths' liability arose was February 6, 2007—the date the guaranty was signed.[4] This date is not inconsistent with the statutory language of section 561.21, which provides "the homestead may be sold to satisfy *debts . . . contracted* prior to its acquisition." (Emphasis added.) Because the guaranty was not executed until February 2007, which was *after* the Booths acquired their homestead (June 2006), the antecedent debt exception of section 561.21(1) is not applicable.

[4] An argument could be made that the date was even later because the Booths contracted to be "liable for all indebtedness." The claim of indebtedness is grounded on Western Farming's breach of contract, which did not occur until June 2008 when Western Farming failed to deliver corn. The Booths as guarantors became liable upon default. *See Spreitzer v. Hawkeye State Bank*, 779 N.W.2d 726, 736 (Iowa 2009) (noting personal guaranty constituted a promise to pay *in the event of default*); *Schaffer v. Acklin*, 205 Iowa 567, 571, 218 N.W. 286, 288 (1928) ("'An "absolute guaranty" is one by which the guarantor is bound *immediately upon the principal failing to perform his contract* without further condition to be performed.'" (emphasis added) (citation omitted)); *Williams v. Clark*, 417 N.W.2d 247, 251 (Iowa Ct. App. 1987) ("[L]iability is imposed upon the guarantor immediately *upon default* of the principle debtor regardless of whether the guarantor has received notice of the default." (emphasis added)); *see also* 38 Am. Jur. 2d Guaranty § 58, at 1005 (2010) ("Because a guarantor steps into the shoes of the original debtor the guarantor's liability depends on the construction and interpretation of the underlying contract. If the debtor is not bound to make payment to the creditor, the creditor may not hold the guarantor liable, as a general rule. A dispute in this regard is resolved by a factual determination of the rights and obligations of the parties to the underlying contract." (footnotes omitted)).

In *Baratta*, our supreme court agreed with this statement found in the comment to chapter 6.7 in *Iowa Land Title Standards*, "Unless a judgment arises out of a claim as described in Iowa Code section 561.21, the judgment is not a lien on the homestead." *Baratta*, 588 N.W.2d at 114. Because AgVantage's judgment did not arise out of an antecedent debt (a claim under section 561.21(1)), no judgment lien attached to the Booths' homestead.

B. Did the court err in finding the homestead exemption flowed to the Franklin County property despite no actual occupancy?

AgVantage does not dispute the Chickasaw County property included the Booths' homestead. It does, however, argue that because the Booths had not yet occupied the Franklin County property, that property could not be claimed as homestead. We disagree.

Iowa Code section 561.20 provides:

> Where there has been a change in the limits of the homestead, or a new homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former would have been.

Iowa law has long provided that once a homestead is acquired it may be exchanged for another. *See, e.g.*, *Webster, Button & Call v. Saunders*, 8 Iowa 579, 589 (1858) ("The law [then sections 1256 and 1257 of the 1851 Code] gives the owner a right to change it and this must not be limited to an exchange to another which he already owns, nor to a technical exchange of property with another person, but he must have the freedom to sell the one and purchase another, so that he may change the place of his residence."). In *State v. Geddis*,

44 Iowa 537, 539 (1876), the court noted that statutory provisions provided an "absolute right . . . to exchange one homestead for another."

The *Geddis* court further noted,

> There is no prescribed method as to how this shall be done. The statute does not provide that the sale must be for money in hand, which must be immediately invested in the new homestead; that is, that the selling of the old and purchasing the new must be simultaneous acts. We must give the statute a reasonable construction so as to effectuate its object. If a homestead be sold and the proceeds applied to some other use there is no doubt that the exemption would cease, but where the sale is made on a credit and with the intention of using the proceeds when collected in purchasing another homestead, and the proceeds are not put to any intervening use, they are exempt while thus in transitu, so to speak, from the old homestead to the new. Any other rule would practically prohibit the changing of homesteads.

Geddis, 44 Iowa at 539.

In *Mann v. Corrington*, 93 Iowa 108, 113, 61 N.W. 409, 409–10 (1894), the court concluded

> that the homestead right may exist in vacant land for which a former homestead has been exchanged, or which has been purchased with the proceeds of such a homestead, when the land was thus obtained, and is held in good faith for use as a home.

In *Elliott v. Till*, 219 Iowa 649, 259 N.W. 460 (1935), a creditor attempted to sell a Des Moines property the plaintiff claimed was her homestead. The creditor argued the property was not plaintiff's homestead and his 1930 judgment (based upon a January 1, 1925 promissory note) was a lien on the premises. *Elliott*, 219 Iowa at 650, 259 N.W. at 461. As described by the court, the plaintiff built a home in Knoxville in 1913; resided in it until 1915 when she moved to Des Moines, but kept two rooms reserved in the Knoxville home in which to store household goods; sold that home in 1918, leaving the proceeds in the bank; and

those proceeds were used to purchase a lot and commenced building May 1, 1924. *Id.* The court noted the case presented two questions:

> Was there an abandonment by the Elliotts of their homestead at Knoxville? If it is shown there was none, the second question arising is: Did the Elliotts in buying the lot at 924 Forty-Third street acquire a homestead right therein?

Id. at 651, 259 N.W. at 461.

The first question was answered in the negative: the court found that the plaintiff did not abandon her homestead in Knoxville:

> It appears clear to us from the record that the plaintiff in leaving her home in Knoxville had no intention of permanently abandoning it; that she came to Des Moines for a temporary purpose; that the whole record shows her intention to return when that purpose was accomplished; also the fixed intention if the Knoxville home was sold the money realized therefrom should go into the purchase or building of a new home.

Id. at 655, 259 N.W. at 463.

The court then concluded:

> The plaintiff in this case purchased with the money the lot upon which the new house was built. *From the moment this lot was bought it then become invested with the homestead character*, even prior to building of the house thereon.

Id. at 657, 259 N.W. at 464 (emphasis added);[5] *see also Magel v. Hunt*, 221 Iowa 199, 203, 265 N.W. 119, 121 (1936) (finding new homestead purchased with proceeds of the old exempt "to the extent in value of the old").

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[5] AgVantage posits that following the sale of the Chicksaw County property, the Booths remained on the Chicksaw County land under a "lease" and thus maintained their homestead in the leased property. It argues the Booths could not also have a homestead interest in the Franklin County property. Under the analysis of *Elliott*, because it was the Booths' intention that the Franklin County property be their homestead, the homestead right existed in the Franklin County property upon its purchase. *See Elliott*, 219 Iowa at 657, 259 N.W. at 464. We find no legal significance to their remaining on the Chicksaw County property awaiting the completion of their home.

> The purpose of homestead laws is
>
> > to promote the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen, and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune.
>
> 40 Am. Jur. 2d *Homestead* § 4, at 253 (1999). "[T]o secure the benevolent purposes of the homestead laws," we construe these laws broadly and liberally "in favor of the beneficiaries of the legislation." *Millsap v. Faulkes*, 236 Iowa 848, 852, 20 N.W.2d 40, 42 (1945).

In re Estate of Tolson, 690 N.W.2d 680, 682 (Iowa 2005).[6]

Iowa case law establishes that, "when a debtor acquires a new homestead after the debt was incurred but did so with the proceeds of a prior, exempt homestead, the new homestead is exempt from execution to the same extent as the old homestead." *In re Takes*, 334 B.R. 642, 652 (Bankr. N.D. Iowa 2005) (citing numerous Iowa cases).

The Booths purchased the Franklin County property in February 2010 intending it to be their homestead. Upon the sale of the Chickasaw County property, the proceeds from that sale were used to pay for the Franklin County property and in July 2010, the Booths purchased a modular home to be placed on the Franklin County property. The home was not completed at the time this

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[6] In *Tolson*, the court was required to determine whether insurance proceeds from damage to the homestead were exempt from creditors' claims. *See Tolson*, 690 N.W.2d at 681. Relying on the benevolent purposes of the homestead laws, the court held:

> Thus, insurance proceeds, as a substitute for the homestead, acquire exempt status when paid by the insurance company, and the proceeds remain exempt for a reasonable period of time. The reasonable period of time gives the owner the opportunity to use the proceeds to repair the homestead or invest in another homestead. After the passage of a reasonable period of time, the proceeds lose their exempt status. This change occurs once all the facts and circumstances of the case show the owner does not intend to use the funds to repair the homestead or invest in another homestead. Under these circumstances, the purpose of the homestead laws will not be served, so the exemption is lost.

Id. at 683.

action was heard, but this fact does not negate the homestead character of the property. The district court did not err in ruling the Franklin County property was the Booths' homestead.

C. Did the district court err in determining the Franklin County property was exempt in its entirety?

AgVantage finally contends that the court erred in determining the Franklin County property was exempt in its entirety because (1) the property consisted of 41.65 acres and under Iowa law no more than 40 acres are exempt, *see* Iowa Code § 561.2; and (2) the Booths are limited to claiming 7.9 percent of the net proceeds from the sale of the Chickasaw County property (40 acres is 7.9% of the total 506 acres).

Relying on *Hawkeye Bank & Trust Co. v. Michel*, 373 N.W.2d 127, 130 (Iowa 1985),[7] the Booths respond that having established they are entitled to the homestead exemption, the burden shifts to AgVantage to show what portion of the new homestead was not subject to the exemption. We agree. *See Hall*

[7] In *Michel*, 373 N.W.2d at 130, the court states:

> There is a threshold question on the burden of proof. Citing our early cases . . . , the bank urges it is the defendant's burden to prove that the exception under section 561.21(2) does not apply. We have no quarrel with the premise of these cases which is that a person claiming a homestead exemption must prove the fats which establish the claim. This rule is consistent with a more general one. The burden of proof is usually placed "upon the party who would suffer loss if the issue were not established." Iowa R. App. P. [6.904(3)(*e*)].
>
> In this case the defendants' initial burden to establish the fact of the homestead is already carried because the facts about it are not in dispute. With the homestead an established fact the defendants are in a position to claim any benefit given by section 561.21(2) unless the bank (which would otherwise "suffer loss" upon the issue) can prove that defendants' homestead rights were expressly waived. *Cf. Hall Roberts' Son, Inc. v. Plaht*, 253 Iowa 862, 867, 114 N.W.2d 548, 551 (1962) ("although the burden is upon defendants to show the homestead character of the property conveyed, the creditor has the burden to prove the property exceeded in value the permissible homestead exemption").

Roberts' Son, Inc. v. Plaht, 253 Iowa 862, 867, 114 N.W.2d 548, 551 (Iowa 1962); *cf. Michel*, 373 N.W.2d at 130 (noting that the debtors have initial burden to establish the fact of the homestead and then the burden "shifts to the creditor (which would otherwise 'suffer loss' upon the issue)"). The Booths proved they are entitled to a homestead exemption for the property upon which AgVantage seeks to execute its judgment.[8] AgVantage has failed to establish what portion of the new homestead is not subject to the exemption.

Under section 561.20, a new homestead is exempt "to the extent in value of the old." Michael Booth testified—for their undivided one-half interest—they received net proceeds of $681,321.31 upon the sale of the Chicksaw County property. *See Millsap*, 236 Iowa at 852, 20 N.W.2d at 42 (holding net—not gross—proceeds are exempt). Even if we accept AgVantage's claim that the Booths' new homestead exemption is limited to the value of forty acres of the Chicksaw County property (which was over 500 acres) and a house, Michael Booth testified the Chickasaw County property sold for $5650 per acre (40 x $5650 = $226,000). The Booths own only a one-half interest in the 41.65 acres in Franklin County; the property is the subject of two claimed homestead exemptions, one for the Booths and one for Patty Booth. Michael Booth testified the Franklin County property was purchased for $187,000 or "around $4800 an acre" (which would be $199,920, one-half interest of which would be $99,960).

[8] Though not relied upon by the district court, we note too that the Booths asserted that the Franklin County property was also Patsy Booth's homestead, which would preclude a judgment lien attaching to the property. *See Baratta*, 588 N.W.2d at 112 (holding non-judgment debtor's interest in property prevents the judgment lien from attaching).

AgVantage has not met its burden to establish the Booths' interest in the new homestead exceeded in value the permissible homestead exemption.

IV. CONCLUSION.

The district court did not err in concluding the Franklin County property was exempt from judicial sale. We affirm.

AFFIRMED.