

**IN THE COURT OF APPEALS OF IOWA**

No. 1-969 / 11-0977  
Filed February 1, 2012

**JOHN DEERE COMMUNITY CREDIT  
UNION, n/k/a VERIDIAN CREDIT UNION,**  
Plaintiff-Appellee,

**vs.**

**TIM MILLER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Buchanan County, Stephen C. Clarke, Judge.

The defendant appeals from the district court's denial of his motion to quash a garnishment. **AFFIRMED.**

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

Brooke Trent of Nelson Law Firm, P.L.L.C., Waterloo, for appellee.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

**MULLINS, J.**

This case is a garnishment action, in which John Deere Community Credit Union, now known as Veridian Credit Union (Veridian) sought to garnish Timothy Miller's property held by Community National Bank. Because we find Iowa Code section 561.19 (2009) did not exempt the funds held by Community National Bank from garnishment, we affirm the district court's denial of Miller's motion to quash the garnishment.

**I. Background Facts & Proceedings.**

Miller's mother, Ruby Miller, died in 1998. Among other provisions of her will, Miller's mother bequeathed her home in Oelwein to Miller. The remainder of her estate was divided between Miller and his three half-brothers. In 2000, "[Miller] sold the Oelwein home for \$58,000[.]" and the proceeds were held in escrow. *In re Estate of Miller*, No. 09-1289 (Iowa Ct. App. October 20, 2010). In 2001, the district court ordered the escrow funds be used to reimburse the estate for Miller's debts to the estate—back rent, expenses, and \$15,000 Miller had wrongfully taken from his mother prior to her death, for a total of \$41,349.97. *Id.* Miller agreed to use the funds in this manner. *Id.* Later in the probate proceedings, Miller argued the 2001 order violated Iowa Code section 561.19 (providing that when a homestead descends to the issue, the homestead is generally exempt from the issue's antecedent debts). *Id.* The district court concluded there was no violation of section 561.19. *Id.* On appeal this court held that the 2001 order was the law of the case and Miller had acquiesced to the use of the proceeds to repay the estate. *Id.*

In 2010, Veridian commenced the present garnishment action to collect its judgment against Miller in the amount of \$22,830.41. See Iowa Code ch. 642 (Garnishment). Veridian served notice of garnishment and interrogatories on the executor of Miller's mother's estate, Community National Bank. Community National Bank responded that it had possession of Miller's twenty-five percent interest in the Estate of Ruby Miller. Miller filed a motion to quash the garnishment, arguing the funds held by Community National Bank were exempt from garnishment under Iowa Code section 561.19. Veridian resisted, arguing that section 561.19 was not applicable and that because the claim had been previously raised in the estate proceedings, Miller could not raise it again pursuant to the doctrine of res judicata. On April 12, 2011, the district court denied Miller's motion, finding it was without merit and section 561.19 could give no relief to Miller.

On April 28, 2011, Miller filed a motion requesting the district court amend and enlarge its findings, again asking the court to hold that section 561.19 was applicable. Veridian resisted, asserting the same arguments previously raised, as well as arguing Miller's motion to enlarge was untimely. On May 25, 2011, the district court ruled on the merits of Miller's motion and reaffirmed its previous ruling. The district court further found Miller's motion for enlargement was untimely. Miller appeals. Our review is for errors at law. Iowa R. App. P. 6.904.

## **II. Timeliness of the Motion to Enlarge.**

Miller first argues his motion to enlarge was timely. A motion to amend or enlarge must be filed within fifteen days after the district court decision was filed.

See Iowa Rs. Civ. P. 1.904(2) (providing a motion to amend or enlarge must be filed within the time allowed for a motion for a new trial); 1.1007 (requiring a motion for a new trial to be filed within fifteen days after the decision was filed). However, under Iowa Rule of Civil Procedure 1.442(4), whenever court rules require a filing within a certain time, “the time requirement shall be tolled when service is made, provided the actual filing is done within a reasonable time thereafter.” See *Estate of Morgan v. N. Star Steel Co.*, 484 N.W.2d 199, 200 (Iowa 1992) (applying the tolling provision of rule 1.442(4) to a motion to enlarge); see also Iowa R. Civ. P. 1.442(5) (defining “filing with the court” as “filing [pleadings or other papers] with the clerk of court”). In the present case, fifteen days after the district court order was filed (April 27, 2011), Miller served Veridian with the motion to enlarge by mail. The next day, Miller filed the motion to enlarge with the district court clerk and it was file stamped on April 28, 2011. Consequently, the motion to enlarge was timely and the district court should not have found otherwise. See *id.* (holding a motion to enlarge was timely where it was served on the opposing party within the time limit and filed the following day). Regardless, the district court considered the merits of Miller’s motion to enlarge and therefore, we do not need to reverse on this ground.

### **III. Iowa Code section 561.19.**

Miller next argues the proceeds from the sale of his mother’s home were not subject to garnishment under Iowa Code section 561.19. Veridian responds that section 561.19 is not applicable for numerous reasons, including that it is not seeking to garnish a homestead, but the proceeds of the sale of a homestead;

there is no evidence a homestead descended to Miller; and the debt at issue in the garnishment proceedings is not an antecedent debt. Veridian further argues the doctrine of res judicata bars Miller's argument.

Iowa Code section 561.19 states: "Where the homestead descends to the issue of either spouse the homestead shall be held exempt from any antecedent debts of the issue's parents or antecedent debts of the issue . . . ." Iowa Code § 561.19. In construing homestead statutes, we consider the purpose behind homestead laws, which 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.

*In re Estate of Tolson*, 690 N.W.2d 680, 682 (Iowa 2005) (quoting 40 Am.Jur.2d Homestead § 4, at 253 (1999)). Thus, in cases where a homestead has been converted in whole or part to funds, we consider the purpose behind the homestead statutes in determining whether the funds have maintained their homestead status. *Id.* at 683. For instance, if a homestead had been converted to insurance proceeds, those proceeds substitute for the homestead and "remain exempt for a reasonable period of time" in order for the owner to use the proceeds to repair the homestead or invest in another homestead. *Id.* However, once a reasonable period of time passes and "the facts and circumstances of the case show the owner does not intend to use the funds to repair the homestead or invest in a new homestead," then the funds lose their exempt status as not serving the purpose of the homestead laws. *Id.*

Miller sold the home in 2000 and the proceeds of the sale were placed in escrow. *In re Estate of Miller*, No. 09-1289 (Iowa Ct. App. October 20, 2010). Miller agreed to use the funds to reimburse the estate for his debts. *In re Estate of Miller*, No. 09-1289 (Iowa Ct. App. October 20, 2010). Miller's agreement to use the funds for repayment of other debts demonstrated he did not intend to use the funds to invest in another homestead. "Under these circumstances, the purpose of the homestead laws will not be served, so the exemption is lost." *Tolson*, 690 N.W.2d at 683. The funds did not keep their homestead character and section 561.19 is not applicable. Thus, it is unnecessary to reach the balance of Veridian's arguments. We hold the district court properly denied Miller's motion and affirm.

**AFFIRMED.**

Tabor, J., concurs; Danilson, P.J., concurs specially.

**DANILSON, P.J.** (concurring specially)

I specially concur as I believe Miller's argument fails because section 561.19 only exempts homestead proceeds from antecedent debts. Iowa Code § 561.19. Here, Veridian's judgment, as well as the underlying debt, were not preexisting debts. Both the judgment and the underlying debt arose after the death of Miller's mother and, as a result, do not constitute an antecedent debt. Under these facts, even if the proceeds maintained their homestead status, our homestead statute clearly does not exempt the proceeds from payment of the Veridian judgment.