

IN THE COURT OF APPEALS OF IOWA

No. 3-364 / 12-1212

Filed June 26, 2013

**IN THE MATTER OF THE ESTATE
OF CORY JAY TIMM, Deceased**

SUSAN TIMM,
Intervenor-Appellant.

Appeal from the Iowa District Court for Boone County, Steven J. Oeth,
Judge.

The decedent's mother challenges the probate court's ruling on the
estate's homestead exemption. **AFFIRMED.**

Michael G. Byrne of Winston & Byrne, P.C., Mason City, for appellant.

Thomas J. Houser and Jana M. Luttenegger of Davis, Brown, Koehn,
Shors & Roberts, P.C., West Des Moines, for estate.

Krystle L. Campa, Des Moines, for appellees.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

This appeal turns on the question whether Cory Timm's property in Boone County qualified under Iowa Code section 561.1 (2011) as his homestead, exempt from claims of creditors and the costs of administering his estate. This homestead dispute pits Cory's mother, Susan Timm, against Linnzi Keller, the mother of Cory's sole heir and the co-administrator of Cory's intestate estate. The probate court sided with the estate, applying the homestead exemption. Susan pursues this challenge in her effort to be reimbursed for her son's burial and other expenses.

Because the evidence established Cory's occupancy of the house while he fixed it up for his mother, and the record does not show he abandoned his homestead interest while he traveled for his work, we affirm the probate court.

I. Facts and Prior Proceedings

Cory Timm worked as an itinerant hail repair specialist, crisscrossing the country in a Springdale travel trailer to locations hit by heavy weather. His mother Susan described him as a "vagabond" who "went from here to there and that was the way he lived, and the way he made his living." In the winter months, Cory sometimes stayed with his mother in Mesa, Arizona,¹ and sometimes lived in his trailer in Texas or other clement locations.

In April 2005, Cory bought 9.46 acres in Boone County for a price of \$105,000. The real estate, located at 1322 Moingona Road, was titled in Cory's

¹According to Susan's affidavit, Cory purchased property at the foot of a mountain in Arizona in 2000, intending to build a log cabin for her to live in, but he sold the property when he received "a good offer."

name. That spring, according to Susan's testimony, Cory lived in the house for a few months before traveling to her place in Arizona. Although the house was "livable," Cory "gutted the bathroom to make a spa" which was never completed. Susan recalled Cory encouraging her to move to Boone, saying: "Let's go, we're going back to – your house is there. I am never there."

For taxing purposes Cory's property consisted of four parcels. Cory sought and received a homestead tax credit on one of the parcels. But when asked who resided at the Boone property in 2006, Susan responded "Cory very rarely was there." She testified she came back there in the summers and occupied the house with her grandchildren.

In early 2008, Cory was physically present at the Boone property as he prepared the house for his mother to move in. In May 2008, Susan sold her mobile home in Arizona and relocated to the Boone residence. Susan said Cory helped her "get settled" after the move. Cory retained ownership of the Boone property and Susan did not pay him rent. But while she lived in the three-bedroom house, Susan paid all the utilities, taxes, and upkeep from a bank account she held jointly with Cory. According to Susan's affidavit Cory "stored extra stuff" in the house and purchased a bed for the guest bedroom. Cory also arranged for a neighbor in Boone to cut the grass at the house.

Cory died from a ruptured aneurysm in February 2009 at the age of thirty-six. His death occurred while he was staying at a trailer park in Albuquerque, but the New Mexico Certificate of Death listed his residence as Boone County, Iowa. Cory's family arranged for his body to be returned to Iowa, where Susan

arranged a funeral costing \$13,703.61. Susan moved out of the Boone residence after Cory's death.

At the time of his death Susan was not aware Cory had a son with Linnzi Keller, who lived in Omaha, Nebraska. The son, Jayden, was twelve years old at the time of Cory's death. Cory had stipulated to his paternity when Jayden was just one year old.

On June 9, 2009, Linnzi Keller filed a petition asking that she and Lonnie Keller be appointed as co-administrators of Cory's intestate estate. The court granted the request and issued letters appointing the Kellers as co-administrators of the estate.

On October 30, 2009, Susan filed a claim against the estate for \$8916.20 in expenses relating to insurance, telephone, lawn mower repair, lawn service, truck maintenance, attorney fees, and advanced cash payments for Cory's funeral. Iles Funeral Home also filed a claim in probate for \$9703.61.

The estate filed a report and inventory on January 27, 2010, listing the gross value of the estate as \$104,927.03—that included the Boone County real estate valued at \$70,694, personal property worth \$32,300, and cash in the amount of \$1933.03.

On May 9, 2011, the co-administrators filed a petition for a declaratory ruling regarding Cory's homestead exemption and creditors' rights in relation to the estate. According to the petition Linnzi and Jayden had moved into Cory's house on Moingona Road. The petition alleged the estate faced claims from creditors in the following amounts: \$9703.61 owed to the funeral home, \$8916.20

owed to Cory's mother, \$77,000 estimated in federal income taxes, and an unknown amount in state income taxes. The petition also alleged the \$13,703.61 that Cory's mother spent for his funeral was unreasonable, and she should be personally liable for those expenses. The petition claimed Susan did not permit Jayden to attend his father's funeral or any related gatherings. The petition contended: "It would be inequitable to require the Decedent's sole heir at law to pay for a funeral that was excessively expensive and for which he was not permitted to attend." Finally, the petition urged the probate court to find the Boone property was Cory's homestead and exempt from claims in Jayden's possession under section 561.19.

On June 7, 2011, Susan filed an answer, asking the court to direct the estate to reimburse her for expenses paid on Cory's behalf and to pay for the cost of Cory's funeral. The answer referred to Cory's property as "the homestead"—but Susan claimed she was her son's legal heir because Cory did not acknowledge Jayden's status during his lifetime. Susan also alleged that at the time of the funeral she had no knowledge of Jayden's existence.

On September 6, 2011, the probate court issued a ruling finding that \$13,703.61—the amount Susan spent on her son's funeral—though higher than the cost of an average funeral in Iowa, was reasonable in this case. The court also declared Jayden to be permitted to inherit from Cory as his biological child.

The probate court held a hearing on the homestead exemption issue on May 14, 2012. Susan provided the only live testimony. The estate presented its case through exhibits, including the warranty deed, property tax and insurance

statements, vehicle registration and titles, and Cory's death certificate. The court issued its ruling on May 30, 2012, concluding:

Under Iowa Code Section 561.16, the property is exempt because it is Cory's homestead. Under Iowa Code Section 561.19, the property is exempt in the hands of Cory's issue. Because the property is exempt, it is not available for the payment of the cost of administration, including burial expense.

Susan asked for expanded findings of fact and an amended decree under Iowa Rule of Civil Procedure 1.904(2). The court issued an amended decree on June 8, 2012. Susan filed a timely notice of appeal on July 9, 2012.

II. Standard of Review, Burdens of Proof, and Liberal Construction in Favor of Exemption

The parties agree our review is de novo because this probate matter was tried in equity. See Iowa Code § 633.33; Iowa R. App. P. 6.907. We give weight to the probate court's fact findings, but are not bound by them. *In re Estate of Liike*, 776 N.W.2d 662, 663 (Iowa Ct. App. 2009).

Because the estate is the party claiming the exemption, it bears the burden to establish the property fit the definition of a homestead at section 561.1. See *Beal Bank v. Siems*, 670 N.W.2d 119, 124 (Iowa 2003). But "a homestead, when acquired, will be presumed to continue until the contrary appears; the burden in this respect being on the general creditor." *Schaffer v. Campbell*, 199 N.W. 334, 337 (Iowa 1924).

Like the probate court, we are mindful our homestead laws are to be "liberally construed in favor of the exemption in order to accomplish their economic, sociological, and humanitarian purposes." *In re Estate of McClain*,

262 N.W. 666, 669 (Iowa 1935). The purpose of statutes protecting the homestead 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)).

The homestead right in Iowa is peculiarly favored. *Gustafson v. Fogleman*, 551 N.W.2d 312, 314–15 (Iowa 1996). “Regard should be had to the spirit of the law rather than its strict letter.” *In re Matter of Bly*, 456 N.W.2d 195, 199 (Iowa 1990) (citations omitted). The loss of a homestead exemption through the theory of abandonment is not favored in our law. *Schaffer*, 199 N.W. at 338.

III. Merits Analysis

The probate court decided Cory’s land and dwelling—where his son and Linnzi now live—qualified as his homestead. Homestead property is not chargeable with the payments of debts against a decedent’s estate. Iowa Code § 633.350. Because she is a creditor of her son’s estate, Susan challenges that decision, arguing the probate court improperly substituted a theory of “constructive occupancy” for the statutory mandate that Cory, as owner, occupy the homestead.

The legislature has defined homestead as “the house used as a home by the owner.” *Id.* § 561.1.² An early Iowa case discussed this statutory language:

² For purposes of homestead tax credits under chapter 425, homestead is defined as “the dwelling house which the owner, in good faith, is occupying as a home on July 1 of the year for which the credit is claimed and occupies as a home for at least six months

“To be the homestead, it must be ‘used,’ and used for the purpose designed by the law, to wit: as a *home*—a place to abide in—a place for the family. When it is thus used and occupied, it becomes the homestead, and not before.” *Charless v. Lamberson*, 1 Clarke 435 (Iowa 1855). Subsequent case law has confirmed that a mere intent to occupy the property does not satisfy the statute; the owner must actually use the property “to impress the property with the character of a homestead.” *Beal Bank*, 670 N.W.2d at 123–24; see also *Berner v. Dellinger*, 222 N.W. 370, 371 (Iowa 1928) (“Occupancy of the dwelling house, except when the owner is temporarily absent with a fixed purpose to return, is essential to claim the right.”); *Hostetler v. Edy*, 104 N.W. 485, 487 (Iowa 1905) (rejecting argument that a homestead right rests wholly in intention, finding instead it “comes into existence by mere operation of law contemporaneous with occupancy”).

Our task is to use these long-standing homestead principles to resolve the somewhat unusual dispute before us. Chief Justice Frederick Faville could have been contemplating this case when eighty years ago he wrote: “The general rules of law applicable to homestead exemption rights are well established. The difficulty lies in their application to the facts of any given case.” *Citizens’ Bank of Milo v. Frank*, 235 N.W. 30, 33 (Iowa 1931). In this case, Cory’s itinerant lifestyle complicates the question of occupancy.

The estate offered documentary evidence at the May 14, 2012 hearing showing Cory was licensed to drive in Iowa, registered and titled his vehicles in

during the calendar year in which the fiscal year begins, except as otherwise provided.” Iowa Code § 425.11(1)(d)(1).

Iowa, and maintained homeowner's insurance for his house in Boone. Cory also obtained a homestead tax credit in Iowa. In addition, both his death certificate and his obituary listed Boone as his residence. Susan suggested these documents may have been evidence that Iowa was Cory's domicile, but did not prove he occupied the Boone residence as required to establish a homestead under section 561.1.

Domicile and homestead are related, yet independent concepts. A domicile is "the place with which a person has a settled connection for certain legal purposes, either because his home is there or because that place is assigned to him by the law." *In re Guardianship of Lehr*, 87 N.W.2d 909, 912 (Iowa 1958). All citizens have "one and only one domicile." *Swanson v. Iowa Dept. of Revenue*, 414 N.W.2d 670, 671 (Iowa Ct. App. 1987). Enjoying the benefits of the homestead credit is one indicia supporting the presumption that a taxpayer's domicile in Iowa. *Id.* But not all people domiciled in Iowa can claim a homestead exemption. In fact, "it is not essential that one have a homestead at all." *Barhydt v. Cross*, 136 N.W. 525, 528 (Iowa 1912). In contrast to domicile, proof of homestead requires a showing of ownership and occupancy. *See Beal Bank*, 670 N.W.2d at 124.

We believe the estate satisfied its burden to show Cory owned and occupied the Boone home, even if he established it primarily as a residence for his mother. Susan's own testimony supported the finding Cory used the house as a home for himself and his family. He stayed there for several months when he first bought the real estate in 2005, and again in 2008 when he was preparing

the house and helping his mother get settled in. Although the record does not show Cory was physically present and living in the house for six months of the year—as required for homestead tax credits under section 425.11(1)(d)—the administrative rule governing tax credits allows actual occupancy or constructive occupancy. The probate court borrowed from that rule to conclude the dominion and control Cory exercised over the house qualified as “constructive occupancy for purposes of the homestead statute.”

Regardless of whether constructive occupancy is sufficient under section 561.1, in our de novo review we find Cory’s actual occupancy of the house in Boone met the test. Cory used the house as his dwelling after he purchased it; accordingly, the burden shifted to Susan to show Cory abandoned the homestead in the four years before his death. See *Schaffer*, 199 N.W. at 337; see also *Maguire v. Hanson*, 74 N.W. 776, 777 (Iowa 1898) (explaining “burden of showing that [homestead right] is at an end is upon the party who assails it”).

Cory earned his living traveling in the wake of hail storms. “If a person cannot obtain a living and occupy his homestead, for the time being, at least, he must of necessity temporarily abandon it, and such abandonment should not be regarded as permanent.” *Boot v. Brewster*, 36 N.W. 649, 650 (Iowa 1888); accord *Boyer v. Dague*, 134 N.W. 542, 542 (Iowa 1912) (finding no abandonment of homestead despite family’s four-year absence from Iowa property while father worked for better wages at railroad company in Kansas). Other jurisdictions also have upheld homestead rights even when the homeowners traveled extensively for their work. See, e.g., *In re Brent*, 68 B.R. 893, 895 (Bkrtcy D. Vt. 1987)

(recognizing homestead even when debtor was absent from property “because of his itinerant employment as a nurse [and] his practice to live and work at some distance from his home place”); *Dearing v. Thomas*, 25 Ga. 223, 225 (1858) (“The profession of the defendant, an itinerant Methodist clergyman, shows that he could have no permanent home. His calling was abroad, and his high duties necessarily carried him from his family; but that is no reason why he and they should be placed out of the protection of this humane law.”).

The record does not reveal Cory’s intent to abandon the property. Allowing his mother to live in his house was not necessarily inconsistent with his intent to return. See *Wapello Cnty. v. Brady*, 92 N.W. 717, 718 (Iowa 1902). Moreover, the fact that Cory left behind personal belongings at the house and retained interest in what Susan called the guest room, by purchasing a bed to furnish it, bears “considerable significance.” See *id.* Cory also demonstrated a continued interest in the upkeep of the property by contributing to the bank account from which Susan paid the bills and by bartering with the neighbors to mow the grass. Considering all these circumstances, we determine Cory intended to return to the Boone residence as his home, and therefore, it did not lose its status as his homestead.

Iowa law jealously guards homestead rights. *Merchants Mut. Bonding Co. v. Underberg*, 291 N.W.2d 19, 21 (Iowa 1980). The probate court’s decision to declare the Boone property as Cory’s homestead serves the highly valued public policy of preserving a home where Cory’s son may be sheltered and live “beyond

the reach of economic misfortune.” See *id.* Viewing Cory’s occupancy of the house in the liberal light demanded by our case law, we affirm.

AFFIRMED.