

IN THE COURT OF APPEALS OF IOWA

No. 9-913 / 09-0164
Filed January 22, 2010

**ESTATE OF TOMMY RAY LYON, by
And through RONDA LYON, Personal
Representative and RONDA LYON,
Individually,**
Plaintiffs-Appellants,

vs.

RODNEY HEEMSTRA,
Defendant-Appellee,

and

WELLS FARGO BANK, N.A.,
Intervenor-Appellee.

Appeal from the Iowa District Court for Warren County, Sherman W.
Phipps, Judge.

Plaintiffs appeal from the district court's determination that Wells Fargo
Bank's lien had priority. **AFFIRMED.**

Ron Danks and Phil Myers of Myers, Myers, Danks & Smith, Pleasantville,
and Donald Beattie of Beattie Law Firm, Des Moines, for appellants.

Thomas W. Lipps of Peterson & Lipps, Algona, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

DANILSON, J.

Plaintiffs, the Estate of Tommy Lyon and Ronda Lyon (collectively the Estate), appeal from the district court's determination that Wells Fargo Bank's judgment lien had priority over their writs of attachment.

I. Background Facts and Proceedings.

The following facts are taken from a recent ruling by this court in *Estate of Lyon v. Heemstra*, No. 08-934 (Iowa Ct. App. June 17, 2009), a collateral matter involving these same parties:

On January 13, 2003, Rodney Heemstra shot and killed Tommy Lyon. Subsequently, Heemstra was charged with first-degree murder in violation of Iowa Code sections 707.1 and 707.2 (2003), which a jury convicted him of in October 2003.

Lyon's widow, Ronda Lyon, and the Estate of Lyon (collectively the Estate) filed a wrongful death suit. On December 29, 2003, the district court entered partial summary judgment in favor of the Estate on the issue of liability as a result of Heemstra's first-degree murder conviction. A trial was held on damages. On February 3, 2006, the Estate secured a judgment against Heemstra for \$8,913,431.44.

Heemstra appealed his first-degree murder conviction. On August 25, 2006, our supreme court reversed Heemstra's first-degree murder conviction and remanded for a new trial. *State v. Heemstra*, 721 N.W.2d 549, 558 (Iowa 2006). . . .

On April 30, 2007, following a second trial, a jury convicted Heemstra of voluntary manslaughter in violation of Iowa Code section 707.4. On May 11, 2007, the district court sentenced Heemstra to ten years in prison and ordered Heemstra to pay a fine, surcharge, and court costs. . . .

. . . .
On October 18, 2007, the supreme court vacated the December 29, 2003 partial motion for summary judgment which had been based upon Heemstra's first-degree murder conviction and consequently, vacated the February 3, 2006 civil judgment entered against Heemstra. The wrongful death suit was remanded to the district court for a new trial.

This proceeding concerns the priority of purported liens upon Heemstra's real property. The Estate claims a lien by virtue of writs of attachment sought upon filing the wrongful death action. The writs on certain parcels of real estate owned by Rodney Heemstra in Warren County were granted on January 27, 2003, and on real estate in other counties on February 18, 2003.

Wells Fargo Bank filed a petition to intervene in this wrongful death action in August 2005 to quash the writs of attachment. Wells Fargo Bank claims a prior lien by summary judgment granted on January 27, 2004, in its suit against Heemstra for defaulting on loan payments secured by personal property.

The district court, on September 12, 2005, ruled Wells Fargo Bank's liens against Heemstra reduced to judgment on January 27, 2004,

arise out of obligations incurred by the Defendant, Rodney Neil Heemstra, and secured by the Intervenor prior to entry of Plaintiff's judgment granted herein on December 27, 2003. Therefore, the Plaintiff's lien(s) imposed by the issuance of the Writ and Amended Writ herein are hereby found to be junior and inferior to the Intervenor's judgment lien.

The Estate appeals.

II. Scope of Review.

We review this law action for errors of law. Iowa R. App. P. 6.907.

III. Discussion.

The Estate contends the writs of attachment became a lien upon the subject real properties at the time they were recorded in the respective counties in January and February 2003, prior to Wells Fargo Bank's judgment lien. The

appellee¹ argues the writs of attachment were improperly granted in the first instance.² We agree.

Iowa Code chapter 639³ provides for the “special action” of attachment. “Proceedings in attachment are ancillary or auxiliary to the main action and are statutory, being unknown to the common law.” *Edwards v. Tracy*, 203 Iowa 1083, 1084, 212 N.W. 317, 318 (1927).

An attachment is not the leading process. Its only office is to hold the property attached under it for the satisfaction of plaintiff’s demand. In a sense, it is an execution by anticipation. It is in derogation of the common law, but, under our statute, the proceedings are to be liberally construed. A court, however, cannot proceed by attachment unless the power rests upon express statutory sanction.

Id. (citations omitted).

Our statute allows for the “plaintiff in a civil action” to “cause the property of the defendant not exempt from execution to be attached” by following the statutory procedures set forth. Iowa Code § 639.1. This right is not limited to contract. *Id.* § 639.8 (“If the demand is not founded on contract, the original petition . . . must be presented to some judge . . . from which the issuance of a writ of attachment is sought, who shall make an allowance thereon of the amount in value of the property that may be attached.”). However, in Iowa, pre-judgment attachment has not been recognized in a tort action.

To allow an attachment under any circumstances, in actions for torts, is not allowed in many of the states; and never, unless

¹ Appellee is Rodney Heemstra. Wells Fargo Bank takes no part as it assigned its rights to its judgment lien to Neil Heemstra, Marilyn Heemstra, and the Heemstra Trust on December 8, 2005.

² In the alternative, appellee argues the writs of attachment did not become a lien until December 18, 2008, when the Estate obtained judgment against Rodney Heemstra in the underlying wrongful death action.

³ All references are to the 2003 Code of Iowa unless otherwise stated.

under some other restrictions than those provided in actions on contract; and hence, under our Code, in such actions, some of the officers named, must make an allowance of the amount of property to be attached, whereas, in actions on contract, the filing of the affidavit and bond procures the writ. And while we are not inclined to give so strict a construction to any part of the attachment law, as will limit or restrain its full and legitimate operation, we are not disposed to extend its provisions in actions for torts, beyond what may clearly seem to be its intention and purpose. And, therefore, we would not recognize the right to an attachment in such cases, unless such was evidently the intention of the legislature. And in consonance with this, is the first argument we would present in favor of the ruling of the court below. To allow an attachment in actions on contract, even for the causes set forth in this affidavit, is an innovation upon the law, as it had stood from the organization of even our territorial government. This fact alone, should lead us to limit its operation to that class of cases, unless the other is also fairly included in its provisions. Again, this amendatory act, we think, contemplates that the claim sued on shall be liquidated or ascertained, or one which is susceptible of being rendered certain, without the judgment of a court. It contemplates the right of the creditor to *demand* payment or security for his *debt*, and a refusal on the part of the debtor to either pay or secure the *debt* as requested. And while we would not lay too great stress on the word *debt*, as here used, yet we are not at liberty to entirely disregard it. We cannot suppose that the legislature used the word in any other sense, than that ordinarily and appropriately attached to it. And thus construed, we understand it to mean, to owe, or that which is contracted—from *debeo*, to owe—*debitum*, contracted—that which is due or owing from one person to another; that for which a person is held, or which he is bound to pay. Now, if one man assaults and beats another; if one shall slander his neighbor, or commit any other act, amounting to a tort or wrong; while he may be answerable in damages, yet we never speak of the amount to which the injured party may be entitled, as a *debt*; it is not set down by the business man ordinarily among his assets or liabilities, nor in any way do we regard it in the nature of a sum owing or due, as by contract.

Raver v. Webster, 3 Iowa 502, 511-12 (1856) (underlining added).

We may affirm the ruling on a proper ground urged but not relied upon by the district court. See *DeVoss v. State*, 648 N.W.2d 56, 62 (Iowa 2002). The

Estate did not have a right of attachment in this wrongful death action. We affirm.

AFFIRMED.