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ESTATE OF TOMMY RAY LYON, by and through RONDA LYON, Personal Representative, and RONDA LYON, Individually, Plaintiffs-Appellants, vs. RODNEY HEEMSTRA, Defendant-Appellee.

No. 9-105 / 08-0934

COURT OF APPEALS OF IOWA

2009 Iowa App. LEXIS 578

June 17, 2009, Filed

NOTICE:

NO DECISION HAS BEEN MADE ON PUBLICATION OF THIS OPINION. THE OPINION IS SUBJECT TO MODIFICATION OR CORRECTION BY THE COURT AND IS NOT FINAL UNTIL THE TIME FOR REHEARING OR FURTHER REVIEW HAS PASSED. AN UNPUBLISHED OPINION MAY BE CITED IN A BRIEF; HOWEVER, UNPUBLISHED OPINIONS SHALL NOT CONSTITUTE CONTROLLING LEGAL AUTHORITY.

SUBSEQUENT HISTORY: Reported at *Estate of Lyon v. Heemstra*, 772 N.W.2d 15, 2009 Iowa App. LEXIS 1202 (Iowa Ct. App., 2009)

PRIOR HISTORY: [*1]

Appeal from the Iowa District Court for Warren County, Michael Huppert, Judge. The plaintiffs appeal the district court's order regarding cash bail.
State v. Heemstra, 721 N.W.2d 549, 2006 Iowa Sup. LEXIS 107 (Iowa, 2006)

DISPOSITION: AFFIRMED.

COUNSEL: Ron D. Danks and Phillip H. Myers of Myers, Myers, Danks & Smith, Pleasantville, and Donald Beattie of Beattie Law Firm, P.C., Des Moines, for appellants.

Joel Baxter of Beverly Wild Law Office, P.C., Guthrie Center, Joel Yunek of Yunek Law Firm, P.L.C., Mason City, David Richter, Council Bluffs, and Joseph Hrvol of Joseph Hrvol, P.C., Council Bluffs, for appellee.

Stanley Thompson and Deborah M. Tharnish of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, and Jeffrey Bump of Bump & Bump, Panora, for intervenor-appellee, Guthrie County State Bank.

Stephen Hardy and Allison J. Doherty of Grefe & Sidney, P.L.C., Des Moines, for intervenor-appellee, Cool Acres, L.L.C.

Bruce Green of Willson & Pechacek, P.L.C., Council Bluffs, for intervenors, Diane and Kelly Clevenger.

Ernest Kersten of Law Offices of Schnurr, Fitzgerald & Kersten, Fort Dodge, for intervenors Marilyn and Neal Heemstra.

Thomas J. Miller, Attorney General and Martha Boesen, Assistant Attorney General, for intervenor, State of Iowa.

Bryan Tingle, Warren County Attorney, [*2] for intervenor, Warren County, Iowa.

JUDGES: Heard by Sackett, C.J., and Vogel and Miller, JJ.

OPINION BY: VOGEL

OPINION

VOGEL, J.

I. Background Facts and Proceedings

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 October 31, 2006, while awaiting retrial, Heemstra was released from jail after Joel Baxter, who was Heemstra's court-appointed attorney at the time, posted a \$ 1,000,000 cash bail. The checks he posted the [*3] bail with were drawn on the trust account of the Beverly Wild Law Firm, P.C. with funds secured from Guthrie County State Bank.

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. Additionally, Heemstra was ordered to pay restitution, which included restitution in the amount of \$ 150,000 to the Estate pursuant to *Iowa Code section 910.3B*. As for the cash bail, the district court ordered that it not be immediately released.¹

1 In the sentencing order, the district court ordered if the court in the civil matter determines the cash bail was posted by Heemstra, then all costs, restitution, fines, and surcharges shall be paid prior to disbursing any remaining amount. If the civil court determines the cash bail was posted by a party other than the defendant, then the civil court's order shall take precedent and the bond shall be released.

Prior to sentencing, the Estate had initiated proceedings to garnish the cash bail based upon the February 3, 2006 judgment. Motions [*4] to intervene and to quash the garnishment were filed by Guthrie County State Bank, Cool Acres, L.L.C., Diane and Kelly Clevenger, and Marilyn J. and Wendel Neil Heemstra, individually and as trustees of the Heemstra Revocable Trust (collectively intervenors).² On July 10, 2007, the district court granted the motions to intervene and denied the motions to quash the garnishment finding that Guthrie County State Bank had not proven ownership of the cash bail. On July 11, 2007, an order condemning funds for the cash bail was entered. On July 18, 2007, the district court entered an order directing the bail proceeds to be distributed in the following order of priority:

(1) court costs in the criminal and civil proceedings; (2) payment of the \$ 150,000 of restitution to the Estate as provided in the sentencing order; (3) the civil judgment.

2 Diane and Kelly Clevenger are Rodney Heemstra's sister and brother-in-law, who are also owners of Cool Acres. Marilyn and Wendel Heemstra are Rodney Heemstra's parents. The State also filed a motion to intervene, but later abandoned its application.

On October 18, 2007, the supreme court vacated the December 29, 2003 partial motion for summary judgment [*5] 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.

On December 6, 2007, the supreme court ruled on motions to set aside the district court's July 10, 11, and 18, 2007 orders. It noted that the garnishment orders were based on the wrongful-death judgment, which subsequently had been vacated by the court's October 18, 2007 order. Thus, the supreme court set aside the July 10, 11, and 18, 2007 orders. The matter was remanded to the district court to hold a hearing and enter appropriate orders with respect to: (1) the recovery of any condemned funds that were previously disbursed; and (2) the disposition of the remaining funds.

On April 28, 2008, following a hearing, the district court found that the cash bail was not owned by Heemstra. Rather, the various intervenors had entered into a loan agreement, which was secured by mortgages on various parcels of land, with Guthrie County State Bank. As a result of this transaction, Guthrie County State Bank advanced \$ 1,000,000, which was then deposited in the trust account [*6] of Wild Law Office. The \$ 1,000,000 cash bail was posted with checks drawn from the trust account of the Wild Law Office. Further, there was "no evidence to suggest that the defendant ever owned or held any interest in the funds posted for bail," except for the involvement of the Wild Law Firm that was currently representing the defendant and an erroneous indication in the clerk's records indicating that the defendant was the owner of the funds. Thus, the district court ordered that the funds be returned to the Wild Law Firm's trust account and cited *Iowa Code section 811.8(2)* (providing for the return of funds posted for bail "to the person who deposited the same"). The Estate appeals.³

3 The district court initially ordered that the funds remaining after court costs were paid were to be paid to the Estate. Subsequently, the judgment based upon the wrongful death suit was vacated and remanded for a new trial, which was pending at the time this appeal was filed. Thus, the only funds at issue on appeal are the \$ 150,000 in restitution ordered pursuant to *Iowa Code section 910.3B*.

II. Analysis

The Estate asserts that the district court erred in determining that the cash bail was not subject [*7] to garnishment for court-ordered restitution.⁴ Our review is for correction of errors at law. Iowa R. App. P. 6.4. The district court's findings of fact are binding if supported by substantial evidence. Iowa R. App. P. 6.14(6)(a).

4 The Estate also asserts that this court should not give the customary deference to the evidentiary evaluation of Judge Huppert as he was "thrust into very complex litigation" and "only provided two of the six volumes of materials in this case." However, Judge Huppert noted that he had reviewed the transcript from the June 15, 2007 hearing, which resulted in the July 10, 2007 order. As the issue on appeal is much narrower than Plaintiffs assert, and Judge Huppert was provided the essential record to make his findings of fact and conclusions of law, we find this argument is without merit. Furthermore, the Estate does not assert how this claim is preserved and we doubt that it is as the Estate failed to file a motion to amend or enlarge pursuant to *Iowa Rule of Civil Procedure 1.904*. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (stating we will not address an issue raised for the first time on appeal).

First, the Estate asserts that court costs and [*8] fines, including restitution ordered pursuant to *Iowa Code section 910.3B*, may be deducted from cash bail regardless of the source of the cash bail because one of the purposes of bail is

to ensure court costs and fines are satisfied. *See State v. Izzolena*, 609 N.W.2d 541, 549 (Iowa 2000) (stating that restitution ordered pursuant to 910.3B is a fine for constitutional purposes). However, the primary purpose of bail is to assure the defendant's appearance in court. *State v. Briggs*, 666 N.W.2d 573, 582 (Iowa 2003). Prior to 1978, the Iowa Code expressly provided that cash bail was subject to deduction for court costs and fines assessed against the defendant. Iowa Code § 765.4 (1975); *State v. Schultz*, 245 N.W.2d 316, 318 (Iowa 1976) (holding that cash bail deposited by a third party was subject to the statutory deduction for court costs and fines); *see* 8 C.J.S. *Bail* § 146, at 192 (2008) ("The authority of a court to apply cash bail to the payment of court costs or a fine imposed on the accused depends wholly on statute, since the court has no inherent power to do so."). Our supreme court further explained that based upon the statutory authority, court costs and fines could be deducted [*9] regardless of whether the cash bail was posted by the defendant or a third party. *Schultz*, 245 N.W.2d at 318; *see also State v. Friend*, 212 Iowa 136, 139, 236 N.W. 20, 22 (1931) (stating that cash bail is deemed to belong to the defendant so far as the rights of the State are affected and when the demands of the State have been met then the rights of third parties become material); *State v. Hart*, 209 Iowa 119, 122-23, 227 N.W. 650, 651-52 (1929) (holding that cash bail deposited by a third party shall be available to pay any fine or cost assessed against the defendant). However, cash bail deposited by a third party did not become property of the defendant and once court costs and fines were deducted, the remaining funds could not be subject to garnishment by the defendant's judgment creditors. *See Simmons v. Beeson*, 201 Iowa 144, 146, 206 N.W. 667, 668 (1926) ("It is well settled that money may be furnished by a third person and deposited in lieu of bail to secure the release of one held in custody, and that, as between the depositor and the defendant or his creditors, the ordinary rules of property obtain."); *Wright & Taylor v. Dougherty*, 138 Iowa 195, 198, 115 N.W. 908, 908-09 (1908) [*10] (holding that cash bail deposited by a third party was not subject to garnishment by a creditor of the defendant).

Effective January 1, 1978, Iowa Code chapter 765 was repealed and replaced with *Iowa Code chapter 811*, which does not authorize the deduction of court costs and fines from cash bail. *See* 1979 Op. Iowa Att'y Gen. 121 ("[C]ourt costs and fines cannot be deducted from a cash bond posted by a defendant or third party, irrespective of whether the costs were incurred at trial or upon appeal."); *see also Iowa Code ch. 811 (2005)* (omitting a provision authorizing court costs and fines to be deducted from cash bail). As such, there is no statutory authority for court costs and fines to be deducted from cash bail deposited by a third party. Rather, *Iowa Code section 811.8(2)* explicitly provides that cash bail shall be returned to the person who posted it. Although the Estate cites to two other states in support of their argument, statutory authority in those states expressly provides for the deduction of court costs and fines from cash bail, as our state did prior to 1978. *See Fla. Stat. § 903.286 (2009)* (providing that fines, fees, costs, and restitution shall be deducted from cash [*11] bail prior to refunding the surplus to the person posting the cash deposit); *Idaho Code § 19-2908 (2009)* (same). Therefore, we conclude that court costs and fines may not be deducted from cash bail posted by a third party.

Next, the Estate asserts that even if *Iowa Code section 811.8(2)* requires cash bail to be returned to the owner, the evidence demonstrated that the cash bail belonged to Heemstra and was subject to garnishment. The Estate does not challenge the district court's finding that the intervenors entered into a loan agreement with Guthrie County State Bank, which then advanced the funds to the Beverly Wild Law Firm, for the express purpose of posting the cash bail. Rather, the Estate argues that prior to the first criminal trial, Heemstra attempted to divest himself of assets and his family members helped him to do so. It appears the Estate is essentially seeking restitution, based upon the allegation of Heemstra's fraudulent divestment of funds. However, we are not sitting in equity to give the Estate restitution for the past transactions between Heemstra and his family members. The narrow issue on this appeal is who deposited the cash bail. The record clearly supports [*12] the district court's finding that the funds were paid from the Beverly Wild Law Firm's trust account, as escrow agent for the Guthrie County State Bank. Therefore, we affirm.

AFFIRMED.