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11819 Miracle Hills Drive, LP, appellee, v. Maman Lawan Ali, appellant.

___ N.W.3d ___

Filed October 30, 2026. No. S-25-461.

1. **Summary Judgment: Appeal and Error.** An appellate court reviews the district court's grant of summary judgment de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor.
2. ____: ____. A grant of summary judgment will be affirmed if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.
3. **Judgments: Statutes: Appeal and Error.** When an appeal calls for statutory interpretation or presents questions of law, an appellate court must reach an independent, correct conclusion irrespective of the determination made by the court below.
4. **Homesteads.** To select a homestead under Neb. Rev. Stat. § 40-101 (Cum. Supp. 2024), an application under Neb. Rev. Stat. § 40-105 (Reissue 2016) that comports with Neb. Rev. Stat. §§ 40-106 and 40-107 (Reissue 2016) must be filed with the district court.

Appeal from the District Court for Douglas County: Katie L. Benson, Judge. Vacated and remanded for further proceedings.

Chinedu Igbokwe, of Banwo & Igbokwe Law Firm, L.L.C., for appellant.

Aimee K. Cizek, of McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O., for appellee.

Funke, C.J., Cassel, Stacy, Papik, Freudenberg, Bergevin, and Vaughn, JJ.

Bergevin, J.

INTRODUCTION

Maman Lawan Ali appeals from the district court's decree foreclosing his interest in his marital residence, which he owns with his wife as a joint tenant with right of survivorship. The decree ordered "the Sheriff or a special master of Plaintiff's choice" to sell the real property to satisfy a judgment lien that 11819 Miracle Hills Drive, LP (Miracle Hills), obtained against Ali individually. The primary issue before us is the applicability and operation of the homestead statutes[1] to the facts of this case. We conclude that the homestead exemption did not prevent the court from entering the decree. However, we find plain error in the decree and, accordingly, vacate the decree and remand the cause for further proceedings.

BACKGROUND

In a prior action, Miracle Hills obtained a money judgment against Ali related to a commercial lease agreement. Miracle Hills filed the instant action by way of a "Complaint for Foreclosure of Judgment Lien (Equity)," seeking to foreclose its judgment lien against Ali's undivided one-half interest in real property owned by him and his wife as joint tenants with rights of survivorship. It is undisputed that the property is the couple's primary residence and family home. In their answers to Miracle Hills' complaint, neither Ali nor his wife raised any defenses or counterclaims.

Miracle Hills moved for summary judgment. At the hearing on the motion, Ali and his wife appeared, both self-represented. Three exhibits were offered and received. The

[1] See, Neb. Rev. Stat. §§ 40-101 to 40-116 (Reissue 2016 & Cum. Supp. 2024); *State Bank v. Carson*, 4 Neb. 498, 502 (1876) ("no sale can be had of such portion as may be selected as a homestead by the judgment debtor, or his authorized agent, so long as the premises thus selected are owned and occupied for that purpose").

first exhibit was an affidavit from Miracle Hills' property manager and business records manager. The affidavit set forth that Miracle Hills obtained a judgment against Ali for his breach of a commercial lease agreement and attached a certified copy of the judgment. The second exhibit was a stipulation between Miracle Hills and the real property's mortgagee setting forth that the mortgagee's interest in the property was senior to Miracle Hills'. The third exhibit was a copy of the commercial lease agreement, which showed that Ali's wife was not a party to the lease.

Ali argued that the property "is my residential house with my family, [where] I live with my four children and my wife. And I don't see legally . . . how my house can be foreclosed." However, he was unable to cite to any law in support of his argument. His wife argued that the judgment was against Ali alone and that "the ownership of the house is protected by the Nebraska law." She maintained that the "house cannot be foreclosed because the interest is for both of us, and they don't have [a] judgment against myself." She contended that (1) a judgment lien cannot attach to a nondebtor property interest and (2) her ownership interest is protected by tenancy in the entirety, as such property cannot be subject to a judgment lien against only one spouse; thus, Miracle Hills could not divide her and Ali's interest by foreclosure.

In its decree, the district court found that there were no issues of fact and that Ali and his wife did not set forth any valid defenses in their answers. The court found that Miracle Hills had a judgment lien based on the prior judgment and that its lien was second in priority to the mortgagee's deed of trust.

The court ordered that unless the debt was paid in full within 20 days, "the Sheriff or a special master of [Miracle Hills'] choice, shall, . . . sell the Real Property and appurtenances [and] bring the proceeds of the sale into Court to be applied to the satisfaction of the sums so found due upon confirmation of said sale." The definition of "Real Property"

in the decree was the legal description and common address of the marital residence. Upon confirmation of the sale, Ali's interest would be foreclosed and "the Sheriff [or] special master shall make, execute, and deliver to the purchaser at said sale a good and sufficient deed of conveyance of [Ali's] undivided one-half interest [and] put the purchaser in possession thereof."

Ali filed a timely appeal.

ASSIGNMENTS OF ERROR

Ali assigns that the trial court erred in (1) granting summary judgment despite material issues of fact regarding the homestead status of the property, (2) ordering foreclosure of his undivided interest in the marital residence contrary to §§ 40-101 and 40-103, and (3) extending a judgment lien against one spouse to divest the nondebtor spouse of her coownership interest in the homestead.

STANDARD OF REVIEW

[1,2] An appellate court reviews the district court's grant of summary judgment de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor.[2] A grant of summary judgment will be affirmed if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.[3]

[3] When an appeal calls for statutory interpretation or presents questions of law, an appellate court must reach an independent, correct conclusion irrespective of the determination made by the court below.[4]

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[2] *Schuemann v. Timperley*, 321 Neb. 955, 38 N.W.3d 417 (2026).

[3] *Id.*

[4] *Park 'N Go v. Airport Authority*, 321 Neb. 798, 37 N.W.3d 459 (2026). See *Chambers v. Bringenberg*, 309 Neb. 888, 963 N.W.2d 37 (2021).

ANALYSIS

We begin by recognizing the unique action that Miracle Hills brought to enforce its judgment lien. Instead of seeking a writ of execution on Ali's property,[5] Miracle Hills brought what it called an equitable foreclosure action. We have, at least on two occasions, recognized such an action; however, the facts of those cases were extreme and readily distinguishable from the instant action.[6] Nevertheless, the district court heard the action and entered a decree, and Ali has not challenged the type of action brought. Accordingly, we do not consider whether an equitable foreclosure action is proper under these circumstances.

On appeal, all three of Ali's assignments of error concern the effect and applicability of the homestead exemption to this case. In sum, he argues that the homestead exemption prevented the district court from ordering the sale of his interest in the real property. Miracle Hills argues that, if the homestead exemption applies, it is not a defense to foreclosure but applies "at the execution stage."[7] As we discuss below, we disagree with both parties. To understand why, we first provide an overview of the homestead statutes[8] before turning to the resolution of this case.

Homestead Statutes

We have explained that the purpose of the Legislature in enacting the homestead statutes was to protect the debtor and the debtor's family residing in a home from the forced sale of the home on execution or attachment.[9] A homestead is generally "exempt from judgment liens and from execution or forced

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[5] See Neb. Rev. Stat. §§ 25-1502(1) and 25-1516 (Reissue 2016).

[6] See, *Ehlers v. Campbell*, 159 Neb. 328, 66 N.W.2d 585 (1954) (judgment debtor conveyed property); *Rich v. Cooper*, 136 Neb. 463, 286 N.W. 383 (1939) (deceased judgment debtor).

[7] Brief for appellee at 18.

[8] See §§ 40-101 to 40-116.

[9] *Chambers v. Bringenberg, supra* note 4.

sale."[10] However, a homestead is subject to certain judgment debts not exempted by the general rule, such as mechanics' liens and mortgages, among others not applicable here.[11] In any event, "the homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed . . . by both spouses."[12]

A homestead has certain characteristics. In its inception, a homestead is a parcel of land on which the family resides, and which is to them a home.[13] It is specific to "[e]ach natural person," requires the claimant to reside in "the dwelling house," and is "to be selected by the owner."[14] A homestead is constituted by the two acts of selection and residence.[15]

To select a homestead,

> [w]hen an execution for the enforcement of a judgment [to which the homestead exemption applies] is levied upon the lands or tenements of a claimant, the claimant may at any time prior to confirmation of sale apply to the district court . . . for an order to determine whether [the real property is] exempt as a homestead . . . .[16]

"The application must show (1) the fact that an execution has been levied upon property which is claimed as a homestead, (2) the name of the judgment creditor, (3) the facts which give rise to a homestead exemption, and (4) the value of the homestead."[17]

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[10] § 40-101.

[11] See § 40-103.

[12] § 40-104.

[13] *Anderson v. Schertz*, 94 Neb. 390, 143 N.W. 238 (1913); *Meisner v. Hill*, 92 Neb. 435, 138 N.W. 583 (1912); *Palmer v. Sawyer*, 74 Neb. 108, 103 N.W. 1088 (1905); *Galligher v. Smiley*, 28 Neb. 189, 44 N.W. 187 (1889).

[14] § 40-101.

[15] See, *Weatherington v. Smith*, 77 Neb. 369, 112 N.W. 566 (1907); *Palmer v. Sawyer, supra* note 13; *Galligher v. Smiley, supra* note 13.

[16] § 40-105.

[17] § 40-106.

"The application must be filed with the clerk of the district court . . . ."[18] In addition, the application and "notice of the time and place of hearing" must be served upon the "judgment creditor," the judgment creditor's "attorney of record," and the "officer making the levy."[19] They must be served "at least [10] days before the hearing," which "may be had before or at the hearing on confirmation of sale."[20]

At the hearing on the application, the court must "determine whether or not such land is subject to the homestead exemption."[21] The court must also determine: "(1) The extent and value of the homestead; and (2) if of greater value than the homestead exemption, whether or not the land claimed as a homestead can be divided without material injury."[22] The homestead statutes also provide procedures for various circumstances, such as when the homestead has already been sold[23] and when the homestead is divisible[24] or indivisible.[25]

Resolution

To the extent Miracle Hills contends that the homestead exemption could not apply in this circumstance, we disagree. None of the exceptions of § 40-103 apply to its judgment against Ali.[26] We can also dispel its contention that the homestead exemption could not be raised in this action prior to the "execution stage."[27] The text of § 40-105 is plain: Ali "may at

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[18] § 40-107.

[19] *Id*.

[20] *Id.*

[21] § 40-108.

[22] *Id.*

[23] See *id*.

[24] See § 40-110.

[25] See §§ 40-111 to 40-113.

[26] See § 40-103 (debts secured by mechanics', laborers', or vendors' liens or by mortgages or trust deeds).

[27] Brief for appellee at 18.

any time prior to confirmation of sale apply" for a homestead exemption.

It is undisputed that Ali did not file an application for a homestead exemption that comported with the requirements of §§ 40-105 and 40-106. But Ali asserts that the homestead exemption acts as a limit on judicial power, "a substantive legislative restriction on what relief a court . . . may order."[28] We disagree.

Ali's argument is premised on the contention that a homestead is a residence. As discussed above, a homestead is constituted by two acts, residence *and selection*.[29] A homestead does not exist until it is selected. Thus, the homestead exemption is not a limit on judicial power. Instead, as mentioned above, the purpose of the homestead statutes is to protect the debtor and the debtor's family residing in a home from the forced sale of the home on execution or attachment.[30]

[4] To select a homestead under § 40-101, an application under § 40-105 that comports with §§ 40-106 and 40-107 must be filed with the district court. Here, Ali did not file such an application. Accordingly, the homestead exemption did not apply to the proceeding before the court. However, for the reasons explained next, we find plain error in the decree.

Plain Error

Plain error may be found on appeal when an error unasserted or uncomplained of below, but plainly evident from the record, prejudicially affects a litigant's substantial right and, if uncorrected, would result in damage to the integrity, reputation, and fairness of the judicial process.[31]

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[28] Supplemental brief for appellant at 10.

[29] See, *Weatherington v. Smith, supra* note 15; *Palmer v. Sawyer, supra* note 13; *Galligher v. Smiley, supra* note 13.

[30] See *Chambers v. Bringenberg, supra* note 4.

[31] *State v. Ansell, ante* p. 28, 38 N.W.3d 788 (2026).

Two errors are plain from a review of the district court's decree. First, the decree defines the "Real Property" as Ali and his wife's marital residence. However, as Miracle Hills concedes, the judgment lien attached only to Ali's one-half interest in the marital residence. Yet, the decree calls for the sale of the "Real Property," and not merely Ali's one-half interest. Because the judgment lien attached only to Ali's one-half interest, the district court erred by ordering the sale of the entire marital residence.

Second, the district court did not identify the party responsible for selling Ali's one-half interest in the marital residence. The court's decree specifies that the sale be conducted by "the Sheriff or a special master of [Miracle Hills'] choice." This provision is insufficient. The court must identify the party responsible for the sale of the real property. The court cannot leave the choice to one party's discretion, as the parties to an action have opposing interests. The court plainly erred in not identifying the party ordered to sell Ali's one-half interest in the marital residence.

These plain errors require us to vacate the court's decree and remand the cause for further proceedings.

CONCLUSION

The homestead exemption does not apply in the absence of an application filed by Ali, in accordance with §§ 40-105 to 40-107. However, the district court plainly erred by ordering the sale of the entire marital residence, rather than Ali's one-half interest, and in not identifying the party ordered to sell that interest. Accordingly, we vacate the court's decree and remand the cause for further proceedings.

Vacated and remanded for
further proceedings.