IN THE COURT OF APPEALS OF IOWA

No. 3-806 / 12-2304
Filed December 18, 2013

GARY DEAN LONGNECKER and SUE ANN LONGNECKER,
Plaintiffs-Appellees,

vs.

DEUTSCHE BANK NATIONAL TRUST COMPANY, As Trustee for ABFC ASSET BACKED SECURITIES SERIES 2005-WF1,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge.

Deutsche Bank appeals the district court's order dismissing its counterclaims for lack of subject matter jurisdiction and granting summary judgment to the Longneckers on their petition to quiet title. **AFFIRMED.**

Jesse Linebaugh of Faegre, Baker, & Daniels L.L.P., Des Moines, and Kathryn E. Olivier of Faegre, Baker, & Daniels L.L.P., Indianapolis, Indiana, for appellant.

Michael P. Holzworth, Des Moines, for appellees.

Heard by Doyle, P.J., and Tabor and Bower, JJ.

TABOR, J.

After Deutsche Bank purchased property owned by Gary and Sue Ann Longnecker at a 2011 sheriff's sale, the Longneckers filed a petition to quiet title alleging the bank failed to execute on its March 2007 foreclosure judgment during the limitations period in Iowa Code section 615.1 (2007).[1] The bank responded by filing state law counterclaims based on the Longneckers' actions in federal bankruptcy court.

Ruling on an issue of first impression, the district court dismissed the bank's counterclaims, finding it lacked subject matter jurisdiction because the "Bankruptcy Code preempts state law claims based on actions within a bankruptcy proceeding." The district court quieted title in the Longneckers, holding: "While the Longneckers' actions of filing multiple bankruptcies and attempts to negotiate may have delayed the pending sheriff's sales, it was Deutsch Bank's" voluntary cancellation of the sheriff's sale set under the timely fourth "execution which ultimately foreclosed its ability to execute on its judgment."

We find no error in the district court's ruling that embraces the preemption analysis adopted by the clear majority of jurisdictions. Because Deutsch Bank

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[1] Iowa Code section 615.1A provides:

> A judgment in an action for the foreclosure of a real estate mortgage . . . upon property which at the time of judgment is . . . a one-family . . . dwelling which is the residence of the mortgagor . . . shall be null and void, all liens shall be extinguished, and no execution shall be issued for any purpose other than as a setoff or counterclaim after the expiration of a period of two years, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action, from the entry thereof.

failed to execute within the section 615.1 limitations period, we agree the 2011 sheriff's sale is void. Accordingly, we affirm.

I. Background Facts and Proceedings

In January 2005 the Longneckers obtained a $681,000 loan from Wells Fargo that was secured by a mortgage on their Johnston, Iowa home. After Wells Fargo sought to foreclose on the Longneckers' note and mortgage, the district court entered judgment for the bank on March 21, 2007. Wells Fargo's December 2007 execution[2] set a sheriff's sale for February 28, 2008. Gary filed a Chapter 7 bankruptcy petition on February 7 which automatically stayed the sale. Wells Fargo cancelled the sale and the sheriff filed the return of special execution unsatisfied. On May 14, 2008, the bankruptcy court granted Wells Fargo's request for relief from the automatic stay. This stay totaled eighty-eight days.

Two months later on July 23, Wells Fargo obtained a second special execution setting a December 30, 2008 sheriff's sale. Gary filed a Chapter 13 bankruptcy petition thirty minutes before the sale was scheduled to start, and the petition automatically stayed the sale. Wells Fargo assigned its foreclosure judgment to Deutsche Bank, Deutsche Bank cancelled the sheriff's sale, and the sheriff filed the return of special execution unsatisfied. On February 14, 2009, the bankruptcy court granted the bankruptcy trustee's motion to dismiss. The second bankruptcy stay totaled forty-six days.

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[2] Wells Fargo could not execute on its judgment until September 2007 because the Longneckers filed a "demand for delay of sale" prior to the entry of judgment. *See* Iowa Code § 654.21. However, the bank waited another two months before obtaining its first execution.

Approximately one month later on March 12, Deutsche Bank obtained a third special execution for a July 2, 2009 sheriff's sale. Gary filed a Chapter 13 bankruptcy petition less than one hour before the sale was scheduled to start, and the petition automatically stayed the sale. Deutsche Bank cancelled the sale and the sheriff filed the third return of special execution unsatisfied. On July 24 the bankruptcy court granted Gary's motion to dismiss. The third bankruptcy stay totaled twenty-two days.

Almost a month later Deutsche Bank's fourth special execution, dated August 17, 2009, set a sheriff's sale for January 7, 2010. We note the special statute of limitations in Iowa Code section 615.1 expired on August 23, 2009 (calculated by adding two years to the March 21, 2007 foreclosure judgment, "exclusive of" the 156 days "during which execution on the judgment was stayed pending a bankruptcy action").[3] Therefore, Deutsche Bank's fourth execution was obtained a few days before the limitations period expired. Neither Gary nor Sue Ann Longnecker filed a bankruptcy petition staying the fourth sale.[4] Deutsche Bank voluntarily cancelled[5] this sale and the sheriff filed the return of special execution unsatisfied.

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[3] The Longneckers' brief stated the specific number of days tolled by each bankruptcy proceeding and Deutsch Bank's brief was silent on these facts. In response to a question during oral arguments, Deutsch Bank stated the Longneckers' dates were off "by a few weeks," but did not provide any alternatives. Accordingly, we utilize the Longneckers' tolling dates.

[4] Gary's first bankruptcy case (Chapter 7) closed on Dec. 21, 2009. As noted earlier, in May 2008 the bankruptcy court granted Wells Fargo's request for relief from the automatic stay in this bankruptcy.

[5] Citing to its counterclaim in the Longneckers' later action to quiet title, Deutsche Bank alleges it cancelled the fourth sale because of the potential for a "short sale" with the Longneckers. "A short sale is, in its simplest definition, a sale by a willing seller to a

Deutsche Bank cancelled its fifth and sixth sheriff's sales set in 2010, after the sales were stayed by Sue Ann's filing of bankruptcy petitions. The sheriff filed the fifth and sixth returns of special execution unsatisfied.

On January 13, 2011, Deutsche Bank obtained a seventh special execution setting a May 12 sheriff's sale. On May 20, 2011, Deutsche Bank purchased the Longneckers' property at a rescheduled sheriff's sale, and the sheriff filed the return of special execution satisfied.[6]

In November 2011 the Longneckers filed a petition to quiet title, alleging Deutsche Bank did not execute on its March 2007 foreclosure decree during the time allowed by the section 615.1 statute of limitations, and the Longneckers own the property in fee simple. Deutsche Bank answered and filed state law counterclaims for unjust enrichment, abuse of process, civil conspiracy, and tortious interference with prospective business relationships. The Longneckers filed a motion to dismiss, asserting the counterclaims were preempted by federal bankruptcy law, and the district court lacked subject matter jurisdiction. Both parties also filed motions for summary judgment on the quiet title petition.

At the July 2012 hearing, the parties and the district court agreed the "question of preemption by the Bankruptcy Code of state law claims based on the filing of bankruptcy petitions is a matter of first impression in Iowa." The district

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willing buyer for less than the total encumbrances on the home with the consent of the underlying lienholders who agree to take less than what they are owed." *In re Booth,* 417 B.R. 820, 824 n.3 (Bankr. M.D. Fla. 2009).

[6] Sue Ann filed a bankruptcy petition two days before the May 12, 2011 sheriff's sale. On May 20 the bank filed a motion to "confirm termination or absence of stay" in the federal bankruptcy action. On June 1, 2011, the bankruptcy court granted the bank's motion, holding no automatic stay resulted from the May 2011 bankruptcy petition.

court found the cases cited by Deutsche Bank had "little persuasive weight given the breadth and depth of authority holding state law claims preempted." The court adopted the majority rule and granted the Longneckers' motion to dismiss the bank's counterclaims, holding that because the "Bankruptcy Code preempts state law claims based on actions within a bankruptcy proceeding," the court "lacks subject matter jurisdiction over each of Deutsche Bank's state law counterclaims."

Regarding the validity of the May 2011 sheriff's sale, Deutsche Bank argued its *initial* 2007 execution validated the May 2011 sheriff's sale. Alternatively, the bank argued it is equitably entitled to the sheriff's deed because a departure from the literal construction of section 615.1 is justified to prevent an absurd result that rewards the Longneckers' misconduct.

The district court found the first four executions were obtained within the section 615.1 limitations period, and the bank's voluntary decision to cancel the fourth sheriff's sale caused the *final timely execution*—the fourth execution—to be returned to the clerk unsatisfied. The court ruled the property "sold at sheriff's sale under the seventh execution, which [execution] was issued outside" the section 615.1 limitations period. Noting the "first through sixth executions were returned" to the clerk of court unsatisfied," only one execution can exist at a time, and an execution must be returned to the clerk of court within 120 days after issuance, the district court found each earlier execution "had no effect" once the sheriff returned it. The district court concluded the "prior timely executions

cannot support" the May 2011 "sheriff's sale occurring under an untimely execution."

The district court also rejected Deutsche Bank's "equitable relief" argument, citing our decision in *FFMLT 04-FF10, Bank of New York v. Smith*, No. 09-1816, 2010 WL 2925494, at *4 (Iowa Ct. App. July 28, 2010) (rejecting the bank's request, based on the debtor's actions, for an equitable tolling of the section 615.1 limitations period, and ruling "the legislature will list exceptions if it intends exceptions to apply"), and the Iowa Supreme Court's earlier decision, *Lacina v. Maxwell*, 501 N.W.2d 531, 533 (Iowa 1993) (ruling section 615.1 "was passed with the legislative purpose of aiding judgment debtors" and the statute is "plain and unambiguous"). The district court concluded: "While the Longneckers' actions of filing multiple bankruptcies and attempts to negotiate may have delayed the pending sheriff's sales, it was Deutsch Bank's cancellation of the sheriff's sale scheduled after the fourth execution which ultimately foreclosed its ability to execute on its judgment." The court granted the Longneckers' motion for summary judgment, and Deutsche Bank now appeals.

II. Scope and Standards of Review

Subject matter jurisdiction is the power of the court to hear a general class of cases, not merely the specific case in question. *Klinge v. Bentien*, 725 N.W.2d 13, 15 (Iowa 2006). "Our scope of review of rulings on subject matter jurisdiction is for correction of errors at law." *Id*.

While courts generally try foreclosure proceedings in equity, we review appeals from orders granting summary judgment for the correction of legal error.

Freedom Fin. Bank v. Estate of Boesen, 805 N.W.2d 802, 806 (Iowa 2011). Summary judgment is appropriate only when the entire record demonstrates that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007); *see* Iowa R. Civ. P. 1.981(3).

We review the record before the district court to determine whether a genuine issue of material fact existed and whether the district court correctly applied the law. *Sain v. Cedar Rapids Cmty. Sch. Dist.*, 626 N.W.2d 115, 121 (Iowa 2001). We review the evidence in the light most favorable to the nonmoving party. *Merriam v. Farm Bureau Ins*., 793 N.W.2d 520, 522 (Iowa 2011).

III. Analysis

A. The federal bankruptcy code preempts state law tort claims based on actions taken in bankruptcy proceedings.

Deutsche Bank contends its state law counterclaims based on the Longneckers' "aggregate actions" in federal bankruptcy court are not preempted by federal bankruptcy law. It asserts the district court failed to give appropriate weight to case law from Texas and Florida holding such claims are not preempted. The Longneckers respond the district court correctly held state law claims based on actions they took in the bankruptcy process cannot be heard in state courts.[7]

[7] Deutsche Bank also asserts the district court's decision "failed to recognize that the absence of a pending bankruptcy action should have significantly affected its analysis." The Longneckers, noting relief was successfully obtained from the automatic stays in the

Preemption is a jurisdictional issue concerning the state court's power to decide certain issues. *Brown v. Garman*, 364 N.W.2d 566, 568 (Iowa 1985). A congressional enactment may preempt state law either by an explicit command in the language of a federal statute or implicitly from the statute's structure and purpose. *Fischer v. UNIPAC Serv. Corp.*, 519 N.W.2d 793, 799 (Iowa 1994). When, as here, the doctrine of implied preemption is at issue, we examine congressional intent. *See English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990). Under the doctrine of "field preemption," Iowa law can be preempted by federal statutes regulating "conduct in a field that Congress intended the Federal Government to occupy exclusively." *See id*. We examine the regulated field and infer the requisite congressional intent for preemption when (1) there is a "scheme of federal regulation" so pervasive it is reasonable to infer "Congress left no room for the States to supplement it," or (2) the federal enactment "touches a field" where "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *See id*.

While courts have not been unanimous in deciding the bankruptcy code preempts state law claims premised on actions taken before a bankruptcy court, we find the analysis used by the majority of federal and state jurisdictions to be

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first and seventh bankruptcy proceedings, reply Deutsche Bank chose not to seek similar relief during the pendency of the second through sixth bankruptcy filings.

The district summarily rejected Deutsche Bank's equitable argument that "fails to take into account that Deutsche Bank was made aware of each Longnecker bankruptcy, and therefore was afforded the opportunity to request remedial action by the bankruptcy court." The district court also stated several bankruptcy rules demonstrate possible additional avenues in bankruptcy and show the bank's assertion that it has no other remedy is "questionable." We agree with and adopt the district court's analysis.

better reasoned. *See Stone Crushed P'ship v. Kassab Archbold Jackson & O'Brien*, 908 A.2d 875, 882 (Pa. 2006) (providing a detailed history of cases holding state law claims are preempted and cases finding no preemption). As detailed below, we conclude the federal bankruptcy code preempts Iowa tort claims premised on litigants' conduct in bankruptcy court for several reasons: the exclusivity of federal jurisdiction over bankruptcy proceedings, the complexity and comprehensiveness of Congress' regulation of bankruptcy law, the need for uniformity in the bankruptcy arena, the existence of federal sanctions for the filing of frivolous and malicious pleadings in bankruptcy proceedings, and our recognition that the specter of state tort claims may deter the exercise of bankruptcy rights.

First, "Congress has expressed its intent that bankruptcy matters be handled in a federal forum by placing bankruptcy jurisdiction exclusively" in the federal district courts. *See MSR Exploration, Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 913-14 (9th Cir. 1996) (citing 28 U.S.C. § 1334(a)). The fact of exclusive federal jurisdiction for bankruptcy matters, while not dispositive, militates in the direction of Congress's intent to preempt Deutsche Bank's state law claims premised on the Longneckers' bankruptcy actions. *See id*.

Second, the Bankruptcy Code's "complex, detailed, and comprehensive provisions" show Congress intended "to create a whole system under federal control," a system designed to "adjust all of the rights" of creditor Deutsche Bank and the debtors, Longneckers, within the unique and "exclusively federal" bankruptcy process. *See id*. at 914 (finding Congress did not intend "to permit

the superimposition of state remedies on the many activities that might be undertaken in the management of the bankruptcy process," and "the opportunities for asserting" state law claims for malicious prosecution "would only be limited by the fertility of the pleader's mind").

Third, the need for uniformity in bankruptcy law "persuaded the framers of the United States Constitution to expressly grant Congress the power 'to establish . . . uniform Laws on the subject of Bankruptcies'" at a time when granting powers to the federal government was considered suspicious. *See id*. (quoting U.S. Const. art I, § 8, cl. 4). Therefore, the "constitutional need for uniformity in the administration" of bankruptcy laws and processes demonstrates Congressional intent "to leave the regulation" of the Longneckers' actions in bankruptcy "before the bankruptcy court in the hands of the federal courts alone." *See id*. at 915; *see also Glannon v. Garret & Assoc., Inc.*, 261 B.R. 259, 265 (D. Kan. 2001) (reserving to the federal courts the question of proper filings "avoids the development of various standards in the state courts used to determine whether conduct in the bankruptcy proceeding is proper").

Fourth, Congress provided numerous remedies designed to preclude misuse of the bankruptcy process. *See MSR Exploration*, 74 F.3d at 915.[8] The fact Congress made federal court remedies for frivolous filings available to

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[8] The court in *MSR Exploration* cited remedies including:

> Fed. Bankr. R. 9011 (frivolous and harassing filings); 11 U.S.C. § 105(a) (authority to prevent abuse of process); 11 U.S.C. § 303(i)(2) (bad faith filing of involuntary petitions); 11 U.S.C. § 362(h) (willful violation of stays); 11 U.S.C. § 707(b) (dismissal for substantial abuse); 11 U.S.C. § 930 (dismissal under Chapter 9); 11 U.S.C. § 1112 (dismissal under Chapter 11).

74 F.3d at 915.

creditors like Deutsche Bank indicates Congress intended the federal court's exclusive jurisdiction over bankruptcy petitions to preclude Deutsche Bank's collateral attack in Iowa courts. *See id*.; *see also Glannon*, 261 B.R. at 259 (holding because the Bankruptcy Code provides "extensive federal remedies" for "improper conduct in bankruptcy proceedings," the bankruptcy scheme "permits no state law remedies for abuse of bankruptcy provisions").

Finally, we are also persuaded by the fact "the mere possibility of being sued in tort in state court" with the potential for a substantial damages award could "deter persons from exercising their rights in bankruptcy." *Gonzales v. Parks*, 830 F.2d 1033, 1036 (9th Cir. 1987); *see MSR Exploration*, 74 F.3d at 916 (ruling state malicious prosecution actions based on events within bankruptcy court proceedings are "completely preempted by the structure and purpose of the Bankruptcy Code"); *Koffman v. Osteoimplant Tech., Inc.*, 182 B.R. 115, 123-25 (D. Md. 1995) (resolving the conflict between the "Congress' express Constitutional authority to establish 'uniform Laws on the subject of Bankruptcies'" and the "states' traditional authority to provide tort remedies to their citizens," and ruling that allowing "state tort actions based on allegedly bad faith bankruptcy fillings" would permit "state law standards to modify" the Bankruptcy Code's remedial scheme).

The *Gonzales* court summarized the need for preemption:

> State courts are not authorized to determine whether a person's claim for relief under a federal law, in a federal court, and within that court's exclusive jurisdiction, is an appropriate one. Such an exercise of authority would be inconsistent with and subvert the exclusive jurisdiction of the federal courts by allowing state courts to create their own standards as to when persons may

> properly seek relief in [bankruptcy] cases Congress has specifically precluded those courts from adjudicating. The ability collaterally to attack bankruptcy petitions in the state courts would also threaten the uniformity of federal bankruptcy law, a uniformity required by the Constitution.

Gonzales, 830 F.2d at 1035.

For all of these reasons, we conclude Deutsche Bank's state law claims are preempted by federal bankruptcy law. Accordingly, the district court did not err in ruling, consistently with the majority of state and federal courts, that it lacked subject matter jurisdiction over claims alleging abuse of bankruptcy proceedings.[9] *See Idell v. Goodman*, 273 Cal. Rptr. 605, 610 (Cal. Ct. App. 1990) (stating "the reasoning of *Gonzales* bears repeating" and recognizing the

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[9] Deutsch Bank argues that its counterclaims would not be preempted under the analysis used by the Texas and Florida state courts in *Graber v. Fuqua*, 279 S.W.3d 608, 620 (Tex. 2009) (finding a state law claim for malicious prosecution was not preempted by the Bankruptcy Code and the claim would not "interfere with the federal interest in uniform bankruptcy laws") and *R.L. LaRoche, Inc. v. Barnett Bank of S. Fla. N.A.*, 661 So. 2d 855, 864 (Fla. Ct. App. 1995) (finding no preemption of state law claims of abuse of process and malicious prosecution because there is "no strong reason to suppose that Congress gave such power [to the bankruptcy courts] by implication").

In the 5-4 *Graber* decision, the Texas majority relied heavily on the fact "Congress did not custom build the adversary proceeding rules" and concluded for a malicious prosecution claim based on an adversary proceeding to be preempted, "Congress must speak more clearly than it has." 279 S.W.3d at 615-17. Since the Deutsche Bank/Longneckers' dispute does not involve bankruptcy's "adversary proceeding rules," *Graber* is factually distinguishable. Also, we find more persuasive the *Graber* dissent's conclusion that a Texas common law malicious prosecution claim may not be predicated on conduct occurring "entirely in the bankruptcy court and which the Bankruptcy Code's extensive remedial and sanction provisions address." *Id*. at 633 (Wainwright, J., dissenting).

Recently, the United States Bankruptcy Court for the Southern District of Florida held state claims for malicious prosecution and abuse of process are preempted. *See In re Rosenberg*, 471 B.R. 307, 315-16 (Bankr. S.D. Fla. 2012). The Florida Bankruptcy Court declined to follow the Florida state court's *LaRoche* decision because it "is at odds with numerous federal and state cases holding" the Bankruptcy Code "is preemptive." *Id*. at 316. We agree with the analysis of the Florida Bankruptcy Court. *See Mullin v. Orthwein*, 772 So. 2d 30, 31 (Fla. Dist. Ct. App. 2000) (Gross, J., concurring specially) (stating *LaRoche* "was wrongly decided" and the Florida Court of Appeals "should recede from that decision en banc").

"existence of federal sanctions for the filing of a frivolous and malicious bankruptcy pleading must be read as an implicit rejection of state court remedies"); *Lewis v. Chelsea G.C.A. Realty P'ship, L.P.*, 862 A.2d 368, 373 (Conn. App. Ct. 2004) (noting "that a majority of courts that have considered the preemptive nature of bankruptcy law in the context of state tort claims alleging violations of the bankruptcy process have found such claims to be preempted"); *Smith v. Mitchell Constr. Co.*, 481 S.E.2d 558, 561 (Ga. Ct. App. 1997) (resolving issue of first impression and ruling the Bankruptcy Code preempts state law tort claims); *Sarno v. Thermen*, 608 N.E.2d 11, 18 (Ill. App. Ct. 1992) (recognizing it would be inconsistent with Congress' intent for state courts to develop a different, definition of "'bad faith' for malicious prosecution purposes"); *Edmonds v. Lawrence Nat'l Bank & Trust Co.*, 823 P.2d 219, 222 (Kan. Ct. App. 1991) (adopting *Gonzales* and concluding federal sanctions for allegations of frivolous and malicious bankruptcy actions preempt state law abuse of process claim); *Mason v. Smith*, 672 A.2d 705, 707-08 (N.H. 1996) (following *Gonzales* while recognizing that allowing the pursuit of state law claims for "wrongful" bankruptcy filings "would frustrate the uniformity of bankruptcy law"); *PNH, Inc. v. Alfa Laval Flow, Inc.*, 958 N.E.2d 120, 126 (Ohio 2011) (resolving issue of first impression and adopting "the reasoning of the jurisdictions that hold the Bankruptcy Code preempts state law causes of action for misconduct committed by litigants in bankruptcy court proceedings"); *Stone Crushed*, 908 A.2d at 886 (resolving issue of first impression in Pennsylvania and concluding Congress "intended to preempt state law remedies for frivolous claims in the field of bankruptcy").

B. The district court's "plain language" application of Iowa Code section 615.1 does not lead to an absurd result.

Deutsche Bank contends it actively sought to execute on its foreclosure decree and the district court's "plain language" interpretation of section 615.1 does not recognize its good-faith efforts, reaches an absurd result, and encourages manipulative delay tactics. But during oral arguments counsel acknowledged the bank could have been "more mindful" of the limitations period.

In general, the goal of statutory construction is to determine legislative intent. *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004). Legislative intent must be determined from "the words chosen by the legislature, not what it should or might have said." *Id*. We ascertain legislative intent by examining the language in the statute. *In re Estate of Ryan v. Heritage Trails Assoc., Inc.*, 745 N.W.2d 724, 729 (Iowa 2008). The meaning of a statute may not be extended, enlarged, or otherwise changed. *Id*. at 730.

Regarding the specific statute at issue, our Iowa Supreme Court has found *no ambiguity* permitting either expansion or restriction of the "fresh start" provisions in section 615.1. *Houghton State Bank v. Peterson*, 477 N.W.2d 94, 95-96 (Iowa 1991) (stating "although its remedy may be harsh, the plain words of the statute make no room for exception"); *see Hell v Schult*, 28 N.W.2d 1, 3 (Iowa 1947) ("The statute provides for no defense or excuse . . . and we may not write it in."); *Shum v. Prow & Leffler*, 298 N.W. 868, 869 (Iowa 1941) ("The statute is plain."); *see also Thorp Credit, Inc. v. Johnson*, 257 N.W.2d 498, 499 (Iowa

1997) (recognizing a legislative purpose to relieve "judgment debtors in financial distress").

Deutsche Bank's argument is further undermined by the Iowa legislature's 2006 and 2009 amendments to section 615.1 adding tolling exceptions. *See* 2009 Iowa Acts ch. 51, § 17(2) (adding tolling period for an "order of court"); 2006 Iowa Acts ch. 1132 § 2 (adding tolling period for debtor's bankruptcy stays). If the Iowa legislature intends an exception to toll the section 615.1 limitations period, the legislature will identify and include the exception. *See Meinders v. Dunkerton Cmty. Sch. Dist.*, 645 N.W.2d 632, 637 (Iowa 2002) (stating the expression of one thing in the statute implies the exclusion of others not mentioned).

We find no error in the district court's "plain language" interpretation of Iowa Code section 615.1 under the circumstances of this case.

C. A sheriff's sale deed is null and void under section 615.1 when an initial timely execution is returned unsatisfied and the sale disposing of the property is set under an untimely seventh execution.

Alternatively, Deutsche Bank argues case law supports its position that the May 2011 sheriff's sale and deed is valid because the first writ of execution was timely.[10] The bank contends the Iowa Supreme Court addressed and

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[10] Two of the cases Deutsche Bank cites are inapplicable because, like *Deaton v. Hollingshead*, 282 N.W.2d 329 (Iowa 1938), there was only one execution issued. In *Lincoln Joint Stock Land Bank v. Bundt*, 14 N.W.2d 865, 867 (Iowa 1944), the court found the creditor "undertook to enforce its judgment by the issuance" of one, timely-issued writ of execution. In *Daniel v. Barnego*, 585 P.2d 1348, 1349 (Nev. 1978), the debtor tried to stop the sheriff's sale set under one writ of execution. The Nevada court explained the execution could issue on the last day of the limitations period and be

resolved "the same issue" in *Deaton,* 282 N.W. at 331 (resolving quiet title suit seeking to set aside sheriff's sale). The bank's reading of *Deaton* is overly broad, and its argument fails to address the fact its first writ of execution was returned unsatisfied.

Deaton did not involve multiple executions; rather, the only execution issued at a time when the underlying judgment was valid. *Id*. The sheriff's sale held under this one and only execution occurred outside the limitations period. *Id*. The *Deaton* court considered whether the sale was valid, "the execution having been issued . . . prior to the time the judgment was barred by the statute," and ruled a "valid execution could be issued the day previous to the expiration of the [limitations] period because it would be based on a judgment in full force and effect." *Id*. at 332. The court concluded the sale was valid, ruling:

> [T]he execution was issued and levy made while the judgment was in full force and effect and consequently the execution when issued and the levy when made were valid. *They obtained their validity from the unbarred judgment*, and we are of the opinion that, being valid, they had a legal life independent of the judgment and did not die with the judgment that gave it life.

"effective in respect to property seized under its levy." *Barnego*, 585 P.2d at 1349. Neither of these cases support Deutsche Bank's attempt to piggyback its untimely seventh execution onto the first, timely execution herein.

The other cases cited by the bank are unpersuasive. In *Linda Mc Co., Inc. v. Shore*, 703 S.E.2d 499, 501-03 (S.C. 2010), the trial court transferred the case to a special referee, the referee issued his report one day after the limitations period had run, and the trial court immediately issued an order to execute on the judgment. The court held that when a creditor "is merely waiting on a court's order regarding execution and levy," the limitations period "is extended to when the court finally issues its order." *Shore*, 703 S.E.2d at 505. A South Carolina case discussing the effect of a delay caused by the court sending the case to a referee is inapplicable.

Finally, in *Collins v. Collins*, 543 S.E.2d 672 (W. Va. 2000), the West Virginia court resolved child support issues. That case does not apply here because it is based on the specific language in the West Virginia statute.

> The proceedings subsequent . . . the notice of sale and sale, were proceedings not on the judgment but under a valid execution.

Id. at 332-33 (emphasis added).

Therefore, *Deaton* held a valid sheriff's sale can occur after the limitations period when the one execution setting the sale is issued within the limitations period on an unbarred judgment. *See id*. *Deaton* does not support Deutsche Bank's efforts to validate its May 2011 sale that was set under an untimely writ of execution issued on a barred judgment. *See id*.; *see also* Iowa Code § 626.2 ("Executions may issue at any time before the judgment is barred by the statute of limitations."). Further, Deutsche Bank has not cited any case law supporting its contention the May 2011 sheriff's sale is valid, though set under an untimely execution, because its initial execution—returned unsatisfied—was timely.

Under Iowa Code section 626.16, every "officer who receives an execution . . . shall make sufficient return of the execution . . . on or before the one hundred twentieth day from the date of its issuance." In *Richardson v. Rusk*, 245 N.W. 770, 771 (Iowa 1932), one mortgagee obtained an execution for a sheriff's sale but before this first execution was returned, the clerk issued a second execution to a different mortgagee, and the property was sold at the sheriff's sale set under the second execution. *Richardson*, 245 N.W. at 772. The Iowa Supreme Court found the second execution to be void, and the resulting sheriff's sale held under the second execution to be void, holding "*an execution must be regarded as existing until it has been returned* . . . . While one execution is in existence another cannot issue. This is the rule." *Id*. at 772-73 (emphasis added). Accordingly, the first execution herein, "existing until" it was returned, does not

validate the May 2011 sheriff's sale *set under* an untimely and void seventh execution. *See id*.

The district court aptly determined Deutsche Bank's voluntary cancellation of the sheriff's sale set under its fourth execution caused its inability to execute before the limitations period expired. We affirm the district court's ruling denying summary judgment to Deutsche Bank and granting summary judgment to the Longneckers. *See, e.g., Furnald v. Hughes*, 804 N.W.2d 273, 283-84 (Iowa 2011) (upholding the court's dismissal of a petition refilled after the expiration of the limitations petition where the initial timely petition had been voluntarily dismissed eleven days prior to trial).

AFFIRMED.