

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

BIG BELL 21, LLC., et al., *Plaintiffs/Appellees*,

v.

KATHLEEN MILLS, et al., *Defendants/Appellants*.

No. 1 CA-CV 21-0166
FILED 12-14-2021

Appeal from the Superior Court in Maricopa County
No. CV2015-007118
The Honorable David W. Garbarino, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Hymson Goldstein Pantiliat & Lohr, PLLC, Scottsdale
By John L. Lohr, Jr., David B. Goldstein, Jackson D. Hendrix
Counsel for Defendant/Appellant Michael Mills

Tiffany & Bosco, P.A., Phoenix
By Tina M. Ezzell
Counsel for Plaintiffs/Appellees

MEMORANDUM DECISION

Judge Maurice Portley¹ delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Chief Judge Kent E. Cattani joined.

P O R T L E Y, Judge:

¶1 Defendant Michael Mills appeals the superior court’s denial of his claim of a second homestead exemption. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In 2017, plaintiff Big Bell 21, LLC and others (collectively, “Big Bell”) obtained a judgment against Mills for more than \$369,000, plus interest. The judgment was recorded in June 2017 and remains unsatisfied.

¶3 In January 2020, Mills sold his residence in Peoria, Arizona (“the Peoria property”) and claimed a \$150,000 statutory homestead exemption as to the identifiable cash proceeds from the sale. At Mills’ direction, the title company transferred \$196,287.54 to his Citibank account.²

¶4 Big Bell then learned that Mills was living at a residence in Glendale, Arizona (“the Glendale property”) and sought to depose him at a judgment debtor examination. Before the examination, Big Bell requested Mills’ financial records, including those from Citibank. Despite a stipulated agreement that was memorialized in a court order, Mills did not identify or provide many of the financial records requested, including documentation from his Citibank accounts. At the judgment debtor examination, Mills testified he had owned both the Glendale property and the Peoria property at the same time. The Glendale property had been paid for in full before

¹ The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

² Mills advised the title company that a defect in recording the judgment required the title company to distribute all sales proceeds to him.

BIG BELL 21, et al. v. MILLS, et al.
Decision of the Court

Mills received the Peoria property sale proceeds, and Mills testified that he could not recall what he had done with the proceeds from the sale of the Peoria property.

¶5 To collect some of its judgment, Big Bell obtained a writ of general execution. Pursuant to the writ, a sheriff's sale of the Glendale property was held in October 2020. The sale netted \$235,000.

¶6 Before the sale, Mills claimed he was entitled to a second \$150,000 statutory homestead exemption on the Glendale property. As a result, the Maricopa County Sheriff's Office ("MCSO") informed Big Bell that it would distribute \$150,000 of the sale proceeds to Mills unless Big Bell obtained a court order requiring it to do otherwise.

¶7 Big Bell moved for a judicial determination of the validity of the claimed homestead exemption for the Glendale property. At Big Bell's request, the court ordered the MCSO to hold the sale proceeds pending further order of the court and held oral argument on the validity of Mills' claimed second homestead exemption.³

¶8 The superior court later ruled that Mills could not claim a homestead exemption on the proceeds from the sale of the Glendale property. A January 2021 order determined Mills' homestead exemption claim invalid and ordered the MCSO to disburse the Glendale property sale proceeds to Big Bell.

¶9 Mills timely appealed from that order. We have jurisdiction under Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(2).

ANALYSIS

¶10 Mills argues the superior court erred in denying his claim of a second homestead exemption on the Glendale property.

I. *Standard of Review and Applicable Law*

¶11 We review *de novo* the interpretation of statutes, including those pertaining to Arizona's homestead exemption. *See Pac. W. Bank v.*

³ At the outset of the October 23, 2020 argument, the court confirmed with the parties that it did not need to hold an evidentiary hearing. Mills' counsel affirmed the facts were not in dispute and that he did not know when any of the funds from the Peoria property might have been dissipated.

BIG BELL 21, et al. v. MILLS, et al.
Decision of the Court

Castleton, 246 Ariz. 108, 110, ¶ 7 (App. 2018). In our review, we look first to a statute's plain language as the most reliable indicator of legislative intent. *Rogone v. Correia*, 236 Ariz. 43, 49, ¶ 17 (App. 2014). When statutory language is clear, we must follow it. *Jackson v. Phoenixflight Prods., Inc.*, 145 Ariz. 242, 245 (1985). We liberally construe the homestead exemption statutes to effect their purpose of protecting a homeowner from the forced sale of his or her home. *Pac. W. Bank*, 246 Ariz. at 110, ¶ 7.

¶12 An individual may claim a homestead exemption in their personal residence of up to \$150,000 in equity, which is "exempt from attachment, execution and forced sale." A.R.S. § 33-1101(A)(1). If a debtor owns more than one property for which the homestead exemption could apply, the debtor may designate the property to which the exemption will apply. A.R.S. § 33-1102(A); *Rogone*, 236 Ariz. at 50, ¶ 20. However, a person may only hold one homestead exemption in a property at a time. See A.R.S. § 33-1101(B). Further, under A.R.S. § 33-1101(C), the homestead exemption

automatically attaches to the person's interest in identifiable cash proceeds from the voluntary or involuntary sale of the property. The homestead exemption in identifiable cash proceeds continues for eighteen months after the date of the sale of the property or until the person establishes a new homestead with the proceeds, whichever period is shorter. Only one homestead exemption at a time may be held by a person under this section.

II. *The Merits*

¶13 Here, Mills owned two Arizona residential real properties at the same time. He sold the Peoria property and claimed a homestead exemption as to the identifiable cash proceeds from that sale. Once he did so, \$150,000 of the Peoria property sale proceeds were automatically protected. See A.R.S. § 33-1101(A)(1), (C). That homestead exemption continued until the earlier of (1) eighteen months after the date of the sale of the Peoria property or (2) when Mills established a new homestead with the proceeds from the Peoria property. See A.R.S. § 33-1101(C). Mills' claim of a new homestead exemption in the Glendale property, however, was less than eighteen months after the sale of the Peoria property, and he did not prove that he had established a new homestead with the proceeds of the Peoria property sale. Further, the Glendale property had been paid for before the Peoria property was sold. Thus, the homestead exemption in the identifiable cash proceeds from the sale of the Peoria property was still in effect, meaning Mills' claim that the homestead exemption applied to the

BIG BELL 21, et al. v. MILLS, et al.
Decision of the Court

Glendale property was contrary to the statutory limitation that he was not allowed to hold more than one homestead exemption at a time. *See* A.R.S. § 33-1101(B), (C).

¶14 Mills argues that the superior court failed to consider A.R.S. § 33-1102(A), which allows creditors to force debtors who own multiple properties to designate which property is the exempted homestead. He maintains that because Big Bell did not take advantage of this statute, he was free to change his homestead exemption at any time. Mills' reliance on § 33-1102(A) is unavailing, however, because not only had Mills already made his homestead designation, but the homestead exemption *automatically* attached to his interest in the identifiable cash proceeds (the funds transferred by the title company) from the sale of the Peoria property. *See* A.R.S. § 33-1101(C). Thus, there was no reason for Big Bell to demand that Mills designate which of his residential real properties he would choose as his homestead.

¶15 Mills also argues that because he may have spent, comingled, or given away the exempt \$150,000, the funds are no longer "identifiable cash proceeds" subject to protection, and the superior court erred by putting the burden on him to show what happened to the funds. In claiming the benefit of the homestead exemption, Mills was obligated to make the required evidentiary showing that it applied. Indeed, "[t]he general rule governing the burden of proof in Arizona is that a party who asserts the affirmative of an issue has the burden of proving it." *Black, Robertshaw, Frederick, Copple & Wright, P.C. v. United States*, 130 Ariz. 110, 114 (App. 1981).

¶16 Before the superior court held oral argument on the challenge to his claim for a second homestead exemption, Mills never requested an evidentiary hearing nor presented any evidence about how he had used the Peoria property sale proceeds. Accordingly, as the superior court noted, because Mills had the burden to demonstrate with specificity the disposition of the proceeds from the first claim of homestead, but he provided sworn statements that he did not recall what, if anything, he did with those proceeds, Mills failed to make the required evidentiary showing that a second exemption might be justified under the statutes.

¶17 Mills also relies on *Rogone* to argue that the superior court's refusal to allow him a second homestead in less than eighteen months violates Arizona law. *Rogone*, however, is inapposite as it simply stands for the proposition that a creditor may not defeat a homestead exemption to which a debtor is otherwise statutorily entitled based on equitable grounds

BIG BELL 21, et al. v. MILLS, et al.
Decision of the Court

not articulated in the statute. 236 Ariz. at 49-50, ¶¶ 16-20. Although Mills suggests otherwise, the superior court did not invalidate Mills' second homestead exemption based on notions of equity, nor was the court's ruling a discovery sanction for hiding evidence. Instead, and consistent with *Rogone*, the court applied the statutory language, which in this case compelled the conclusion that Mills' second homestead exemption was not valid. See A.R.S. § 33-1101(C).

III. *Attorneys' Fees and Costs*

¶18 Mills requests attorneys' fees as a sanction under A.R.S. § 12-349. Because the record supports the court's ruling, and Mills has not shown any of the alternative bases to support such a sanction, there is no basis for fees as requested. See A.R.S. § 12-349(A)(1)-(4). Accordingly, we deny Mills' request for attorneys' fees. We award Big Bell its taxable costs on appeal upon compliance with Rule 21, ARCAP.

CONCLUSION

¶19 We affirm the superior court's denial of Mills' claim of a second homestead exemption. The superior court may order the MCSO to release the proceeds from the sale of the Glendale property to Big Bell.



AMY M. WOOD • Clerk of the Court
FILED: AA