

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0073**

First Minnesota Bank as assignee of Sacor Financial, Inc.,
as assignee of National Credit Acceptance, Inc.,
Appellant,

vs.

Richard Weller,
Respondent.

**Filed September 24, 2018
Reversed
Bratvold, Judge**

Isanti County District Court
File No. 30-CV-08-230

David J. Lenhardt, Patrick S. Rosenquist, Gries Lenhardt Allen, P.L.L.P., St. Michael,
Minnesota (for appellant)

D. Sherwood McKinnis, Jacob G. Peterson, McKinnis & Doom, P.A., Cambridge,
Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Cleary, Chief Judge; and
Smith, Tracy M., Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant argues the district court erred in determining that respondent's real property was exempt from enforcement of a 2008 judgment based on stipulated facts establishing that, as of 2013, respondent owned and occupied the real property as his

homestead. *See* Minn. Stat. § 510.01 (2016). Because respondent owned but abandoned the real property as his homestead in 2008, allowing the judgment lien to attach, and because existing precedent holds that a judgment lien is not defeated and execution of the judgment is not prevented by respondent's subsequent occupancy of the real property as a homestead in 2013, we reverse.

FACTS

National Credit Acceptance, Inc. (National) obtained a judgment (the judgment) for \$21,182.60 against respondent Richard Weller, the judgment debtor. The judgment was entered on March 3, 2008, and docketed on September 17, 2008, in Isanti County. National assigned the judgment to Sacor Financial, Inc., which assigned it to appellant First Minnesota Bank (FMB), the judgment creditor.

At the time the judgment was entered, Weller owned but did not reside on eight contiguous parcels of land (the property) in Isanti County, totaling approximately 46.58 acres. Weller owned and lived in a home on a parcel adjacent to the property (adjacent parcel).

Sometime on or after April 4, 2008, Weller moved from the adjacent parcel and resided on a third property (the third parcel) that he was purchasing under a contract for deed. At the time the judgment was docketed, Weller no longer owned the adjacent parcel and continued to own the property. Neither the adjacent parcel nor the third parcel is involved in this appeal.

Before Weller moved in April 2008, the Isanti County assessor had designated the property as "agricultural homestead." After Weller moved to the third parcel, the county

assessor changed the property's designation to "agricultural non-homestead" for tax years 2009-2013. During this time, Weller claimed the third parcel as his homestead. At no time did Weller file in the office of the county recorder a claim of homestead notice relating to the property.

At the end of July 2013, Weller moved from the third parcel to the property and has continued to reside there throughout district court proceedings. He lives in a recreational vehicle that is "raised on jacks" and is attached to an electrical hookup.

Starting in 2014 and continuing through 2017, the county assessor designated the property as "agricultural homestead." Weller's driver's license, issued in October 2013, and his current license, issued in September 2014, list the property as his address.

In March 2014, Weller petitioned for relief under Chapter 7 of the United States Bankruptcy Code; his petition did not identify the property as his homestead. The United States Bankruptcy Court granted Weller a discharge on June 30, 2014, providing Weller with the relief he sought.

In December 2016, Weller applied in Isanti County District Court to discharge FMB's judgment based on his bankruptcy. *See* Minn. Stat. § 548.181, subd. 1 (2016) (judgment debtor may apply for discharge of all judgments ordered discharged in bankruptcy). FMB objected, arguing that the judgment should not be discharged because "the judgment was an enforceable lien on real property when the bankruptcy discharge was entered." *See id.*, subd. 4 (upon objection by judgment creditor, court may not discharge judgment that was an enforceable lien on real property when bankruptcy discharge was

entered). The parties entered into a written stipulation of facts before submitting the issue to the district court on written motions and memoranda, without a hearing.

On November 11, 2017, the district court denied Weller's application to discharge the judgment, determining that Weller had abandoned the property and "caused the parcel to lose its homestead exemption." The district court also concluded that Weller had "acquired a new homestead exemption" when he moved back to the property in 2013. But the district court reasoned that the 2013 exemption could not defeat the judgment because the judgment "had already become an enforceable lien on the property on approximately October 4, 2008."

Nonetheless, the district court agreed with Weller on two points: (1) his "valid homestead exemption" on the property protected the property from execution of the judgment lien and (2) the record supported Weller's claim that the property is his homestead "for purposes of Minn. Stat. § 510.01." FMB appeals.

D E C I S I O N

FMB raises two issues. First, FMB contends that the district court erred in concluding that, under Minn. Stat. § 510.01, FMB "could not execute on its [j]udgment while [Weller] occupied [the property] as his homestead." Second, FMB argues that the district court erred in determining that the property is Weller's homestead under the statutory exemption. We do not resolve the second issue because our decision regarding the first issue makes it unnecessary to do so. *See Larson v. Larson*, 373 N.W.2d 287, 290 (Minn. 1985) (declining to address issues rendered unnecessary by the resolution of another issue). Instead, we assume without deciding that the property has been Weller's homestead

since 2013. The first issue is a legal determination that we review de novo. *Fast v. Fast*, 766 N.W.2d 47, 48 (Minn. App. 2009).

Under Minnesota law, a judgment creditor has a lien on the real property owned by a judgment debtor from the time the judgment is docketed and continuing for ten years after entry. Minn. Stat. § 548.09, subd. 1 (2016). The homestead exemption, however, protects some real property from legal process that enforces a judgment lien. The statutory exemption provides:

The house owned and occupied by a debtor as the debtor's dwelling place, together with the land upon which it is situated to the amount of area and value hereinafter limited and defined, shall constitute the homestead of such debtor and the debtor's family, and be exempt from seizure or sale under legal process on account of any debt not lawfully charged thereon in writing.

Minn. Stat. § 510.01.¹ The homestead exemption was enacted to express a state constitutional right. *Vickery v. First Bank of LaCrosse*, 368 N.W.2d 758, 762 (Minn. App. 1985), *review denied* (Minn. Aug. 20, 1985). The state constitution provides that “[a] reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability. The amount of such exemption shall be determined by law.” Minn. Const. art. I, § 12. The “homestead laws are to be liberally construed.” *Vickery*, 368 N.W.2d at 762.

¹ As mentioned in section 510.01, other statutes limit and define the exemption, for example, providing that a homestead may not exceed 160 acres, nor may it exceed a value of \$390,000, or \$975,000 if the homestead is used primarily for agricultural purposes. Minn. Stat. § 510.02, subd. 1 (2016). The parties appear to agree that the property satisfies these criteria.

The homestead exemption is cancelled, however, after a judgment debtor abandons his property. Minn. Stat. § 510.07 (2016) (providing owner may “remove” from a homestead “without affecting” the exemption “if the owner does not thereby abandon the same as the place of abode”).

If the owner shall cease to occupy such homestead for more than six consecutive months, the owner shall be deemed to have abandoned the same, unless, within such period, the owner shall file with the county recorder of the county in which it is situated a notice.

Id. Once a judgment debtor abandons a property that previously served as a homestead, a “judgment [becomes] a lien against the property.” *Hall v. Holland*, 165 N.W. 235, 235 (Minn. 1917); *see also In re Estate of Eckley*, 780 N.W.2d 407, 410 (Minn. App. 2010) (“Property ceases to be the owner’s homestead when the owner abandons his home.”).

The district court determined that Weller abandoned the property in April 2008, and that the judgment became an enforceable lien on the property six months later, in approximately October 2008. Weller did not appeal from this adverse determination. Because Weller abandoned the property in 2008, the district court denied Weller’s application for discharge of judgment in bankruptcy, reasoning that the judgment “was an enforceable lien on real property.” Weller also did not appeal from the district court’s decision denying discharge of the judgment.

The district court went on to determine that Weller reestablished the property as his homestead when he moved back and occupied it in 2013. Because Weller owned and occupied the property as of 2013, the district court concluded that the homestead exemption

“prevent[ed] [FMB] from executing on the [j]udgment with respect to the seizure or sale of the [the property] while the parcel remains [Weller’s] homestead.”

FMB argues the district court erred in determining that the judgment could not be executed on the property. Weller argues that the plain language of the homestead exemption appears to support the district court’s order because section 510.01 exempts a homestead from “*seizure or sale*” under legal process on account of “*any debt.*” Minn. Stat. § 510.01 (emphasis added).

The homestead exemption has existed, albeit under different numbering, since 1863. The exemption’s language, in large part, has remained the same; it has exempted a homestead from execution of a judgment by seizure or sale. *See* Minn. Gen. Stat. ch. 68, § 1 (1863) (prohibiting the “levy” or “sale on execution” of a homestead). Since at least 1881, the supreme court has interpreted the homestead exemption to not apply to protect a property after it has been abandoned and is no longer a homestead. *See Donaldson v. Lamprey*, 11 N.W. 119, 119-20 (Minn. 1881). The question posed by this case is whether the homestead exemption protects abandoned property from execution of a judgment lien after the owner resumes occupancy.

Hall v. Holland controls our analysis. In *Hall*, the judgment debtor occupied a property as a homestead from 1911 to 1915. 165 N.W. at 235. In April 1915, the judgment debtor moved from the property and did not occupy it again until September 1916. *Id.* During the 16 months that the judgment debtor was absent from the property, a judgment was docketed and became a lien against the property. *Id.* In October 1916, the judgment creditor “caused execution to issue” on the lien. *Id.* The judgment debtor brought an action

to restrain the judgment creditor from proceeding with an execution sale of the property. *Id.* The district court dismissed the judgment debtor’s action, determining that the property could be sold to satisfy the lien. *Id.*

The supreme court affirmed, holding that the judgment attached during the judgment debtor’s abandonment of the property as a homestead and “the fact that the [judgment debtor] returned and made it her home after an absence of 16 months, but before the levy under the execution, [did] not defeat the lien.” *Id.* The supreme court continued: “Where there has been a loss of exemption of a homestead by abandonment, a resumption of occupancy as a home does not have a retroactive effect, but merely gives a new right as of the date of the resumption.”² *Id.*

The facts in Weller’s case are very similar to those in *Hall*. The judgment against Weller became an enforceable lien in 2008 when he abandoned the property. Even assuming Weller reestablished the property as his homestead in 2013, Weller’s return to the property “does not have retroactive effect” and does not prevent a judgment creditor,

² The 1913 version of the homestead exemption, which *Hall* applied, has language that is nearly identical to language in the current homestead exemption. The 1913 statute provided:

The house owned and occupied by a debtor as his dwelling place, together with the land upon which it is situated to the amount hereinafter limited and defined, shall constitute the homestead of such debtor and his family, and shall be exempt from seizure or sale under legal process on account of any debt not lawfully charged there-on in writing.

Minn. Gen. Stat. ch.66, § 6957 (1913).

here, FMB, from executing on the lien because the judgment attached during Weller's abandonment of the property.

Weller argues that *Hall* merely held that “resuming ownership does not defeat the lien” and specifically held that “resumption of occupancy” “gives a new right as of the date of the resumption.” *See Hall*, 165 N.W. at 235. Weller also suggests that *Hall* is “obsolete,” but we disagree. The “new right” referred to in *Hall* is the exemption from judgments docketed *after* the debtor resumes occupancy as a homestead.³ Weller is in the same position as the judgment debtor in *Hall* and FMB is in the same position as the judgment creditor in *Hall*; consequently, FMB may enforce its judgment against the property because its lien attached during the period of abandonment.

Other cases confirm that a judgment creditor may execute on a lien attached to real property that is not protected as a homestead, regardless of whether the judgment debtor occupies the property as a homestead at the time of execution. For example, in *Rusch v. Lagerman*, the judgment debtor obtained an “equitable interest” in a property in January 1926, and the interest was sufficient for a judgment lien to attach. 261 N.W. 186, 187 (Minn. 1935). A creditor docketed a judgment against the debtor in April 1926. *Id.* at 186. In September 1926, the judgment debtor began to occupy the property as his homestead.

³ In *Hall*, the judgment debtor brought an action to restrain the judgment creditor from “proceeding with an execution sale of [the judgment debtor’s] homestead.” *Id.* The district court determined that the judgment debtor “was entitled to no relief” and that “the property may be sold to satisfy the lien.” *Id.* The supreme court affirmed the district court’s decision. Because the district court in *Hall* decided that the judgment creditor could sell the judgment debtor’s property to satisfy the judgment lien, and because the supreme court affirmed, Weller’s argument fails.

Id. In 1933, the judgment creditor “procured a writ of execution on his judgment,” and the sheriff held an execution sale. *Id.* at 187. The judgment debtor brought an action to set aside the execution sale and the district court entered judgment for the debtor based on the homestead exemption. *Id.* at 186.

The supreme court reversed and directed judgment in favor of the judgment creditor. *Id.* at 187. The supreme court held that the judgment debtor acquired “no new rights which could defeat the lien when he moved on the premises in September, claiming a homestead.” *Id.* In short, a judgment lien on real property creates a right to execute on the lien, which is not lost when the judgment debtor subsequently occupies the property as a homestead. *See, e.g., Kelly v. Dill*, 23 Minn. 435, 439 (1877) (holding judgment debtor cannot defeat lien previously levied by moving on land and making it a homestead).

Weller argues that three cases stand for the proposition that a judgment creditor cannot “actually seize the land once” a judgment debtor has established real property as a homestead. But *Hall* and *Rusch* hold otherwise, and the cases Weller relies on do not undermine their reasoning. Further, in each of the cases Weller cites, the supreme court determined that the judgment debtors had never abandoned their homesteads, and also held that the judgment never attached to the property. *See Eustice v. Jewison*, 413 N.W.2d 114, 118-21 (Minn. 1987); *Cysewski v. Steingraber*, 24 N.W.2d 266, 270-72 (Minn. 1946); *Vickery*, 368 N.W.2d at 763-65.

Weller also contends “the date on which a person homesteads his property does not control the exemption [and] [t]he mere fact that someone treats property as his homestead precludes a creditor from seizing or selling that land.” Relying on the homestead

exemption, he argues that “no statutory language dictates the homestead or [nonhomestead] status as in any way operative for docketing or execution purposes.” But Minnesota courts have held that the homestead status of real property *is* “operative for docketing or execution purposes.” *See, e.g., Eustice*, 413 N.W.2d at 118-21; *Hall*, 165 N.W. at 235.

Thus, we reverse the district court’s determination that Minn. Stat. § 510.01 prevents FMB from executing on its judgment lien, including the seizure or sale of the property, even though the property is currently occupied by Weller as his homestead. We do not address FMB’s argument that Weller’s occupancy of the property is not a valid homestead. Assuming, without deciding, that Weller established a homestead on the property when he returned in 2013, the homestead exemption does not prohibit the seizure or sale of the property because the judgment lien attached in 2008 after Weller abandoned the property.

Reversed.