FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 6-600 / 95-1626

PAUL A. BRAUNGER d/b/a **P.A. BRAUNGER FOOD SERVICE,**
Appellee,

vs.

DONALD KARRER d/b/a **GUIDO'S** and **NORMANDY HUNT CLUB,**
Appellant.

Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh, Judge.

The defendant appeals a district court ruling that the money received from the sale of the Karrer home and deposited with the clerk of court is subject to attachment by the plaintiff. **REVERSED.**

Donald H. Molstad of the Molstad Law Firm, Sioux City, for appellant.

James W. Redmond of Heidman, Redmond, Fredregill, Patterson, Schatz & Plaza, L.L.P., Sioux City, for appellee.

Heard by Streit, P.J., and Vogel, J., and Schlegel, S.J.*

* Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

VOGEL, J.

Judith Karrer[1] appeals the district court ruling that money received from the sale of her and her husband's house is subject to attachment by the plaintiff.

*I. **Background facts.*** Donald and Judith Karrer owned their home as joint tenants with rights of survivorship. Following financial difficulities, Donald filed for protection under Chapter 7 bankruptcy. The bankruptcy court entered a judgment in favor of Braunger for $34,000 for a debt he co-signed for Donald. Braunger could not levy against the Karrer's home as it was exempt as homestead property. The Karrers decided to sell the house and a purchase agreement was entered into with the buyers. The closing was held on May 26, 1995, the same day that a garnishment was served upon the buyers. The garnishment directed the buyers to deposit their remaining payment with the Clerk of Court. It is that money, $30,252.50, which is the subject of this appeal. The trial court ruled a portion of that money, $11,495.95, was to be set aside as homestead and therefore be exempt from execution. The remainder, $18,756.55, may be applied to Braunger's judgment.

II. *Scope of review.* Our review is de novo. *Benson v. Richardson*, 537 N.W.2d 748, 756 (Iowa 1995).

III. *Property Title.* Judith argues the joint tenancy in the real estate was severed upon signing the purchase agreement. The proceeds of the sale were then

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[1]Although not a named party to the action, Judith informally intervened, without objection by Braunger. She participated in the trial and was represented by counsel.

held as tenants in common with 50% ownership each by Donald and Judith. The money paid into the closing escrow account by the buyers also took on the tenants in common ownership. We agree with this analysis and reverse the district court.

Entering into a contract for sale of real estate operates as an equitable conversion of the real estate from real to personal porperty. *In re Sprague's Estate*, 244 Iowa 540, 57 N.W.2d 212 (1953). The sellers retain legal title only as security for the payment of the balance due on the purchase price. *Id.* at 216. There is a severence of the joint tenancy when a contract for the sale of real estate is entered into by the joint tenants. *In re Estate of Baker,* 247 Iowa 1380, 1384, 78 N.W.2d 863, 868 (1956). Upon severance of a joint tenancy by sale of the property, the proceeds from such sale are not held in joint tenancy, absent a manifest intent to retain the joint tenancy. *Id* at 868.

In applying these principles of law, we determine the entry into the purchase agreement to sell the real estate operated as an equitable conversion of title, transforming the Karrer's interest from real property to personal property. It also severed the joint tenancy of the real estate. The entire proceeds of the sale, $220,000, which includes the money held by the Clerk of Court and is the subject of this appeal, was personal property of the Karrers, held as tenants in common, with Donald Karrer and Judith Karrer each owning an one-half interest. The judgment against Donald in favor of Braunger could only be paid out of Donald's one-half

interest. Accordingly, **Judith's** interest was not subject to a lien or attachment for the judgment in favor of Braunger.

REVERSED.