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# McGuire v. Manufacturers & Traders Trust Co. (In re McGuire), 37 Bankr. 365 (Bankr. M.D. Fla. 1984)

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# CASE NOTES

## Florida Homestead Exemption—Proceeds from the Voluntary Sale of a Homestead—A Shield or a Trap for the Debtor?—*McGuire v. Manufacturers & Traders Trust Co. (In re McGuire)*, 37 Bankr. 365 (Bankr. M.D. Fla. 1984)

### I. Introduction

The debtor in *McGuire* filed a complaint seeking to invalidate two judicial liens held by the creditor,[1] arguing that the liens impaired his homestead exemption rights under the Florida Constitution.[2] In 1971, the debtor purchased his residence in Island Es-

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1. Debtor had filed for bankruptcy under 11 U.S.C. §§ 1101-1174 (1982). Chapter 11 deals with debtor rehabilitation. Either a debtor or his creditors may commence chapter 11 proceedings by filing a petition with the bankruptcy court. A plan may be filed at the same time as the petition or any time thereafter. Generally, a plan is the culmination of debtor-creditor negotiations; in most cases, the debtor has the exclusive right to file a plan. *See* 5 Collier on Bankruptcy § 1100.01 (L. King ed. 1984) (discussing historical evolution of chapter 11); *see also* 2 *id.* § 109.04 (explaining who is deemed a debtor under chapter 11). In reference to judicial liens, 11 U.S.C. § 522(f) (1982) states:

> Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—(1) a judicial lien . . . .

Under subsection (b) an individual debtor may exempt either property specified under the Bankruptcy Code, unless the state law applicable to the debtor specifically forbids the election, or any property exempt under federal law other than as listed in the Code or applicable state or local law. Under Fla. Stat. § 222.20 (1983), Florida residents are not entitled to the federal exemptions provided in § 522(d) of the Bankruptcy Code. Florida has "opted out" in accordance with the provision of subsection (b), and consequently Florida law controls exemptions.

2. Fla. Const. art. X, § 4(a):

> There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by the head of a family:
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> (1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or his family.

Florida electors approved in November 1984 an amendment to § 4 which will have the effect of eliminating the troublesome "head of family" issues. Under the amendment, a person may designate property as homestead property, prior or subsequent to levy, whether or

tates, Clearwater, Florida. He lived there with his wife and minor children until May 10, 1983.[3] At that time, debtor sold the house, with the net proceeds totaling $42,471.12.[4] Sometime between May 10, 1983, and his death on September 23, 1983, the debtor entered into a contract and deposited $1,000 for the purchase of a lot in East Lake Woodlands, a residential community.[5] It appears that the rest of the money was deposited in a passbook savings account.

The bankruptcy court held that the proceeds from the voluntary sale of the homestead property did not retain the character of exempt property. The court found the record devoid of evidence demonstrating that the debtor intended to build a residence on the lot or that the purchase of the lot was connected to the sale of the former homestead and the construction of a new residence.[6] Likewise, the court found the record lacking in respect to proof that the funds realized from the sale of the former homestead were not commingled with other monies.[7]

The Florida homestead exemption "is more often than not a chameleon, which changes color to accord with the background against which he is viewed."[8] Therefore, a review of Florida law pertaining to the exempt status of proceeds from the voluntary sale of homestead property, as set forth in *Orange Brevard Plumbing & Heating Co. v. La Croix*,[9] is prerequisite to the evaluation of

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not he is the head of a family.

3. McGuire v. Manufacturers & Traders Trust Co. (*In re* McGuire), 37 Bankr. 365, 365 (Bankr. M.D. Fla. 1984).

4. The total sale price was $170,000 from which the debtor netted $61,216.59. From the net proceeds, $42,417.12 was paid to the debtor and $18,745.47 was held in escrow pending the outcome of the suit. *Id.*

5. *Id.* at 366. Although the debtor's widow was never substituted formally as party plaintiff, she was recognized as the real party in interest.

Under FLA. STAT. § 222.19 (1981), head of family status inured to the benefit of the surviving spouse. This provision was explicitly repealed with the recent approval of the amendment to FLA. CONST. art. X, § 4. *See* FLA. STAT. § 222.19 n.1 (1983). The amendment makes head of family status irrelevant to the exemption.

6. *McGuire*, 37 Bankr. at 367.

7. *Id.*

8. Crosby & Miller, *Our Legal Chameleon, The Florida Homestead Exemption* (pts. 1-3, 4, 5), 2 U. FLA. L. REV. 12, 12, 219, 396 (1949). *See generally* Maines & Maines, *Our Legal Chameleon Revisited: Florida's Homestead Exemption*, 30 U. FLA. L. REV. 227 (1978) (examining each aspect of homestead tax and forced sale exemptions in order to analyze the purposes of each statutory and constitutional provision, treatment by the court, problems with the conditions for exemptions, and statutory procedures for claiming and protecting homestead exemptions).

9. 137 So. 2d 201 (Fla. 1962). *See generally* Note, *The Exemption of Proceeds from a Voluntary Sale of Homestead Property*, 17 U. MIAMI L. REV. 99 (1962) (proposing that the court acted upon a legislative question and left unanswered many questions including how

the bankruptcy court's decision in *McGuire*. Accordingly, this note will examine those cases and the manner in which courts construe exemptions in light of public policy considerations. Finally, this analysis will point out the incorrectness of the *McGuire* holding in light of both precedent and policy.

## II. *Orange Brevard* AND SUBSEQUENT CASES

In *Orange Brevard*, the creditor obtained a writ of garnishment against the proceeds of a voluntary sale of the debtor's homestead property.[10] The circuit court dissolved the writ, holding that the provision of the Florida Constitution exempting homestead property from forced sale by creditors extends to the proceeds of the sale of the homestead.[11] The Second District Court of Appeal transferred the appeal to the Florida Supreme Court.[12]

In that case of first impression, the supreme court acknowledged a definite split of authority among jurisdictions and reviewed the various positions concerning the exempt status of proceeds from a voluntary sale.[13] Ultimately the court adopted what was the minor-

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intent may be proved and what period of time will be deemed reasonable).

10. *Orange Brevard*, 137 So. 2d at 201.

11. *Id.* at 202.

12. *Id.* at 202-03. The circuit court had construed a provision of the constitution and therefore exclusive jurisdiction of the appeal rested with the supreme court under old FLA. APP. R. 2.1(a)(5)(d). The high court stated the precise issue as "whether the exemption of homestead property from forced sale which is accorded by Article X, Section 1 of the Florida Constitution . . . extends also to the proceeds of a voluntary sale of a homestead when it is intended in good faith that such proceeds are to be reinstated in a new homestead." *Orange Brevard*, 137 So. 2d at 203.

13. *Orange Brevard*, 137 So. 2d at 204; *see* 40 AM. JUR. 2D *Homestead* § 46 (1968 & Supp. 1984); 40 C.J.S. *Homesteads* § 71 (1944); Annot., 1 A.L.R. 483 (1919) (supplemented by Annot., 46 A.L.R. 814 (1927)).

> In the absence of constitutional or statutory provisions to the contrary, the voluntary sale of homestead property is held, in some jurisdictions, to be a complete extinguishment of the homestead right; consequently, the proceeds of such a sale, until invested in other exempt property, may be subjected to the claims of creditors. . . .
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> A view sometimes taken is that the proceeds of the sale of a homestead constitute exempt property for a reasonable time pending the investment of the same in another homestead. The exemption is said to be applicable to the amount intended to be reinvested so long as the funds are held specifically for purchase of a new homestead and not for the general purposes of the debtor.

40 AM. JUR. 2D *Homestead* § 46, at 146 (1968) (footnotes omitted).

Statutes addressing the proceeds of a voluntary sale of a homestead generally:

(1) give absolute right of exemption; or
(2) give no right of exemption; or
(3) give unconditional protection for a designated period; or
(4) protect proceeds intended to be reinvested in new homestead

ity view and held that the proceeds of a voluntary sale are exempt if the vendor shows an abiding good faith intention to reinvest the proceeds in another homestead.[14]

In discussing the exemption provision, the court stated:

> [It] was not placed in our Constitution for the purpose of tying the owner thereof and his family to a particular home, once established, for the remaining period of their natural lives. It is a protection which should remain inviolate so long as the head of the family who is indebted acts in good faith and with reasonable diligence in converting one homestead into another. In our modern peripatetic society it often becomes necessary for a family to give up its former homestead and move to a new home out of economic necessity or for other compelling reasons. To hold other than we have in the instant case would be to deny to a family finding itself in such circumstances the full benefit of the homestead exemption provision of our Constitution and would be inimical to our declared policy of a liberal construction thereof.[15]

The court set out four criteria to be used in determining whether proceeds from a voluntary sale retain the character of homestead and are thus beyond the reach of creditors: (1) the sold property must meet the constitutional requirement of a homestead;[16] (2) the seller must show an abiding good faith intention prior to and at the time of the sale of the homestead to reinvest the proceeds in another homestead within a reasonable time;[17] (3) the funds must not be commingled with other monies;[18] and (4) the proceeds must be invested in another homestead in a reasonable time.[19] Further,

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(a) for a designated period; or
(b) for a reasonable period.

*See* 40 C.J.S. *Homesteads* § 71, at 510-11 (1944).

14. *Orange Brevard*, 137 So. 2d at 204. Only the amount of money that is intended to be reinvested in another homestead is exempt.

15. *Id.* at 206.

16. *Id.* at 207; *see supra* note 2.

17. *Id.* at 206. Presale intent and intent at the time of the sale can be difficult to prove. *See, e.g.*, State v. Brown, 218 P. 816, 819 (Okla. 1923) ("[T]he intention to use and occupy a given tract of land as a homestead, and what is necessary to constitute such an intention . . . is difficult to define in specific terms, and is dependent upon the circumstances and conditions surrounding each particular case.").

18. *Orange Brevard*, 137 So. 2d at 206.

19. *Id.* The court analogized the principle set forth by its decision to the doctrine of equitable conversion, citing Trotter v. Van Pelt, 198 So. 215 (Fla. 1940). The *Trotter* court stated: "Under [the doctrine of equitable conversion], land which is directed to be converted into money is treated as money and money which is directed to be invested in land is treated as land." *Id.* at 218. *See generally* Comment, *Exempt Status of Proceeds from Con-*

the court held that the burden of proof on the vendor is "by a preponderance of the evidence."[20]

Since 1962 other courts have had occasion to interpret the *Orange Brevard* decision and apply the outlined criteria. The Fifth District Court of Appeal found *Orange Brevard* controlling in *Sun First National Bank v. Geiger*.[21] In addressing the intent issue, the district court stated: "*Orange Brevard* requires the homestead seller to show by a preponderance of the evidence a good faith intention, both prior to and at the time of the sale, to reinvest the proceeds of the sale into another homestead within a reasonable time."[22] Without stating how the vendor had proven the required good faith intention, the appellate court stated that the trial court had found *implicitly* that such intent existed and that the record contained evidence sufficient to support that finding.[23]

*Geiger* turned on the form of the proceeds and the reasonableness of the time within which the proceeds were reinvested.[24] The court held that noncash proceeds can be eligible for exemption as long as "they serve the same function that cash proceeds do, *i.e.*, a temporary form of the homestead, to be reinvested, to be *con-*

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*versions of the Homestead*, 15 U. FLA. L. REV. 410 (1962) (author investigates the application of the constitutional homestead exemption to insurance payments, judgments awarded for injuries to the homesteads, and surplus proceeds from involuntary conversions).

20. *Orange Brevard*, 137 So. 2d at 206. In a strong dissent, Justice Drew criticized the decision as being judicial legislation. On the issue of intent, he stated that "[f]or more than eighty years this Court has said that mere intention cannot give even real property the status of homestead." *Id.* at 210 (Drew, J., dissenting). Justice Drew questioned the majority's opinion in light of Drucker v. Rosenstein, 19 Fla. 191 (1882), in which the Florida Supreme Court stated that " 'the property must, when claimed as exempt, be stamped with the character of a home by some circumstance other than the *intention* to make it so. A bare lot unoccupied cannot be a homestead.' " *Orange Brevard*, 137 So. 2d at 209 (Drew, J., dissenting) (quoting *Drucker*, 19 Fla. at 198 (emphasis in original)).

21. 402 So. 2d 428 (Fla. 5th DCA 1981). The judgment creditors obtained a writ of garnishment against the debtors of the judgment debtors. The judgment debtors and the debtors of the judgment debtors moved to dissolve the writ, arguing that mortgage payments owed by debtors to judgment debtors were intended by judgment debtors to be used to buy a new homestead and therefore were exempt from levy of execution by the Florida Constitution.

22. *Id.* at 431.

23. *Id.* The court also addressed the issue of reasonableness relating to the time period for conversion. Finding that "reasonable time" extended beyond the time of garnishment, the district court affirmed the lower court. However, the appellate court warned that ten years is far in excess of reasonable time; creditors were given the signal that should the debtors sit on their note and mortgage, another suit would be fruitful. *Id.* at 432.

24. "The *Orange Brevard* case clearly stands for the proposition that homestead property can change into proceeds and still be protected. The issue is whether those proceeds must be cash proceeds in order to come under the protection of *Orange Brevard*." *Id.* at 431.

*verted back* into real-property homestead . . . ."[25]

In *Blackmon v. Hill*,[26] the Third District Court of Appeal examined whether the lower court's finding that sellers had not used diligence to transfer good title was supported by sufficient evidence.[27] The lower court in its final judgment had ordered defendants to make the title good, marketable, and insurable, "including, but not limited to, obtaining a Declaratory Judgment under the case of *Orange Brevard* . . . ."[28] The district court found the lower court had misread *Orange Brevard*, stating: "That case . . . holds only that proceeds from the sale of homestead property are exempt from levy by judgment creditors provided the seller intends to use the proceeds to purchase another homestead within a reasonable time."[29]

The issue of whether the proceeds from a voluntary sale of homestead are exempt from the claims of creditors also was addressed in *In re McCarthy*.[30] There, debtors argued they were entitled to the exemption, and the trustee objected. At a hearing on the objections, the debtor and his wife stated they were unable to make the house payments and could rent an apartment at lower cost.[31] Further, the debtors testified they had no plans to purchase a replacement homestead in Florida but, rather, intended to divide the net proceeds between them. Citing to *Orange Brevard*, the court held that the debtor did not come within the case law exception to the general rule that proceeds from the sale of a homestead are personalty.[32] The debtor's claim failed because intent to reinvest in a replacement homestead was lacking.

In *Roemelmeyer v. Vidana (In re Vidana)*,[33] the proceeds exemption issue arose in the context of an alleged attempt by the debtor to defraud creditors.[34] The debtor had conveyed his homestead to his daughter who, in turn, had sold the property to an

25. *Id.* at 432 (emphasis in original). In so holding, the court acknowledged that homestead law is to be liberally construed to allow the exemption to debtors. *Id.* at 430.

26. 427 So. 2d 228 (Fla. 3d DCA 1983).

27. *Id.* at 229.

28. *Id.* at 229 n.1 (citation omitted).

29. *Id.* at 230 (citation omitted).

30. 13 Bankr. 389 (Bankr. M.D. Fla. 1981).

31. *Id.* at 390.

32. *Id.* at 391 n.1. *See* Tingle v. Hornsby, 111 So. 2d 274, 276 (Fla. 1st DCA 1959) (stating the general rule that once the contract for sale has been entered, the vendor's interest becomes personalty). Personal property also enjoys an exemption under Florida law, but only to the value of $1,000. FLA. CONST. art X, § 4(a)(2).

33. 19 Bankr. 787 (Bankr. S.D. Fla. 1982).

34. *Id.* at 788.

unrelated third party. In citing *Orange Brevard,* the court stated that "[h]omestead proceeds lose their exempt character unless they are promptly reinvested in another homestead."[35] The court found that the debtor's daughter was "the debtor's alter ego or a straw man in a plan to convert the homestead into cash and secrete the debtor's share of the proceeds . . . ."[36]

*Orange Brevard* also was applied in *Havee v. Rodriguez (In re Rodriguez),*[37] in which the debtor claimed that proceeds from the sale of his house were protected despite several transfers of property prior to his purchasing a replacement homestead.[38] Sifting through complicated facts, the court denied the exemption, stating:

> [T]he proceeds from the debtor's original homestead were so commingled with his income and the proceeds of loans received by [the corporation], and so many months passed between receipt of the sale proceeds and reinvestment in a new home, that it is impossible for this court to conclude that the possible infusion of some proceeds from the first homestead protects the debtor's ownership and homestead status of the second home.[39]

Although the burden of proof on the debtor in claiming the ex-

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35. *Id.*

36. *Id.*; *see* Milton v. Milton, 58 So. 718, 719 (Fla. 1912) ("Organic and statutory provisions relating to homestead exemptions should be liberally construed in the interest of the family home. But the law should not be so applied as to make it an instrument of fraud or imposition upon creditors.").

37. 24 Bankr. 12 (Bankr. S.D. Fla. 1982). The trustee filed a complaint against the debtor, the debtor's wife, and the debtor's closely held corporation, Arimar Construction, Inc., claiming that the debtor had fraudulently conveyed personal funds to the corporation, and that a later conveyance of a residence owned by the corporation to the debtor and his wife was void.

38. *Id.* at 14. In April 1979, the debtor and his wife sold their home and moved into rental property. The debtor generally used proceeds from the sale to pay living expenses and debts, but a portion of the proceeds was contributed to the corporation. In 1980, the corporation constructed the home in which the debtor and his family were living at the time of the suit. Although the debtors moved into the house in June, the corporation made mortgage payments from June to December 1980. In December, the corporation transferred a quitclaim deed to the debtor.

On March 2, 1981, the debtor filed for bankruptcy. In his capacity as the sole shareholder of the corporation, the trustee raised a derivative claim, alleging that the conveyance to the debtor and his wife was a void conveyance. *Id.* at 13. The court impressed a trust in favor of the corporation on the real property conveyed by it to the debtor and his wife and granted an equitable lien in favor of the trustee on the real property. The court returned the house to the corporation encumbered by a lien which was a direct asset of the debtor's estate. *Id.* at 14.

39. *Id.* at 14. The debtor argued that his new residence was a replacement homestead and that the various intervening transfers could not be attacked because they were simply part of the process of funneling proceeds out of one homestead into another.

empt status allowed by *Orange Brevard* is that of a preponderance of the evidence, the above cases illustrate that it is possible for a debtor to prove implicitly the intent to reinvest in a replacement homestead. However, evidence of flagrant wrongdoing may be enough to eliminate any chance of winning an exemption.

## III. CONSTRUCTION OF HOMESTEAD EXEMPTIONS

Beyond an examination of Florida law as set forth in *Orange Brevard* concerning the exempt status of proceeds from a voluntary sale, it is necessary to examine the manner in which courts construe homestead exemptions. The *Orange Brevard* court, relying on Florida case law, determined that "homestead exemption laws should be liberally applied to the end that the family shall have shelter and shall not be reduced to absolute destitution. . . . Obviously Article X intended to confer valuable rights on the owner of the homestead and was not drawn for the benefit of creditors."[40]

Historically, homestead exemption laws have been construed so as to implement their purpose.[41] The exemption is designed "to promote the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen, and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune."[42] The homestead exemption laws are intended to protect a broader range of debtors than just those economically disadvantaged.

> [They] are intended to secure to the householder a home for himself and family, regardless of his financial condition—whether he is solvent or insolvent—without reference to the number of his creditors, and without any special regard to the extent of the estate or title by which the homestead property may be owned.[43]

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40. *Orange Brevard*, 137 So. 2d at 204 (citations omitted) (citing Olesky v. Nicholas, 82 So. 2d 510 (Fla. 1955); Slatcoff v. Dezen, 76 So. 2d 792 (Fla. 1954); Bessemer Properties v. Gamble, 27 So. 2d 832 (Fla. 1946)); *see also* Vandiver v. Vincent, 139 So. 2d 704 (Fla. 2d DCA 1962).

41. *See* Elliott v. Till, 259 N.W. 460, 464 (Iowa 1935) ("That the homestead statute must be liberally construed to effectuate its purpose, there is no question. This has been too often reiterated in courts to need any citation of authorities."); *see also* Kohn v. Coats, 138 So. 760 (Fla. 1931) (court held that proceeds from a fire insurance policy are exempt from the claims of creditors); Hill v. First Nat'l Bank, 84 So. 190 (Fla. 1920) (court held that actual damages recovered in an action by a homestead owner for an unlawful invasion of the homestead rights assume the same exempt status as the homestead).

42. 29 FLA. JUR. 2D *Homesteads* § 3, at 271-72 (1981) (footnotes omitted).

43. *Id.* § 3, at 272.

Recent cases in Florida and other jurisdictions have consistently followed this orientation to the construction of homestead exemption laws, promulgating the policy that such laws are to be construed in favor of the debtor[44] "as a matter of public policy to preserve a home for the family and to protect the family even from the *just* demands of creditors."[45]

## IV. ANALYSIS OF *McGuire*

The *McGuire* court recognized that homestead exemption laws are to be liberally construed to achieve their underlying policy aims.[46] However, an analysis of the court's application of *Orange Brevard* shows a strict construction of the proceeds exemption articulated therein. The *McGuire* court found that the debtor had failed to prove that arrangements had been made for the purchase of a replacement homestead or that he had the requisite intent to purchase a replacement homestead.[47] The court also held that the debtor had failed to show that funds "in the passbook account were generated *solely* from the sale of the property."[48] Had the court applied the criteria set out in *Orange Brevard* in the spirit of the intent and purpose of exemption laws, a decision more congruent with public policy considerations would have resulted.

The former residence of the debtor qualified for homestead exemption.[49] In order for the proceeds of the voluntary sale to retain exempt status, the debtor had to prove a presale intent and an at-sale intent to reinvest the proceeds of the sale in a replacement homestead. The death of the debtor and his consequent inability to testify at trial affected his widow's ability to prove the requisite intent to reinvest in a replacement homestead. However, the court did not consider the peculiar circumstances before it.[50]

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44. *In re* Arnold, 33 Bankr. 765 (Bankr. E.D.N.Y. 1983); *In re* Redmon, 31 Bankr. 756, 759 (Bankr. E.D. Va. 1983) ("any ambiguities found in state exemption laws must be resolved in favor of debtors"); *In re* Jones, 31 Bankr. 20 (Bankr. W.D. Wash. 1983); *In re* Hersch, 23 Bankr. 42 (Bankr. M.D. Fla. 1982).

45. LaGasse v. Aetna Ins. Co., 213 So. 2d 454, 459 (Fla. 2d DCA 1968) (emphasis added), *rev'd on other grounds*, 223 So. 2d 727 (Fla. 1969).

46. *McGuire*, 37 Bankr. at 366.

47. "There is no evidence in the record that at the time of the sale, the Debtor had taken any steps to arrange for the purchase of a replacement residence or that he had any intent to do so." *Id.* at 366-67.

48. *Id.* at 367 (emphasis in original).

49. *Id.* at 366.

50. Other courts have considered surrounding circumstances including the importance of the testimony of the parties and health problems in the disposition of cases involving homestead exemption. *See, e.g.*, Charter v. Thomas, 292 N.W. 842, 843 (Iowa 1940) (issue was

Likewise, evidence of the debtor's $1,000 deposit on a residential lot prior to his death and the fact that the debtor's widow and two minor children were living with another son at the time of trial allowed the court to find implicit intent to reinvest the proceeds from the sale of the old homestead in a replacement homestead.[51] However, the court declined to find such intent. The totality of the circumstances, viewed in light of the policy of liberal construction given homestead exemptions, would seem to have established the necessary intent required by *Orange Brevard.*

In addressing the requirement that monies from a voluntary sale remain in a separate account, the *McGuire* court found that the debtor had failed to prove the funds in the savings account were "solely" from the sale of the home. As with the intent criteria discussed above, the circumstances surrounding the handling of the monies from the sale allowed the court to find that the monies were not commingled with other funds. The evidence presented at trial showed that at the time of the debtor's death, the net proceeds minus the $1,000 deposit were held in a savings account.[52]

From the $1,000 deposit on a residential lot, the court might easily have inferred the intent to reinvest in a replacement homestead. However, the court refused to make that inference and furthermore declined to characterize the deposit as an actual reinvestment in a new dwelling.[53] The court left unclear its characterization of the nature of the deposit.

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whether the debtor had abandoned as part of the homestead rented portions of his dwelling; "[t]he question is one of intention and that must usually be determined from the testimony of the parties in the light of the surrounding circumstances"); State v. Brown, 218 P. 816, 820 (Okla. 1923) ("We do not think, as a matter of law, that a man would be required to transact such matters as to purchase a homestead, so long as he continued in ill health . . . . [M]en in this condition frequently defer matters, and wait in the hope that they will soon regain their health . . . .").

51. The debtor's widow testified she intended to purchase a home if she prevailed in the litigation. *McGuire,* 37 Bankr. at 366. It seems the court went out of its way to find the requisite intent lacking, commenting, "[T]here is no evidence of the amount that the Debtor intended to reinvest in a principal residence even if an intent to reinvest can be inferred from the circumstances." *Id.*

52. *Id.* at 367. The court did not reach the issue of whether the proceeds from the voluntary sale were reinvested in a reasonable time. Treas. Reg. § 1.1034-1(a) (1984), which allows a homestead owner two years to purchase and occupy a new residence in order to take advantage of the partial nonrecognition provisions in the Internal Revenue Code, should be looked to as a guide for both homeowners and courts in attempting to define "reasonable time."

53. *McGuire,* 37 Bankr. at 367. *Contra* Elliot v. Till, 259 N.W. 460, 464 (Iowa 1935) ("From the moment this lot was bought it then became invested with the homestead character, even prior to the building of the house thereon.").

## V. CONCLUSION

The exempt status of proceeds from the voluntary sale of a homestead shares the chameleon-like character of Florida's other homestead exemption laws.[54] The *Orange Brevard* court, in keeping with the spirit of liberal construction of homestead laws, set forth four criteria that the debtor must meet in order to claim this exemption. The broad language of the *Orange Brevard* opinion allows courts a great deal of flexibility. However, practitioners and homeowners may have problems meeting the burden of proof requisite to the case law exception if the *Orange Brevard* rule is applied strictly.

Presale intent and intent at the time of the sale of a homestead to purchase a replacement homestead are particularly difficult to prove. Neither the *Orange Brevard* court nor courts applying the *Orange Brevard* criteria have proffered guidelines to determine whether a home owner displayed an outward manifestation to buy a new or replacement homestead before selling the old homestead. Enlightened courts will look to actions of debtors after the sale of the home to find whether such intent can be inferred.[55] The reasonable time limitation to claiming the proceeds exemption is to be determined in relation to the circumstances of the particular case. As with the intent criteria, the particular court's approach to the issue and sensitivity to facts can be crucial. The requirement that monies from the sale of the old homestead cannot be commingled with other funds acts to trap unwary homeowners who fail to take particular care to keep proceeds from the sale of the homestead in a special account. This harsh result is contrary to the spirit of exemption laws.

A liberal construction of the criteria set forth in *Orange Brevard* furthers the purpose of homestead exemptions and at the same time protects creditors from fraud and deceit. A strict application of *Orange Brevard* can work to eliminate the exemption and leave homeowners who are unaware of the intricacies of the law with no protection from creditors.

From a legal positivist's point of view, the *McGuire* court's strict application of *Orange Brevard* may be not only correct but lauda-

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54. Crosby & Miller, *supra* note 8.

55. *In re* McCarthy, 13 Bankr. 389; 391 (Bankr. M.D. Fla. 1981) ("[T]he Court cannot blind itself to subsequent events, particularly when trying to determine a matter as ephemeral as intent.").

ble.[56] From a public policy point of view, the court erred by strictly applying a set of rules to a question that calls for a more humane, liberal approach.[57]

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56. "The positivist thereby attempts to weed out moral judgments and policy considerations and their resulting uncertainty and ambiguity. Positivism can lead to a perception of law as static, which can all be viewed at one time." Van Doren, *Implications of Jurisprudence to Law Teaching and Student Learning*, 12 STETSON L. REV. 613, 618 (1983).

57. "[T]o secure the benevolent purposes of the homestead laws they should be broadly and liberally construed . . . . Regard should be had to the *spirit* of the law rather than its strict letter." Millsap v. Faulkes, 20 N.W.2d 40, 42 (Iowa 1945) (emphasis added).