

United States Court of Appeals,

Fifth Circuit.

No. 91-1027.

UNITED STATES of America, Plaintiff-Appellant-Cross-Appellee,

v.

James Neal BLAKEMAN, As Executor of the Estate of C.E. Blakeman, Deceased, Robert Earl Blakeman and Karen A. Whaley, Defendants-Appellees-Cross-Appellants and Cross-Appellees,

RIDGLEA BANK, et al., Defendants-Appellees,

v.

Maudine BLAKEMAN, Defendant-Appellee-Cross-Appellant.

July 21, 1992.

Appeals from the United States District Court for the Northern District of Texas.

Before JOLLY, JONES, and EMILIO M. GARZA, Circuit Judges:

EMILIO M. GARZA, Circuit Judge:

The United States brought this suit seeking judgment against the estate of C.E. Blakeman for federal estate taxes and to foreclose a federal tax lien against property of the estate.<sup>1</sup> The district court entered judgment in favor of the United States, enforced the government's general federal tax lien, and ordered foreclosure of certain estate property. 750 F.Supp. 216 (N.D.Tex.1990). The parties have filed cross-appeals.

I

A

C.E. Blakeman ("C.E.") died on May 25, 1978. He was survived by his wife, Maudine Blakeman ("Mrs. Blakeman"), and three children from a previous marriage—James Neal Blakeman, Robert Earl Blakeman, and Karen Whaley ("the Blakeman children"). At the time of his death, apart

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<sup>1</sup>The United States also sought judgment against James Neal Blakeman, individually and as executor of C.E.'s estate, for monies paid out of the estate while federal estate tax remained unpaid. Ridglea Bank, the State of Texas, Tarrant County, Texas, Fort Worth Independent School District, and the City of Fort Worth, were also parties to the lawsuit.

from the community property he shared with his wife, C.E. owned as his separate property a tract of land known as the Randol Mill Property—the major asset of his estate—which consisted of 101.5954 acres of land located in Fort Worth, Tarrant County, Texas.

C.E.'s 1973 will left all real property of his estate, including the Randol Mill Property, to his children. After C.E.'s death, a dispute arose between the Blakeman children and Mrs. Blakeman as to their respective rights in C.E.'s estate. Following a trial, the Tarrant County Probate Court entered judgment declaring that the Randol Mill Property is the rural homestead of C.E. and Mrs. Blakeman. That judgment ordered that Mrs. Blakeman have the use and benefit of 100 acres of the Randol Mill Property for as long as she occupied the property as her homestead.<sup>2</sup>

On June 17, 1980, the Secretary of the Treasury made assessments against the estate in the amount of \$124,820.93 in federal estate tax and \$12,651.37 in interest. On July 21, 1980, the Secretary made an additional assessment of interest and penalties relating to the unpaid estate tax in the amounts of \$1,395.26 and \$31,205.23, respectively. Another assessment for interest in the amount of \$1,436.30 was made on August 18, 1980. On March 16, 1981, the I.R.S. filed a notice of federal tax lien for the assessments against the estate with the Tarrant County Clerk. The I.R.S. made demand upon James Neal Blakeman, as executor of C.E.'s estate, for payment of the outstanding federal estate taxes.

## B

The government filed suit on June 16, 1986, seeking judgment against the estate for federal estate taxes and judicial foreclosure on its federal tax lien against the Randol Mill Property. Following trial, the district court found that Mrs. Blakeman had a rural homestead interest in the Randol Mill Property from the date of C.E.'s death until trial. The district court held that the special

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<sup>2</sup>After the Probate Court judgment was entered, Mrs. Blakeman designated the Randol Mill Property as her homestead and has resided there continuously since C.E.'s death in 1978.

tax lien under 26 U.S.C. § 6324 had expired, but the general tax lien under 26 U.S.C. § 6321 was valid and attached to the property at issue—subject to Mrs. Blakeman's homestead interest. The district court ordered foreclosure of the federal tax lien, and, from the proceeds of such foreclosure, awarded Mrs. Blakeman her interest in the property as of the foreclosure date, but limited the government's recovery to the estate's interest in the property on the date the federal tax lien arose in 1980.<sup>3</sup> The district court also ordered that the difference, between the value of Mrs. Blakeman's interest on the date the federal tax lien arose and the value of her interest on the date judgment was entered, be paid to the estate—irrespective of whether the government was otherwise able to collect the tax liability of the estate.

The parties cross-appeal, raising various contentions of district court error and challenging specific district court rulings.<sup>4</sup> The issues presented are:

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<sup>3</sup>The district court found Mrs. Blakeman had a 60.352 percent interest in the property and the government had a 25.577 percent interest in the property.

<sup>4</sup>The following is a summation of the parties' arguments on appeal:

*The government.* The government argues that the district court erred in holding that the reach of the government's federal tax lien—arising from the unpaid estate tax—was limited to the estate's interest in the Randol Mill Property on the lien's attachment date. The government does not challenge the district court's finding relating to the special estate tax lien.

*The Blakeman Children.* The Blakeman children argue that the government does not have a valid lien on the Randol Mill Property because the government's complaint contains no specific reference to 26 U.S.C. § 6321 and fails to state a claim based on the general tax lien. The Blakeman children argue, therefore, that the government is not entitled to foreclose on the Randol Mill Property. Alternatively, the Blakeman children argue, if the government has a valid lien on the Randol Mill Property and is entitled to foreclose, the district court erred in finding that Mrs. Blakeman has a rural homestead in the Randol Mill Property. The Blakeman children argue that the character of the homestead should be determined at the time of the trial or at the time of the foreclosure sale.

*Mrs. Blakeman.* Mrs. Blakeman contends that the district court erred in failing to value her homestead interest as of June 17, 1980—the date the general tax lien attached to the remainder interest in the homestead property. Mrs. Blakeman argues that she is entitled to at least 74.42 percent of the gross proceeds from the sale of the Randol Mill Property, without any reduction to account for the period she occupied the property. Mrs. Blakeman also contends that she should be compensated for the taxes she will pay as a result of a sale of her homestead interest.

- (a) Whether the district court properly concluded the government's complaint stated a claim based on the general federal tax lien arising under 26 U.S.C. § 6321;
- (b) Whether the district court properly concluded that the Randol Mill Property was the rural homestead of Mrs. Blakeman;
- (c) Whether the district court properly valued the Randol Mill Property; and
- (d) Whether Mrs. Blakeman is entitled to compensation for the taxes she will pay as a result of the foreclosure sale.

II

A

The district court found that the government's complaint stated a claim arising under 26 U.S.C. § 6321—the general federal tax lien statute.<sup>5</sup> A tax lien arising under section 6321 is one of

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*Other defendants.* Ridglea Bank, State of Texas, Tarrant County, Texas, Fort Worth Independent School District, and the City of Fort Worth did not appeal.

<sup>5</sup>The district court found that:

Although it is not drawn as articulately as might be desired, plaintiff's complaint constitutes a claim to foreclose on the general federal tax lien described in 26 U.S.C. § 6321 and is sufficient to give defendants notice of such a claim. *Conley v. Gibson*, 355 U.S. 41, 47, 48 (1957).

Requirements of the general tax lien include: (a) assessment within three years after a return is filed, and (b) collection began within six years of assessment. 26 U.S.C. § 6501(a); 26 U.S.C. § 6502(a). The parties have stipulated that the following assessments were made:

June 17, 1980 \$124,820.93 estate taxes

\$ 12,651.37 interest

July 21, 1980 \$ 31,205.23 penalties

\$ 1,395.26 interest

August 18, 1980 \$ 1,436.30 interest

As a result of a payment and the abatement of a delinquent penalty, which was stipulated, the balance of the assessments due was \$90,495.65 as of July 21, 1980. There is apparently no dispute that the assessments were timely.... [O]n March 16, 1981, plaintiff filed a notice of federal tax lien with the Clerk of Tarrant County, Texas; ... plaintiff made demand on defendant James Neal Blakeman, as executor

two types of tax liens the United States has available to it to enforce the estate tax liability of a decedent's estate. *See United States v. Cleavenger*, 517 F.2d 230, 232 (7th Cir.1975). The other type of lien to secure payment of federal estate taxes is known as the special estate tax lien. *Id.* The special estate tax lien arises under 26 U.S.C. § 6324(a)(1), which provides that, "[u]nless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death...." The special estate tax lien automatically attaches to all property in the decedent's estate upon the decedent's death; the government need not make an assessment or a demand. *See Kleine v. United States*, 539 F.2d 427, 429 (5th Cir.1976); *accord United States v. Vohland*, 675 F.2d 1071, 1074 (9th Cir.1982); *see also Detroit Bank v. United States*, 317 U.S. 329, 332, 63 S.Ct. 297, 298, 87 L.Ed. 304 (1943).

The general tax lien arises under 26 U.S.C. § 6321 when the taxpayer fails to pay a federal tax liability, after assessment and notice are given and demand upon the taxpayer is made. *See Harris v. United States*, 764 F.2d 1126, 1128 (5th Cir.1985). The lien continues until the taxpayer satisfies the debt or the statute of limitations runs. *See* 26 U.S.C. § 6322; *United States v. Wilkes*, 946 F.2d 1143 (5th Cir.1991); *Texas Commerce Bank—Fort Worth v. United States*, 896 F.2d 152, 161 (5th Cir.1990) (citations omitted). The government must collect the assessed tax liability "by levy or by a proceeding in court ... within 6 years after the assessment of the tax ..." 26 U.S.C. § 6502(a); *McCray v. United States*, 910 F.2d 1289, 1290 (5th Cir.1990), *cert. denied sub nom.*, — U.S. —, 111 S.Ct. 1313, 113 L.Ed.2d 246 (1991); *United States v. Verlinsky*, 459 F.2d 1085, 1086–87 (5th

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of the estate of C.E. Blakeman, deceased; ... the taxes were not paid; ... the plaintiff filed its complaint June 16, 1986. Accordingly, the Court finds that plaintiff's suit to enforce its general tax lien was timely filed.

750 F.Supp. at 221 ("Memorandum Opinion"). The district court found the special federal estate tax lien had expired as a matter of law.

Cir.1972). Section 6503(b) tolls the limitations period, however, "for the period the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any State or the District of Columbia, and for 6 months thereafter." 26 U.S.C. § 6503(b).

The Blakeman children argue that the district court erred in concluding that the government's complaint stated a claim under 26 U.S.C. § 6321 because the complaint does not contain a specific reference to the general federal tax lien under 26 U.S.C. § 6321. The government argues, on the other hand, that the complaint states a claim based on the general tax lien under the strictures of Rule 8 and notice pleading. *See* Fed.R.Civ.P. 8. Moreover, the government argues that, even if the Blakeman children did not ascertain from the complaint that the government's claim was based on section 6321's general tax lien, the Blakeman children had sufficient notice of the government's theory before trial.<sup>6</sup> The government argues also that, because the special estate tax does not depend upon the filing of the notice of a lien, there would have been no reason to make such an allegation in the complaint unless the government also sought relief under section 6321.

The Blakeman children's challenge consists simply of the argument that the complaint does not contain a specific reference to the general federal tax lien or section 6321 and the government relied solely on the special estate tax lien. We find that the Blakeman children's argument misapprehends the allegations in the complaint, the language of the Federal Rules of Civil Procedure and the substance of "notice pleading." *See* Fed.R.Civ.P. 8.

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<sup>6</sup>The government suggests that this is the case because:

- (1) the government's motion for partial summary judgment explicitly stated that its legal theory was based upon the § 6321 general tax lien;
- (2) following the pretrial conference, the parties briefed the issue whether the government's liens had expired and these briefs dealt with both the general and the special tax liens; and
- (3) on the morning of trial, the district court notified the parties that it determined the special lien had expired, but the general tax lien was still in effect and would be the basis for the government's claim.

The Federal Rules of Civil Procedure create a presumption against rejecting pleadings for failure to state a claim. *See Auster Oil & Gas, Inc. v. Stream*, 764 F.2d 381, 386 (5th Cir.1985), *cert. denied sub nom.*, 488 U.S. 848, 109 S.Ct. 129, 102 L.Ed.2d 102 (1988). A plaintiff must comply with Rule 8 in pleading a claim for relief in federal court; this court has determined that Rule 8 may be satisfied by a "plain recitation of the facts that a party believes entitles her to relief." *Id.* While the complaint does not expressly state that the government sought foreclosure of its tax lien under section 6321, the allegations in the complaint support a claim based on a general federal tax lien under 26 U.S.C. § 6321. The complaint: (i) sets forth the date of C.E.'s death and the date the government assessed the estate tax against the estate; (ii) contains allegations that the government gave notice of the assessment, demanded payment, and filed notice of the lien with the Tarrant County Clerk; and (iii) states that the government was "seek[ing] foreclosure of its federal tax lien." Although neither the general or specific federal tax lien statute was referenced in the government's complaint, these allegations were sufficient to put defendants on notice that the government was seeking foreclosure under the general federal tax lien statute. Therefore, finding that the government's complaint contains a claim to foreclose on the general federal tax lien described in 26 U.S.C. § 6321 and is sufficient to give defendants notice of such a claim, we hold that the government's general federal tax lien is valid and enforceable.

## B

The district court concluded that Mrs. Blakeman had a rural homestead interest in the Randol Mill Property.<sup>7</sup> We review the district court's factual findings under the clearly erroneous standard,

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<sup>7</sup>The district court found:

1. Until the death of C.E. Blakeman, the Randol Mill property was the rural homestead of C.E. Blakeman and Mrs. Blakeman.
2. At all times since the death of C.E. Blakeman, Mrs. Blakeman has continued to use, occupy and claim at least a 100–acre part of the Randol Mill property as her homestead.
3. The 100–acre part of the Randol Mill property Mrs. Blakeman selected as her homestead pursuant to the May 7, 1980, Probate Court judgment is legally

and review de novo the district court's application of law to those facts. *See In re Bradley*, 960 F.2d 502, 507 (5th Cir.1992); *see also Zink v. United States*, 929 F.2d 1015, 1020–21 (5th Cir.1991).

The Blakeman children challenge the district court's finding that Mrs. Blakeman has a rural homestead interest in the Randol Mill Property. They argue that, pursuant to section 41.002(c) of the Texas Property Code,<sup>8</sup> Mrs. Blakeman's homestead is urban as a matter of law. The Blakeman children take the position that, under this statute, the presence of any one of the factors enunciated in section 41.002(c) mandates an urban characterization.<sup>9</sup>

Mrs. Blakeman contends the district court properly concluded that she has a rural homestead interest in the Randol Mill Property. Mrs. Blakeman argues that section 41.002(c) is not the exclusive test for determining the character of a homestead interest. Mrs. Blakeman argues that, at

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described in Exhibit "B" to the judgment....

4. Mrs. Blakeman has never abandoned the 100 acres as her rural homestead.

5. The 100 acres has been the homestead of Mrs. Blakeman at all times since the death of C.E. Blakeman.

Memorandum Opinion at 10–11.

<sup>8</sup>Section 41.002(c) states:

(c) A homestead is considered to be rural if, at the time the designation is made, the property is not served by municipal utilities and fire and police protection.

Tex.Prop.Code Ann. § 41.002(c) (West Supp.1992).

<sup>9</sup>Further, they argue that, even if the property is not served by municipal utilities, police or fire protection, there would still remain a fact question as to urban or rural status. In effect, the Blakeman children suggest a two-pronged analysis:

They propose that we inquire as to whether the property is served by municipal utilities, police or fire protection?

—If the answer is "yes," they propose that we classify it "urban" as a matter of law;

—If the answer is "no," they propose that this presents a fact question to be decided by the finder of fact.



most, section 41.002(c) creates a presumption of a rural homestead when the section applies and does not create any presumption when it does not.<sup>10</sup>

In Texas, the law recognizes both rural and urban homesteads. *See* Tex. Const. art. XVI, § 51;<sup>11</sup> Tex.Prop.Code Ann. § 41.002 (West Supp.1992);<sup>12</sup> *see also* *Bradley*, 960 F.2d at 506. An

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<sup>10</sup>On appeal, the government does not take a position concerning the character of Mrs. Blakeman's homestead interest. The government states, however, that "[s]hould this Court decide this issue in the children's favor, the Government's lien would necessarily attach to the estate's increased interest in the Randol Mill property."

<sup>11</sup>Section 51 provides,

The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or lots amounting to not more than one acre of land, together with any improvements on the land; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

<sup>12</sup>Section 41.002, "Definition of Homestead" provides:

"(a) If used for the purposes of an urban home or as a place to exercise a calling or business in the same urban area, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than one acre of land which may be in one or more lots, together with any improvements thereon.

(b) If used for the purpose of a rural home, the homestead shall consist of:

(1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or

(2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

(c) A homestead is considered to be rural if, at the time the designation is made, the property is not served by municipal utilities and fire and police protection.

(d) The definition of a homestead as provided in this section applies to all homesteads in this state whenever created."

Tex.Prop.Code Ann. § 41.002 (West Supp.1992). This section of the Texas Property Code was amended and subsection (c) became effective August 28, 1989.

urban homestead cannot amount to more than one acre of land; a rural homestead cannot total more than 200 acres of land, for a family, or 100 acres, for a single adult person not otherwise entitled to a homestead. *See Bradley*, 960 F.2d at 506. While the characterization of a homestead is subject to change, the initial homestead characterization status, once established, is presumed to continue. *See In re Niland*, 825 F.2d 801, 808 (5th Cir.1987). "Once the claimant has established the homestead character of her property, the burden shifts to the creditor to disprove the existence of the homestead." *Bradley*, 960 F.2d at 507, *citing Sullivan v. Barnett*, 471 S.W.2d 39, 43 (Tex.1971); *Lifemark Corp. v. Merritt*, 655 S.W.2d 310, 314 (Tex.App.—Houston [14th Dist.] 1983, writ ref'd n.r.e.).<sup>13</sup>

Historically, Texas courts examining the homestead characterization question have regarded the issue whether a homestead is rural or urban as a question of fact. *See Fajkus v. First Nat'l Bank of Giddings*, 735 S.W.2d 882, 885 (Tex.App.—Austin 1987, writ denied), *citing Wilder v. McConnell*, 91 Tex. 600, 45 S.W. 145, 147 (1898); *Roberts v. Cawthon*, 26 Tex.Civ.App. 477, 63 S.W. 332, 334 (1901, no writ); *First State Bank of Grapeland v. Brown*, 490 S.W.2d 248, 250 (Tex.Civ.App.—Tyler 1973, no writ) (citations omitted); *Kimmey v. Goodrum*, 346 S.W.2d 901, 902 (Tex.Civ.App.—Waco 1961, writ ref'd n.r.e.) (citations omitted). Indeed, federal courts, interpreting and applying Texas law, have also considered this "urban"/"rural" differentiation as a determination rightly made by the factfinder. *See In re Moody*, 862 F.2d 1194, 1200 (5th Cir.1989) ("Whether property is rural or urban is a question of fact...."), *cert denied sub nom.*, — U.S. —, 112 S.Ct. 1562, 118 L.Ed.2d 209 (1992), *aff'g*, *In re Moody*, 77 B.R. 580 (S.D.Tex.1987); *In re Spencer*, 109 B.R. 715, 716 (W.D.Tex.1989) ("question of rural or urban character is one of fact")

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<sup>13</sup>After the property has been dedicated as homestead property, the only way for the property to lose its homestead status is by death, abandonment, or alienation. *See Garrard v. Henderson*, 209 S.W.2d 225, 229 (Tex.Civ.App.—Dallas 1948, no writ). To prove the discontinuance of a homestead, a party may demonstrate that the homestead claimant abandoned the property—that is, the homestead claimant had the permanent intent to cease use of the property for homestead purposes. *See West Texas State Bank of Snyder v. Helms*, 326 S.W.2d 47, 49 (Tex.Civ.App.—Eastland 1959, no writ). *See also Niland*, 825 F.2d at 808, *quoting McFarland v. Rousseau*, 667 S.W.2d 929, 931 (Tex.App.—Corpus Christi 1984, no writ).

(citation omitted); *In re Moody*, 77 B.R. 580, 591 (S.D.Tex.1987). In *Moody*, the bankruptcy court recognized that the analysis involved in differentiating rural from urban cannot be reduced to a simple formula: "[u]nder Texas law, no set formula exists to label land as rural or urban [and t]he courts have examined and balanced many factors." *Moody*, 77 B.R. at 591.

At the outset, we note that the Blakeman children argue a change in the law—that is, that section 41.002(c) (effective 1989) retroactively applies to previously designated homesteads—even where there were no other changed circumstances concerning the homestead. Therefore, we consider whether the legislative amendment to section 41.002(c) has altered our inquiry for determining whether a homestead is rural or urban; that is, we determine whether section 41.002(c) has overturned more than 100 years of Texas law to become the exclusive consideration for determining Texas homestead status.

This court's recent decision in *In re Bradley* aids us in the disposition of the present appeal. *In re Bradley*, 960 F.2d 502 (5th Cir.1992). In *Bradley*, this court addressed a bankruptcy appeal where the creditor challenged the rural characterization of the debtor's homestead property. After a review of Texas homestead law, we acknowledged that, under current law, "[i]t is unclear whether section 41.002(c) applies in all homestead disputes." *Id.* at 511 n. 18. We said that, "[a]t the least the definition of 'homestead' in section 41.002(c) applies in cases, like [*Bradley* ], involving the threatened foreclosure of homestead property." *Id.* (citation omitted). Accordingly, we determined that, because Bradley's homestead received no utility or other municipal services at the time she began to use the property as her homestead, Bradley was entitled to a rural homestead interest in the property. *Id.* at 511–12.

As we noted in *Bradley*, "section 41.002(c) might not displace the traditional common law definition of 'homestead' in all cases." *In re Bradley*, 960 F.2d 502, 511 n. 18 (5th Cir.1992). Prior to 1989, we said, the Texas courts generally examined several factors which were relevant to the

determination whether a homestead was urban or rural.<sup>14</sup> We then construed section 41.002(c) to be a clarification of the test to determine homestead status. We did not then, nor do we now, construe section 41.002(c) to be the exclusive test to determine a property's homestead status: it is but one factor a court considers to determine whether the homestead is urban or rural. Therefore, we reject the Blakeman children's contention that a homestead property is urban simply because it is served by municipal utilities or fire and police protection.

The 1980 probate court judgment declared that the property was the rural homestead of C.E. and Mrs. Blakeman and ordered that Mrs. Blakeman have the use and the benefit of the property for so long as she occupied the property as her homestead. The district court found that Mrs. Blakeman continued to occupy the property and that the evidence did not establish that Mrs. Blakeman had abandoned her rural homestead interest in the property. The Blakeman children have not pointed to any contradictory evidence. Accordingly, we hold that the district court was not clearly erroneous in concluding that Mrs. Blakeman's homestead interest in the property was rural.

### C

The district court, finding that Mrs. Blakeman's homestead interest was the economic equivalent of a life estate, used the Treasury tables set forth in Treasury Regulation § 20.2031-10(f),<sup>15</sup> to determine its value.<sup>16</sup> The district court measured the value of the estate as of

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<sup>14</sup>These factors include: "(1) the location of the land with respect to the limits of the municipality; (2) the situs of the lot in question; (3) the existence of municipal utilities and services; (4) the use of the lot and adjacent property; and (5) the presence of platted streets, blocks, and the like." *Id.*, at 511-12 n. 18, citing *Vistrion Corp. v. Winstead*, 521 S.W.2d 754, 755 (Tex.Civ.App.—Eastland 1975, no writ); *Rockett v. Williams*, 78 S.W.2d 1077, 1078 (Tex.Civ.App.—Dallas, 1935, writ dismissed); *Purdy v. Grove*, 35 S.W.2d 1078, 1081-82 (Tex.Civ.App.—Eastland 1931, writ refused); 43 Tex.Jur.3d *Homesteads* § 15 (1985).

<sup>15</sup>See 26 C.F.R. § 20.2031-10(f).

<sup>16</sup>The court found that the parties agreed that "the value of Mrs. Blakeman's homestead estate is the economic equivalent of a life estate and that use of the tables set forth in Treas.Reg. § 20.2031-10(f) in determining the value of said estate is appropriate." Memorandum Opinion at 222.

the date of the tax assessment and determined that the value of Mrs. Blakeman's homestead estate (life estate) was 74.423 percent of the total value of the 100 acres. The district court then held the government's lien attached only to the estate's remainder interest in the 100 acres and held the remainder interest was worth 25.577 percent of the value of the homestead as of the date of the assessment.<sup>17</sup> The district court, however, found that "inequity would result if Mrs. Blakeman were to ... have the use of the homestead for the ten years that have passed since date of assessment, as she has had, and at the same time to receive sales proceeds representing the value of the homestead life estate for that same ten-year period, and" concluded that Mrs. Blakeman's interest in the 100 acres should be determined by the value of Mrs. Blakeman's homestead interest as of the present date. Using the Treasury tables, then, the district court found Mrs. Blakeman's interest in the property to be 60.352 percent of the value of the land as of judgment. The district court then determined that the difference, between the 74.423 percent representing the value of Mrs. Blakeman's homestead estate at date of assessment (June 17, 1980) and the 60.352 percent (Mrs. Blakeman's interest at judgment), should be given to the estate.<sup>18</sup>

The government argues that Mrs. Blakeman's interest in the Randol Mill Property should be valued as of the foreclosure date and contends that the district court erred in holding that the government's tax lien was limited to the estate's interest in the property on the lien's attachment date. Mrs. Blakeman, on the other hand, argues that the district court should have determined the interests of the respective parties as of the date the lien arose. In the alternative, Mrs. Blakeman argues that if her homestead interest is to be valued as of the foreclosure date, it should be valued under the tables promulgated pursuant to 26 U.S.C. § 7520, and the district court erred in using the tables

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<sup>17</sup>The court so reasoned because "the general federal tax lien described in 26 U.S.C. § 6321 and on which federal levy may be had under 26 USC § 7403(a) attaches only to the interest of the delinquent taxpayer in particular property and not to the entire property." Memorandum Opinion at 222, citing *United States v. Rodgers*, 461 U.S. 677, 690, 103 S.Ct. 2132, 2141, 76 L.Ed.2d 236 (1983). This amount represents 14.071 percent.

<sup>18</sup>See Memorandum Opinion at 222.

under Treas.Reg. § 20.2031-10.<sup>19</sup>

Mrs. Blakeman contends that she is entitled to at least 74.423 percent of the gross proceeds realized from the sale of the homestead property without any reduction to account for the period she occupied the property. Mrs. Blakeman relies on *Harris v. United States*, 764 F.2d 1126 (5th Cir.1985), contending that the government should be estopped from asserting a position contrary to that taken in *Harris*. We find Mrs. Blakeman's contention without merit.

It is well-settled that a federal tax lien reaches property and interests in property owned by the taxpayer on the date of the assessment, as well as property and interests in property acquired by the taxpayer from that date until the tax debt is satisfied. See *Texas Commerce Bank—Fort Worth v. United States*, 896 F.2d 152, 161 (5th Cir.1990) ("The lien arises on the date the IRS assesses unpaid taxes, applies to currently owned as well as after-acquired property, and continues until the taxpayer satisfies the debt or the statute of limitations runs."), citing 26 U.S.C. § 6322; *Glass City Bank v. United States*, 326 U.S. 265, 267, 66 S.Ct. 108, 110, 90 L.Ed. 56 (1945); *United States v. Cache Valley Bank*, 866 F.2d 1242, 1244 (10th Cir.1989); *Prewitt v. United States*, 792 F.2d 1353, 1355 (5th Cir.1986); see also *Rice Investment Co. v. United States*, 625 F.2d 565, 568 (5th Cir.1980) ("After-acquired property ... is reached by the lien.") (citations omitted). Therefore, the federal tax lien reaches the interests of C.E.'s estate as of the date of the foreclosure sale.

Mrs. Blakeman's next argument is that, if her homestead interest is to be valued as of the foreclosure date, her interest should be valued according to the tables promulgated pursuant to 26

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<sup>19</sup>Federal district courts in tax foreclosure cases are authorized to order a sale of the homestead property and distribute the sale proceeds in accordance with the interests of the parties. See 26 U.S.C. § 7403(c). Section 7403(c) does not, however, provide a precise method of (1) valuing the interests of the parties to the foreclosure and (2) distributing the sales proceeds realized on the foreclosure sale. *Id.*

U.S.C. § 7520.<sup>20</sup> The government agrees that the tables promulgated pursuant to 26 U.S.C. § 7520 are the proper tables to determine Mrs. Blakeman's interest in the property, but argues that, because Mrs. Blakeman failed to properly raise the issue of the applicability of section 7520 in the district court, she has waived her right to assert that the district court should have used the tables promulgated pursuant to 26 U.S.C. § 7520. We agree.

This court generally will not address a claim on appeal that was not properly raised in the trial court. *See Savers Federal Sav. & Loan Ass'n v. Reetz*, 888 F.2d 1497, 1501 & n. 5 (5th Cir.1989); *United States v. Indiana Bonding & Sur. Co.*, 625 F.2d 26, 29 (5th Cir.1980). In *Indiana Bonding*, we declined to review an issue on appeal because the defendant failed to affirmatively plead it, and failed to list it in its proposed findings of facts and conclusions of law or at trial, despite the fact that the defendant had listed this issue as one of its contentions in the pretrial order. *See Indiana Bonding*, 625 F.2d at 29. In contrast, in *Batiansila v. Advanced Cardiovascular Systems, Inc.*, 952 F.2d 893, 896 (5th Cir.1992), we found that the defendant had not waived its right to present an argument where it listed this issue as a contested issue of fact in the pretrial order, the defendant orally requested, but was denied, an opportunity to brief the issue, and also elicited testimony at trial regarding the issue. *See id.*

We find that Mrs. Blakeman did not properly urge the applicability of section 7520 to the district court and, therefore, she has waived her right to raise on appeal the propriety of using the tables promulgated under 26 U.S.C. § 7520 for valuation purposes.<sup>21</sup> Mrs. Blakeman failed to: (1)

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<sup>20</sup>Mrs. Blakeman contends that the district court erred when it stated that she agreed that the tables under Treas.Reg. § 20.2031-10 should be used to determine the extent of her homestead interest.

<sup>21</sup>In Mrs. Blakeman's brief supporting her motion for partial summary judgment, she stated that, "as a matter of law, the value of her life estate (homestead interest) in the Homestead Property should be determined by the use of the tables set forth January 8, 1990 in Treasury Regulation Sections 20.2031.10(a) and (f)." *See Record on Appeal*, Vol. 1 at 132, *United States v. Blakeman*, 750 F.Supp. 216 (5th Cir.1991). The district court denied Mrs. Blakeman's motion and the parties subsequently attended a pretrial conference in order to narrow the issues for trial. The pretrial order listed as a contested issue of law whether Mrs. Blakeman's homestead interest

affirmatively plead; (2) list as a contested issue in her pre-trial order; (3) brief; (4) elicit testimony, or (5) argue to the district court the applicability of section 7520. Although Mrs. Blakeman, in her proposed findings of fact and conclusions of law, submitted one week prior to trial, mentions that section 7520 should be used in the event the district court valued her interest at the time of the foreclosure sale, she effectively abandoned her conditional argument by not raising it at trial. There is nothing in the record to suggest that Mrs. Blakeman addressed the applicability of section 7520 at trial. To be preserved for appeal, we require something more than an intimation of an argument in a party's proposed findings of fact and conclusions of law. *See Indiana Bonding & Surety Co.*, 625 F.2d at 29; *cf. Batiansila*, 952 F.2d at 896. Accordingly, we find that Mrs. Blakeman waived her right to assert that the tables promulgated under section 7520 should be used.

#### D

Mrs. Blakeman argues that she is entitled to compensation for taxes she will pay due to the sale of her homestead property. Mrs. Blakeman did not raise this issue in the district court, but she contends on appeal that *Gibson v. United States*, 761 F.Supp. 685 (C.D.Cal.1991), presents new law warranting this court's examination of the question whether she should be compensated for the tax consequences of selling the homestead property.

We generally do not allow parties to raise issues for the first time on appeal. *See Colburn*

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should be measured as of the date of death of C.E. Blakeman or the date of the sale of the Randol Mill Property. *See Record on Appeal, Vol. 2 at 444.* In response to the district court's order directing the parties to submit briefs with respect to the proper date of valuation and how to value Maudine's interest, Mrs. Blakeman submitted a memorandum of law wherein she asserted that her interest should be determined as of the date of C.E.'s death and that the tables set forth in the Treasury Regulations should be used. *See Record on Appeal, Vol. 2 at 538–39.* The government responded to the district court's directive by submitting a brief wherein the government agreed "that the value of the Maudine Blakeman's life estate (homestead interest) should be determined by the use of the tables set forth in Treasury Sections 20.2031.10(a) and (f)." *Id.* at 520. Mrs. Blakeman's response in opposition to the government's brief did not discuss the proper tables to be used to determine her interest in the Randol Mill Property. *See Record on Appeal, Vol. 3 at 595–98.* It was only in her proposed findings of fact and conclusions of law that Mrs. Blakeman suggested, for the first time, that, if the proper valuation date was the date of sale, then her interest should be determined under the tables issued pursuant to 26 U.S.C. § 7520. *See Record on Appeal, Vol. 4 at 866–67.*



*v. Bunge Towing*, 883 F.2d 372, 375 (5th Cir.1989), citing *Edwards v. Sears, Roebuck & Co.*, 512 F.2d 276 (5th Cir.1975) ("We are reluctant to address for the first time on appeal alleged errors, which the trial court was not given an opportunity to consider and correct"). We make an exception to this general rule, however, when this prohibition would result in a "substantial miscarriage of justice." *Id.*

The government argues that a substantial miscarriage of justice would not result if Mrs. Blakeman was prohibited from raising this assertion for the first time on appeal.<sup>22</sup> We are not persuaded that our refusal to allow Mrs. Blakeman to raise this issue on appeal would result in a substantial miscarriage of justice. Indeed in her brief, Mrs. Blakeman cites a case from the Second Circuit which, she argues, stands for the proposition that the costs and expenses attendant to section 7403 judicial foreclosure proceedings may be shifted to the government in order to make innocent third parties whole. See Reply Brief for Maudine Blakeman at 10, *United States v. Blakeman*, 750 F.Supp. 216 (5th Cir.1991), citing *United States v. 110–118 Riverside Tenants Corp.*, 886 F.2d 514 (2d Cir.1989), *cert. denied*, 495 U.S. 956, 110 S.Ct. 2560, 109 L.Ed.2d 743 (1990). We see no reason why Mrs. Blakeman could not at least have presented in the district court her position that, pursuant to 26 U.S.C. § 7403, the district court could require the government to pay the costs and expenses attendant to the judicial foreclosure. Accordingly, we will not consider Mrs. Blakeman's untimely assertion.

### III

For the foregoing reasons, we AFFIRM in part and REVERSE and REMAND in part for the district court to determine the government's interest in the Randol Mill Property as of the date of the foreclosure sale, in accordance with the tables set forth in the Treasury Regulations.

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<sup>22</sup>Moreover, the government argues, there is nothing in 26 U.S.C. § 7403 or its legislative history to suggest that a nonliable third party's tax liability should be paid out of the proceeds of a foreclosure sale.

