

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
DEBORAH GRAY,) CASE NO. BK03-80096
)
Debtor(s).) CH. 13

MEMORANDUM

Hearing was held in Omaha, Nebraska, on April 3, 2003, and April 22, 2003, on the Chapter 13 Trustee's objection to the claimed homestead exemption (Fil. #7) and resistance (Fil. #21), and on the trustee's objection to the plan (Fil. #6). Casey Quinn appeared for the debtor, and Kathleen Laughlin appeared as the Chapter 13 Trustee. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B).

Decision

The objection to exemption is sustained. The objection to confirmation is sustained.

Discussion

Regarding the objection to the homestead exemption, the debtor has claimed an exemption for a home she owns in Kansas, although she resides in Nebraska. She previously lived in Kansas with her spouse and children, plans to live there presently during the summer months, and intends to resume living there full-time if she is able to obtain employment in that geographical area. She currently is married but separated.¹ She obtained a Kansas driver's license in April 2003, listing the Kansas City, Kansas, house as her address.

Because Nebraska has opted out of the federal exemption

¹The issue of whether the debtor is "head of household" for purposes of claiming the homestead exemption has been raised, but it need not be addressed here in light of the ruling on the applicability of the exemption.

scheme, debtors may exempt from the bankruptcy estate property that is exempt under state or local law in the place where the debtor is domiciled. 11 U.S.C. § 522(b)(2)(A). This debtor verified in her bankruptcy petition that she had been domiciled in Nebraska for the requisite amount of time as of the petition date. Therefore, the Nebraska homestead exemption law is applicable here.² Debtor's counsel correctly asserts that the statutes, Neb. Rev. Stat. §§ 40-101 to -116, are silent as to whether the claimed homestead property has to be located in Nebraska. Debtor also cites a Ninth Circuit case permitting a debtor domiciled in California to claim a California homestead exemption for a residence in Michigan. In that case, Arrol v. Broach (In re Arrol), 170 F.3d 934 (9th Cir. 1999), the court noted that the California exemption statute does not limit the exemption to residences within the state of California, and found that the stated legislative purpose of the homestead exemption is to provide families with a home where they can reside free from the anxiety that the dwelling can be taken from them against their will. This goal, the court said, "exists independently from state boundary lines." 170 F.3d at 936.

The Arrol ruling seems to be the minority view. See, e.g., In re Stratton, 269 B.R. 716, 717 (Bankr. D. Or. 2001):

The trustee argues that the Oregon law providing for the homestead exemption cannot be applied to real property located outside the State of Oregon. There is ample authority to support the trustee's position which, in fact, appears to be the majority view. See In re Halpin, 1994 WL 594199 (Bankr. D. Idaho 1994)

²Neb. Rev. Stat. Ann. § 40-101 (Michie 1999) provides:

A homestead not exceeding twelve thousand five hundred dollars in value shall consist of the dwelling house in which the claimant resides, its appurtenances, and the land on which the same is situated, not exceeding one hundred and sixty acres of land, to be selected by the owner, and not in any incorporated city or village, or, at the option of the claimant, a quantity of contiguous land not exceeding two lots within any incorporated city or village, and shall be exempt from judgment liens and from execution or forced sale, except as provided in sections 40-101 to 40-116.

(WestLaw only); In re Sipka, 149 B.R. 181 (D. Kan. 1992); In re Peters, 91 B.R. 401 (Bankr. W.D. Tex. 1988); Cherokee Const. Co. v. Harris, 92 Ark. 260, 122 S.W. 485 (1909); Rogers v. Raisor, 60 Iowa 355, 14 N.W. 317 (1882); State Bank of Eagle Grove v. Dougherty, 167 Mo. 1, 66 S.W. 932 (1902); In re Owings, 140 F. 739 (E.D.N.C. 1905); see generally, 40 Am. Jur. 2d Homestead § 14 (1999).

The Stratton court and the court in In re Weza, 248 B.R. 470 (Bankr. D.N.H. 2000) followed Arrol in permitting debtors to claim homestead exemptions in dwellings located in other states because the Oregon and New Hampshire legislatures did not explicitly limit the exemptions to property located within the boundaries of the state.

The Nebraska courts have not had an opportunity to address the extraterritorial effect of the homestead exemption statutes, but reading that statute to permit an exemption to be claimed in real property owned in another state would be an overly liberal reading of the exemption laws. The Nebraska Supreme Court has made the general observation that "[t]he exemption laws of this state have no extraterritorial force[.]" Siever v. Union Pacific R.R. Co., 68 Neb. 91, 93 N.W. 943 (1903) (regarding garnishment of wages of a Nebraska resident; in dicta the court speculated that the garnishor may attempt to transfer its claim to Iowa and institute garnishment there to get around the Nebraska exemptions). The same type of factual situation gave rise to Chicago, Burlington & Quincy R.R. Co. v. Hall, 229 U.S. 511 (1913), where Mr. Hall, a Nebraska resident, became subject to garnishment while working in Iowa, "where it had been held that the Nebraska exemption statute had no extraterritorial effect." 229 U.S. at 513. Before judgments were entered in the Iowa lawsuits, Mr. Hall returned to Nebraska and declared bankruptcy. Judgments were subsequently entered in Iowa and the railroad garnished his wages. Mr. Hall then sued the railroad to recover the funds, claiming them as exempt. The Nebraska Supreme Court affirmed the judgment in his favor in that action. The U.S. Supreme Court affirmed on the basis of section 67f of the Bankruptcy Act, which stated that

all . . . liens obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property

affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt.

229 U.S. at 514.

Accordingly, the court found that the liens of the Iowa plaintiffs were annulled by operation of the bankruptcy law and the funds were exempt property.

Although neither of these Nebraska cases addresses the issue present in this case, they provide some guidance as to the perception historically that a state's authority to declare its citizens' property exempt has no extraterritorial effect. Because it does not appear that the Nebraska Supreme Court would, if presented with the question, be likely to extend the applicability of the Nebraska homestead exemption statute beyond the borders of the state of Nebraska, I find that the Trustee's objection to the debtor's claimed homestead exemption should be sustained.

Regarding the objection to confirmation of the plan, the Trustee asserts that if the debtor is not eligible for the homestead exemption, then her plan fails to meet the best-interest-of-creditors test because it does not propose to pay unsecured creditors at least as much as they would receive in a Chapter 7 proceeding. The Trustee's objection is sustained, and the debtor will be given an opportunity to amend.

Separate order will be entered.

DATED: June 30, 2003

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

Casey Quinn
*Kathleen Laughlin
United States Trustee

Movant (*) is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.

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ORDER

Hearing was held in Omaha, Nebraska, on April 3, 2003, and April 22, 2003, on the Chapter 13 Trustee's objection to the claimed homestead exemption (Fil. #7) and resistance (Fil. #21), and on the trustee's objection to the plan (Fil. #6). Casey Quinn appeared for the debtor, and Kathleen Laughlin appeared as the Chapter 13 Trustee.

For the reasons stated in the Memorandum of today's date,

IT IS ORDERED: The Chapter 13 Trustee's objection to claim of exemption (Fil. #7) is sustained.

IT IS FURTHER ORDERED: The Chapter 13 Trustee's objection to confirmation (Fil. #6) is sustained. The debtor shall file amended schedules and an amended plan by July 11, 2003.

DATED: June 30, 2003

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
Casey Quinn
*Kathleen Laughlin
United States Trustee

Movant (*) is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.