

In the United States Bankruptcy Court

for the Northern District of Iowa

ELAINE S. HALSCH
Debtors.

Bankruptcy No. 87-01976-C
Contested No. 71616

MEMORANDUM OF DECISION RE: MOTION TO AVOID LIEN

The matter before the court is a motion by the debtor to avoid a lien on her homestead created by state court decree of dissolution of marriage. Trial was held on March 7, 1988 in Cedar Rapids, Iowa. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(0).

FINDINGS OF FACT

Elaine S. Halsch (DEBTOR) filed her individual petition under Chapter 7 of the Bankruptcy Code on September 18, 1987. In her schedule of real property (B-1) she listed and described her personal residence and in her schedule B-4, she claimed it as exempt property under Iowa Code 561.16.

On December 24, 1987, debtor filed a motion to avoid a judgment lien on the property under 11 U.S.C. 522(f). The motion was resisted by Leo Halsch and by Garrin Halsch.

Leo Halsch and debtor were once married. On March 14, 1984, the Iowa District Court for Linn County entered a decree of dissolution of that marriage. The decree fully incorporated a "Stipulation" entered into by the parties which was filed by them on March 14, 1984 in state court.

By paragraph 3 of the Stipulation, debtor was awarded their personal residence as her separate property (emphasis added). Debtor was to hold Leo Halsch harmless from the first mortgage loan on the property and from certain real estate tax obligations. Leo Halsch was to hold debtor harmless from any and all other financial obligations due and owing on the property.

Under Division V, paragraph 5 of the Stipulation, as part of the property settlement, Leo Halsch obtained judgment against the debtor in the sum of \$19,000.00 plus interest at the rate of 7%. No part of the judgment was payable, however, until either the personal residence was sold or until termination of Leo Halsch's child support obligation, whichever occurred first.

The Stipulation also provided that Leo Halsch was to obtain a release of the real estate mortgage against the personal residence. In the event he failed to do so, the \$19,000.00 judgment and the award to Leo Halsch of certain other real estate would be void. There was no evidence he failed to do so.

DISCUSSION

Debtor seeks to avoid the judgment lien under 522(f) of the Bankruptcy Code claiming that it is a judicial lien which impairs her homestead exemption. Leo Halsch and Garrin Halsch⁽¹⁾ resist arguing

that 11 U.S.C. 522(f) permits the avoidance of involuntary liens and that the judgment lien awarded to Leo Halsch was a consensual lien which is unavoidable under 11 U.S.C. 522(f).

The exemption claimed by debtor in her homestead is based upon Iowa Code 561.16 (1981).

The initial sentence of this Code section in pertinent part states as follows: "The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. . . . " Iowa Code 561.16, as amended by 1981 Iowa Acts, ch. 182, 1.

The judicial lien which the debtor seeks to avoid was awarded by the dissolution decree of the Iowa District Court. The power of the state court to divide the property interest of the Halsches arose from Iowa Code 598.21 as it existed on March 14, 1984, prior to amendment in 1985.

The statutory predecessor to Iowa Code 598.21 (1983) has been interpreted by the Iowa Supreme Court to be a "special declaration of statute to the contrary" within the meaning of the homestead exemption granted by 561.16. In re Marriage of Tierney, 263 N.W.2d 533, 534 (Iowa 1978); Kobriger v. Winter, 263 N.W.2d 892, 894 (Iowa 1978). There have been no significant changes in the statute which now warrant a different conclusion.

Therefore while the homestead of debtor may be otherwise exempt, it is not exempt to the extent of the value of Leo Halsch's judgment lien arising from the dissolution decree. In re Adams, 29 B.R. 452, 454 (Bankr. N.D. Iowa 1982); compare Boyd v. Robinson, 741 F.2d 1112 (8th Cir. 1984) (this case involved the operation of 11 U.S.C. 522(f) upon the judicial lien created in a homestead by a dissolution decree under Minnesota law).

Also, Boyd v. Robinson, et al., *id.*, compels the denial of the debtor's motion under 11 U.S.C. 522(f).

Here, as in Boyd v. Robinson, the lien imposed by the state district court did not attach to an interest of debtor but instead protected Leo Halsch's pre-dissolution interest in the homestead.

CONCLUSIONS OF LAW

The judgment lien of Leo Halsch in the homestead property of debtor may not be avoided under 11 U.S.C. 522(f) because it did not attach to or impair an interest of the debtor within the meaning of 11 U.S.C. 522(f).

IT IS THEREFORE ORDERED that the debtor's motion to avoid lien is denied.

Judgment shall enter accordingly.

SO ORDERED ON THIS 22ND DAY OF MARCH, 1988.

William L. Edmonds
Bankruptcy Judge

Filed Stamped 3/22/88

1. There was no evidence at trial as to the interest of Garrin Halsch in the real property nor as to the grounds for his resistance to the lien avoidance motion. There is insufficient evidence for the court to

make any determination as to the interest of Garrin Halsch in the real property or whether that interest should be avoided.