

In the United States Bankruptcy Court

for the Northern District of Iowa

PATRICIA ESTES
Debtor.

Bankruptcy No. 87-02006W

MEMORANDUM OF DECISION AND ORDER RE: OBJECTION TO EXEMPTION

The matter before the Court is an Objection to Property Claimed Exempt by Debtor Patricia Estes (Debtor) filed by Schneider's Milling, Inc. (Schneider) on November 13, 1987. A hearing was held January 20, 1988 in Waterloo, Iowa. The matter was submitted to the undersigned for consideration. This ruling shall constitute Findings and Conclusions as required by Bankr. R. 7052. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

I.

The Court finds the following:

1. Debtor occupied a house in Denver, Iowa beginning in February of 1981.
2. Upon her marriage to Merlin Benning in 1982, Debtor moved from the Denver house to his farm home.
3. Debtor and Merlin Benning, while married, borrowed a principal sum of \$51,230.09 from Schneider on January 18, 1985 primarily for feed and fertilizer; the note was secured by the borrowers' inventory, equipment, farm products, accounts and other rights to payment, and general intangibles.
4. Debtor returned to the Denver house in May, 1985 upon separation from her husband.
5. Debtor was divorced from Merlin Benning in December of 1985.
6. Debtor sold the Denver house in August, 1986 and received a house in Janesville, Iowa in partial consideration.
7. Debtor moved from the Denver house in August of 1986 to a rental house in Evansdale, Iowa.
8. Debtor moved into the Janesville house in October, 1986 after repairs and cleaning rendered the premises habitable.
9. Debtor claims the Janesville house is exempt as her homestead with a stated value of \$23,000.00.

II.

Iowa has opted out of the federal exemption statute in favor of its own. Iowa Code § 627.10. The Iowa homestead exemption is provided by Iowa Code § 561.16:

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary, provided that persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be

exempt from judicial sale. For purposes of this section, "household unit" means all persons of whatever ages whether or not related, who habitually reside together in the same household as a group.

Iowa defines a homestead as follows:

The homestead must embrace the house used as a home by the owner, and, if he has two or more houses thus used, he may select which he will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead.

Iowa Code § 561.1. The homestead may be changed:

The owner may, from time to time, change the limits of the homestead by changing the metes and bounds, as well as the record of the plat and description, or vacate it.

Such changes shall not prejudice conveyances or liens made or created previously thereto.

No such change of the entire homestead, made without the concurrence of the husband or wife, shall affect his or her rights, or those of the children.

Iowa Code § 561.7 (emphasis added). The new homestead is exempt to the extent of value of the old:

Where there has been a change in the limits of the homestead, or anew homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former one would have been.

Iowa Code § 561.20. As highlighted above, a spouse must consent to change of homestead by the other. Further,

[n]either husband nor wife can remove the other nor the children from the homestead without the consent of the other.

Iowa Code § 561.15.

The burden of proof in establishing that an exemption is not properly claimed is on the objector. Bankr. R. 4003. Courts must liberally construe the homestead exemption in the debtor's favor. Berner v. Dellinger, 206 Iowa 1382, 1385, 222 N.W. 370, 372 (1928) (cited in Chariton Feed and Grain, Inc. v. Kinser, 794 F.2d 1329, 1331 (8th Cir. 1986)). The purpose of the exemption statutes should not be defeated by narrow construction, American Savings Bank v. Willenbrock, 209 Iowa 250, 253, 228 N.W. 295, 297 (1929)1 but it is not within a court's province to enlarge or extend the exemptions established by the legislature. Iowa Methodist Hospital v. Long, 234 Iowa 843, 851, 12 N.W.2d 171, 175 (1943).

The purpose of Iowa's homestead exemption laws is clear.

Homestead exemption is allowed, not for the financial profit or merely as a margin of financial safety to the debtor. The exemption is for the benefit of the family, to provide wife (or husband), children, and dependents with a home. The exemption is granted not

merely out of grace to the debtor, but as a matter of public policy. The state itself is interested in it. The law allowing the exemption is to be liberally construed, and is not to be pared away by construction so as to defeat its beneficent, sociological, and economic purpose.

American Savings Bank, 209 Iowa at 253, 228 N.W. at 297.

Schneider argues that any homestead interest Debtor had when the debt was incurred was abandoned either when Debtor moved from the farm or when she subsequently moved from her Denver house. Therefore, Schneider contends, Debtor's present homestead interest in the Janesville house arose subsequent to the debt and is subject to execution for that debt. Debtor responds, in light of the policy behind the state's homestead exemption and under the facts present, that her homestead interest in the Denver house continued when she "traded" her Denver house for the Janesville house and subsequently moved into the Janesville house.

Since the objector has the burden of proof, the issue before the Court is whether Schneider has shown that Debtor has not properly claimed her homestead is exempt from execution for a debt incurred while the Benning farm was her homestead.

III.

Any of Debtor's three changes of residence since 1985 may have in fact constituted an abandonment of any homestead interest she had in the prior residence. From the evidence presented, however, no abandonment of any homestead interest Debtor had at the time the debt was incurred has been shown.

The Iowa Legislature recognizes that a person may own more than one house but mandates that only one may be claimed as a homestead. Iowa Code § 561.1. Iowa's homestead exemption statutes permit a change of homestead but do not dictate when or how the owner may do so. See Iowa Code § 561.7 and § 561.20. The statutes only dictate that purchasers or lien creditors may not be prejudiced by the change, Iowa Code § 561.7, and spouses must consent to the change. Iowa Code § § 561.1 and 561.15.

Iowa Code § 561.20 provides that the new homestead is protected to the transferred value of the old. See, e.g., Furman v. Dewell, 35 Iowa 170, 172-73 (1872); State v. Geddis, 44 Iowa 537 (1876); Elliott v. Till, 219 Iowa 649, 259 N.W. 460 (1935)⁽¹⁾. A sale of the old homestead and a strict application of the proceeds toward the new is not required. Iowa Code § 561.7 and § 561.20; American Savings Bank, 209 Iowa at , 228 N.W. at 298 (assets of the debtor in addition to the proceeds of the old homestead may be used in acquiring the new); Benham v. Chamberlain and Co., 39 Iowa 358, 359 (1874)(property or money other than the proceeds of the old homestead may be used to buy a new one); Harm v. Hale, 206 Iowa 920, 923, 221 N.W. 582, 583-84 (1928)(use of exact proceeds is not imperative). In essence, the old homestead need not "enter into" the acquisition of the new. Shaffer Brothers v. Chernyk, 130 Iowa 686, , 107 N.W. 801, 801 (1906).

As long as the value exchanged remains unchanged, creditors are not prejudiced since only the property available for execution has changed and the new homestead is exempt only to the value of the old. Harm, 206 Iowa at 923, 221 N.W. at 583-84; Shaffer Brothers, 130 Iowa at , 107 N.W. at 801.

In one of several ways, Schneider might have shown that the value of Debtor's homestead interest in the farm property was not conveyed to her Denver house. Schneider did not introduce evidence that Debtor had no ownership interest in the farm on which she could premise a right to change her

homestead under Iowa Code § 561.7 or that, as the homestead owner's spouse, her move from the farm to the Denver house was an attempt to change their homestead without her spouse's consent as required by Iowa Code § § 561.7 and 561.15. There was no evidence that an agreement pursuant to the divorce altered Debtor's homestead interest in the Benning farm or the Denver house nor has Schneider presented a statutory basis for depriving Debtor of a continued homestead interest because of her separation and divorce from Merlin Benning. Finally, Schneider did not present any evidence that Debtor's change of homestead was an attempt to displace an existing judgment lien creditor contrary to Iowa Code § 561.7. See Chariton Feed and Grain, Inc. v. Kinser, 794 F.2d 1329 (8th Cir. 1986).

Schneider also failed to show that Debtor abandoned her homestead interest when she sold and moved from the Denver house to the temporary rental property in Evansdale. As noted above, the exact proceeds of the old homestead need not be directly applied to the purchase of the new. Moreover, the proceeds of a sale are likewise protected while in "transitu" to the new homestead so long as the proceeds are not put to an intervening use and the debtor maintains his intention to apply the proceeds to a new homestead. Fardal v. Satre, 200 Iowa 1109, 206 N.W. 22 (1925); Geddis, 44 Iowa at 539. A trade of properties, as was made by Debtor, is acceptable. See Benham, 39 Iowa at 359. Also, the taking of a temporary residence for a reasonable period of time after the old house is sold and while the new house is repaired is not considered an abandonment where the intention to continue the homestead is maintained. Neal v. Coe, 35 Iowa 407, 410 (1872).

The Evansdale house clearly constituted proceeds of the sale of the Denver house. That Debtor, soon after moving out of the Denver house, chose to make the Evansdale house her homestead, that is, to "convert" the proceeds from the sale of her old house into a homestead itself, does not indicate Debtor never intended to invest the proceeds of her old homestead into a new homestead. Moreover, Debtor's testimony that when she moved from the Denver house she had not yet decided where she would permanently reside does not indicate that she did not intend to establish a new homestead with the proceeds of sale nor is it inconsistent with a deposition statement that her bank originally expected her to sell the Janesville house to reduce her debt to them.

The evidence necessary for the Court to conclude that Debtor did not have a homestead interest in the farm which transferred to the Denver house and ultimately to the Janesville house was not presented. See Iowa Code § 561.20; American Savings Bank, 209 Iowa at 253, 228 N.W. at 297-98. Accordingly, the Court concludes that Schneider has not met its burden of showing Debtor improperly claims her homestead in Janesville is exempt from a debt incurred while the farm was her homestead.

Finally, Schneider failed to produce evidence of the value of Debtor's homestead interest, if any, which transferred from the farm. Consequently, the Court cannot determine whether Debtor's present homestead is subject to execution for the antecedent debt to the extent that its value exceeds the protected value transferred from an old homestead.

IT IS THEREFORE ORDERED that the Objection to Exemption by Schneider's Milling, Inc. is overruled.

Judgment shall enter accordingly.

DATED this 25th day of March, 1988.

William L. Edmonds

Chief Bankruptcy Judge

Filed Stamped 03/28/88

1. Iowa Code § 561.20 was amended, though not substantively, in 1923. Elliott v. Till, 219 Iowa 649, 259 N.W. 460 (1935), was decided under its current language.