In the United States Bankruptcy Court

for the Northern District of Iowa

JERRY M. JACOBSEN, CAROL J. JACOBSEN	Bankruptcy No. 93-10724LC
Debtors.	Chapter 7

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On August 26, 1993, the above-captioned matter came on for hearing pursuant to assignment. Debtor, Jerry Jacobsen, was present in person with his Attorney, Cathy Fitzmaurice. The Chapter 7 Trustee was represented by Attorney Kate Corcoran. Evidence was presented, after which the Court took the matter under advisement.

ISSUE

The issue for determination is whether a mobile home located on rented property and used by Debtors as a personal residence qualifies under the Bankruptcy Code for a homestead exemption.

FINDINGS OF FACT

The evidence establishes that the Debtors are husband and wife and reside at Lot 81 of a Mobile Home Park located in West Liberty, Iowa. The Mobile Home Park is not owned by the Debtors and they have no property interest in the real estate upon which the mobile home sits except as renters. The property taxes are paid by the owners of the Mobile Home Park.

The Debtors purchased this mobile home in April, 1992 from Mr. Jacobsen's father. It is a 14 ft. x 70 ft. mobile home containing two bedrooms. The Debtors pay $150 per month toward the purchase of this mobile home. At the time of purchase, title was signed over to the Debtors by Mr. Jacobsen's father without any notation of a security interest on the certificate of title.

The mobile home is in the same location as when purchased and has been in this location for the last ten years. The wheels and the hitch have been removed. It has no foundation but is sitting on cement blocks to keep the undercarriage off the ground. The home has skirting installed around it. It is attached to the ground by means of metal straps attached to anchors.

Debtor testified that if he did move, he would take the mobile home with him though he has no intention of moving or of moving the mobile home. He considers it to be his home.

CONCLUSIONS

Title 11 U.S.C. 522(b) allows individual debtors to exempt from property of the bankruptcy estate any property that is exempt under either 522(d) of the Bankruptcy Code or, in the alternative, State or local law applicable at the date of filing, and any Federal exemptions other than 522(d). State preference determines which exemption scheme is available to debtors. Section 522(b)(1) allows States to opt out of the Federal scheme embodied in 522(d) and thereby, entitles debtors to State and local exemptions. Iowa has done this by virtue of Iowa Code sec. 627(10). As such, precedents from other Courts analyzing the homestead exemption, applying other than Iowa law, are of little precedential value. The Court must turn to Iowa law to determine whether the debtors are entitled to the claimed homestead exemption.

The debtors have claimed their mobile home as exempt as a homestead under sec. 561.1 of the Iowa Code. No issue is made in this case whether a mobile home would qualify as a motor vehicle or as exempt personal property. Iowa Code sec. 561.1 (1993) defines a homestead as follows:

> "The homestead must embrace the house used as a home by the owner . . . 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."

Resolution of this issue requires the threshold determination of whether a homestead exemption can exist on rented or leasehold property. The definition provided in sec. 561.1 uses permissive language when it states that the homestead "may contain one or more contiguous lots". A strict reading of the language indicates that there is no mandatory requirement that the existence of a homestead include ownership of the land. This is confirmed by Iowa case law. A determination of a property interest sufficient to support a homestead does not necessarily preclude debtors from claiming as exempt, a leasehold interest which they may presently hold in the property. Perry v. Adams, 179 Iowa 1215, 1233, 162 N.W. 817, 820 (1917) (there may be a homestead right in a leasehold); White v. Danforth, 122 Iowa 403, 404, 98 N.W. 136, 137 (1904); Wertz v. Merritt, 74 Iowa 683, 687, 39 N.W. 103, 104 (1888). Though of limited analytical value in the present case, at least one other bankruptcy Court has held it unnecessary to own the land on which a mobile home is situated in order to be entitled to a homestead exemption. In re Ronald Tiffany, 106 B.R. 213 (Bankr. D. Idaho 1989). It is the conclusion of this Court that a leasehold estate interest created by a rental agreement is sufficient to support a homestead exemption if all other requirements are satisfied. See also In re Louis E. Guynn, No. L-91-1545C, slip op. at 2 (Bankr. N.D. Iowa Aug. 17, 1993).

The issue for ultimate resolution is whether the mobile home, in and of itself, can qualify as a homestead exemption under Iowa law. Iowa case law has consistently mandated that there be a liberal interpretation of exemption statutes. The homestead exemption statute, however, is provided even more deference than the remainder of the exemption statutes. See Berner v. Dellinger, 222 N.W. 370, 372 (Iowa 1928) (holding that Court must liberally construe the homestead exemption statutes in the debtor's favor); Brown v. Vonnahme, 343 N.W.2d 445, 451 (Iowa 1984) ("The purpose of homestead laws is to provide a margin of safety to the family . . ."); In re Marriage of Tierney, 263 N.W.2d 533, 534 (Iowa 1978). The most recent statement confirming the special status of homestead exemptions is reflected in In re Matter of Bly, 456 N.W.2d 195, 199 (Iowa 1990) at 199, which states:

> In this state, homestead statutes are broadly and liberally construed in favor of exemption. See, e.g., Millsap v. Faulkes, 236 Iowa 848, 852, 20 N.W.2d 40, 42 (1945). "Regard should be had to the spirit of the law rather than its strict letter." Id. The homestead exemption is not "for the benefit of the husband or wife alone, but for the family of which they are a part." Swisher v. Swisher, 157 Iowa 55, 65, 137 N.W. 1076, 1080 (1912). Further still, we have recognized that the exemption is not only "for the benefit of the family, but for the public welfare and social benefit which accrues to the state by having families secure in their homes." In re Estate of McClain, 220 Iowa 638, 644, 262 N.W. 666, 669 (1935). The policy of our law is to jealously safeguard homestead rights. Merchants Mut. Bondong Co. v. Underberg, 291 N.W.2d 19, 21 (Iowa 1980).

Iowa, therefore, provides an extraordinarily expansive interpretation to the homestead exemption consistent with the societal purposes stated in the case law. Nevertheless, this view, by itself, merely defines a rule of construction. The determination of whether a mobile home can constitute a homestead requires the application of ascertainable legal standards. These standards must be gleaned from Bankruptcy Court decisions discussing this aspect of the Iowa law, from applicable Iowa statutory law, and from Iowa Court decisions.

The Court will first discuss applicable Bankruptcy decisions analyzing Iowa homestead law. To a large extent, Federal or Bankruptcy decisions discussing Iowa homestead exemptions are of little value in this case. The 8th Cir. case of Chariton Feed & Grain, Inc. v. Kinser, 794 F.2d 1329 (8th Cir. 1986) originates from the Southern District of Iowa. The debtor was the owner of three contiguous parcels of land. She attempted to change her homestead by moving a mobile home that she used as her domicile from one parcel of real estate to another. This move was attempted in order to avoid a lien on the parcel on which she moved the mobile home. The trial court initially determined that the first parcel was the debtor's homestead by virtue of her residing there in a mobile home. Id. at 1330. This determination does not appear

to have been at issue on appeal, however, and the circuit court did not disturb the lower court's determination of this issue. Judge Russell Hill has indirectly addressed this issue in In re Dettman, 96 B.R. 899 (Bankr. S.D. Iowa 1988). In Dettman, 96 B.R. at 900, the debtor sought lien avoidance on a mobile home under 11 U.S.C. 522(f)(2) apparently defining mobile home as a "household good". In denying the debtor's motion, Judge Hill noted that because the debtor exempted the mobile home under Iowa Code sec. 561.16, Homestead Exemption, the mobile home is a homestead, not a household good. Id. at 900-901. However, as in Kinser, this matter was not at issue.

Finally, the Court is referred to a case from the Northern District of Iowa, In re Thys, No. 83-00329 (Bankr. N.D. Iowa 1984). A copy of the slip opinion has not been provided to the Court. The Court has subsequently learned that this citation is referenced in the treatise Bankruptcy in Iowa (1992) by Eric W. Lam at page 56:

> "The debtor had moved onto a 40-acre tract and placed thereon a mobile home several weeks before bankruptcy. The court disallowed the homestead exemption claim, reasoning that the mobile home did not evidence an intent to habitually reside on the acreage."

Reference to this case is not unlike the Iowa Supreme Court analysis in Kinney v. Howard, 133 Iowa 94, 110 N.W. 282, 285 (1907):

> "There is another case bearing upon this proposition (statutory interpretation) which neither counsel nor we have been able to find; but it holds . . . the departure from the statute in that case was much greater than in this one."

While the 1907 Iowa Supreme Court made a comparative analysis without the case, this Court feels In re Thys is of little precedential value both because of its absence and its apparent holding.

In summary, those bankruptcy cases which discuss this issue, have not resolved it clearly on its merits.

The Court will next discuss the various Iowa statutory provisions which consider mobile home issues. Iowa's general exemption statute relating to homesteads, under sec. 561.1, has been previously defined and discussed. As noted, the reference in this Code section is specifically to the term "house" and does not mention "mobile home". Neither is the term "house" defined in this chapter. Other homestead exemption statutes make specific provision for mobile homes in the homestead exemption. In re Ronald Tiffany, 106 B.R. 213 (Bankr. D. Idaho 1989); In re John Frank Kelly, 85 B.R. 832 (Bankr. E.D. Mo. 1988); In re James Arthur, 113 B.R. 399 (Bankr. S.D. Ohio 1990); In re Toni J. Coonse, 108 B.R. 661 (Bankr. S.D. Ill. 1989).

A general definition of mobile home is provided under the motor vehicle section of the Iowa Code. Iowa Code sec. 321.1(39)(a) provides:

> "Mobile home means any vehicle without motive power used or so manufactured or constructed as to permit its being used as conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons."

No further insight is provided in the motor vehicle section than is contained in this definition. The Trustee in this case argues that as a mobile home is included under the definitional section of the motor vehicle code, a mobile home is more appropriately categorized as a vehicle than as a homestead.

Finally, Iowa Code sec. 425.17(4) defines homestead for purposes of the homestead property tax credit. This Code sec. states:

> "Homestead means that dwelling owned or rented and actually used as a home by the claimant during all or part of the base year, and so much of the land surrounding it including one or more contiguous lots or tracts of land, as is reasonably necessary for use of the dwelling as a home, and make consist of a part of a multi-dwelling or multi-purpose building and part of the land upon which it is built. It does not include personal property except that a mobile home may be a homestead."

This code reference states unequivocally that a mobile home may be a homestead. However, the statute does not define whether special actions must be take in order to qualify a mobile home for a homestead under this section. Chapter 435 (Mobile home tax) does state that a mobile home shall not be assessed for property tax nor shall it be eligible for a homestead tax credit unless it is converted to real estate. Iowa Code sec. 435.26. One of the stated requirements for converting a mobile home to real estate is that the mobile home must be attached to a permanent foundation. Iowa Code sec. 435.26(1)(a). The Trustee claims that as the home does not have a conventional, permanent foundation, this mobile home cannot qualify as a homestead. A second requirement of Iowa Code sec. 435.26(1)(b) is that the vehicular frame must be modified for placement on a foundation. As stated, this has been accomplished to some extent.

In summary, Iowa statutory law contains language which appears to go both ways on the issue of whether a mobile homes can qualify as a homestead. The homestead exemption statute itself provides little guidance and is silent as to mobile home in general. The motor vehicle statute defines mobile home as a vehicle. However, it does not preclude the possibility that a vehicle could be converted to a fixed habitation within the definition of a homestead. Finally, the Homestead Property Tax Law (Sec. 425.17(4)) appears to provide the most insight on this issue. While stating that under ordinary circumstances a mobile home is personal property, it may be converted to a homestead under special circumstances. Any serious attempt to reconcile the various statutory provisions is unsuccessful. The Iowa Supreme Court provided some guidance when it stated that "statutes will not be construed as taking away common law rights existing at the time of enactment unless that result is imperatively required." Porter v. Porter, 286 N.W.2d 649, 655 (Iowa 1979). More specifically, the Iowa Court determined that Iowa Code sec. 135D.26(2), which is now sec. 435 of the Code, does not control this issue, in a factually similar case. In so doing, the Court concluded that a statutory scheme governing taxation or other matters relating to mobile homes, does not supersede the common law of fixtures. The Court stated that it is not unusual for property to be deemed realty for one purpose and personalty for another. Ford v. Venard, 340 N.W.2d 270, 273 (Iowa 1983).

Finally, the Court will discuss Iowa case law, which addresses this issue. Iowa case law has addressed issues of personalty becoming fixtures in various cases throughout the years. In the interest of brevity, the Court will not discuss each of them individually. These cases are summarized and addressed in general terms in the most recent case of Ford v. Venard, 340 N.W.2d 270 (Iowa 1983). After addressing many of the underlying principles and issues raised in the present opinion, the Iowa Supreme Court determined that a mobile home can become a fixture and, therefore, a homestead when:

1. It is actually annexed to the realty or to something appurtenant thereto;

2. It is put to the same use as the realty with which it is connected; and

3. The party making the annexation intends to make a permanent accession to the freehold.

Ford v. Venard, 340 N.W.2d at 271.

The Iowa Supreme Court therefore has determined that a mobile home can be a homestead. The Court also determined that, on this issue, statutory enactments are not controlling and the common law of fixture applies. This Court must, therefore, analyze the facts of this case to determine whether the common law rule containing the foregoing three part test is satisfied. In this case, the evidence establishes that this mobile home has been in its present location for in excess of ten years. The wheels and the trailer hitch have been removed. The home is on cinder blocks and is skirted though there is no poured foundation. The mobile home is affixed to the ground by means of a system of straps and anchors. It is set up to be used as a domicile in a mobile home park which is designed for the purpose of providing permanent homes to the individuals who live there.

The most critical element in this analysis is obviously the intent of the persons seeking a homestead exemption. In the present case, Mr. Jacobsen testified that he and his family have resided in this mobile home for approximately 1 1/2 years. The parties view this mobile home as their homestead and Debtors testified that they do not intend to move. Finally, there is nothing in the record to indicate that the Debtors have moved recently on to this property or that there is any motive or advantage which would be gained by seeking a homestead exemption other than is apparent from the

claim itself.

In summary, Iowa law does allow a homestead exemption to be established on property not owned by the debtor. Iowa law does allows a mobile home to become a fixture. Common law rules apply a three part test to determine if a homestead is created. Analysis requires a liberal construction consistent with Iowa case law. Based on these considerations, it is the conclusion of this Court that the Debtors' claim of a homestead exemption is in good faith and is sufficiently in compliance with the three factors to qualify this mobile home as a homestead under Iowa law.

WHEREFORE, for all the reasons set forth herein, the Trustee's Objection to Debtors' Exemption Claim is DENIED.

SO ORDERED this 8th day of September, 1993.

Paul J. Kilburg, Judge
U.S. Bankruptcy Court