

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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T. C. ERSEPKE  
Debtor.

Bankruptcy No. L-92-00541D  
Chapter 7

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### ORDER

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On October 20, 1993, the above-captioned matter came on for hearing pursuant to assignment. Appearing for Debtor was Attorney Brian Peters. Also appearing was the Chapter 7 Trustee Paul Fitzsimmons. The parties argued their respective positions after which the Court took the matter under advisement.

### STATEMENT OF THE CASE

The operative facts are not in dispute. Debtor T.C. Ersepke was married to Alice Ersepke. The parties were granted a dissolution of marriage in Dubuque County in Dissolution File No. 6797 in 1991. The parties owned a house in joint tenancy which was their homestead until entry of the dissolution decree. In the dissolution, the home was awarded to Alice Ersepke. In return, Debtor was granted a judgment in his favor and against Alice Ersepke in the amount of \$20,000 payable in annual installments of \$2,000 with interest. The first payment was to be made on January 15, 1992. He was given the judgment and lien on this property as compensation for his share of the marital estate.

Debtor T.C. Ersepke filed the pending Chapter 7 Bankruptcy on March 18, 1992. At the time of filing, Debtor lived in a mobile home and had lived there for several months previously. This is a 1979 Marshfield Mobile Home purchased, according to the bankruptcy schedules, on November 26, 1991. It has an indebtedness to Tri-State Community Credit in the amount of \$9,400. The value of the mobile home, as of the time of filing, was approximately \$5,600.

At the time of filing, Debtor claimed two homestead exemptions. He claimed as exempt the judgment against Alice Ersepke entered in his favor in the dissolution proceeding. He also claimed as a homestead exemption the Marshfield Mobile Home where he resided since November of 1991. At the time of filing, Alice Ersepke lived in the home which was the subject of distribution in the dissolution proceedings. T.C. Ersepke did not live in this house after the entry of the dissolution decree.

Debtor asserts he has not acquired another piece of property on which he has a homestead interest. He states the law provides that he can maintain a homestead exemption in proceeds of the sale of a homestead. He states that claiming the Marshfield Mobile Home was an error in the schedules. It is his position that the mobile home has no equity and it was not his intent to claim this as a homestead. Debtor states that he is entitled to claim the homestead exemption in the \$20,000 judgment.

Trustee states that Debtor does not reside in the home. His only claim to a homestead exemption is under Iowa law which allows a homestead exemption to continue in the proceeds of a sale of a homestead pending investment in a subsequent homestead. Trustee takes the position that a judgment entered in a dissolution procedure is different in kind than the sale of a homestead whereby the homestead exemption continues in the proceeds. He states that the dissolution decree and the subsequent judgment divested Debtor of the benefit of the homestead exemption in the proceeds. In other

words, a judgment in a dissolution decree does not constitute proceeds as envisioned by Iowa law.

The Court is asked to determine the status of this homestead claim. If it is exempt property, it is not subject to sale by Trustee and must be set aside to Debtor as a homestead. However, if it is not exempt, it becomes property of the estate and is subject to disposition by Trustee. Trustee has in fact found a buyer for the judgment. An offer of \$8,000 has been tendered by a friend of Alice Ersepke for this judgment. Trustee feels that this is a fair offer which should be accepted. He asks the Court for an Order approving the sale if the determination is made that this is not exempt property.

Debtor objects to the sale. He states that the judgment is collecting 7% interest per annum and is payable over a period of ten years. He feels that the value is substantially in excess of \$8,000. Trustee responds that this is a Chapter 7 Bankruptcy. It is necessary to reduce the assets of the estate to present value so this estate may be liquidated. Trustee feels that \$8,000 is fair and reasonable when reduced to present value and asks that the sale of this judgment for \$8,000 be approved.

## CONCLUSIONS OF LAW

The issue for resolution in this case is the extent to which the proceeds of disposition of a homestead in a dissolution proceeding should be allowed the protection of the homestead exemption. Many Courts have held that the disposition of a homestead extinguishes the homestead right and the proceeds of such disposition thereby become subject to the claims of Creditors. See 40 Am. Jur. 2d Homestead 46 (1968). What has been denominated as the minority position by some Courts allows the proceeds from the disposition of a homestead to retain the protection of the label of homestead. Sun First Nat'l Bank of Orlando v. Gieger, 402 So. 2d 428 (Fla. 1981). Iowa law has consistently taken the position that the Iowa homestead law should be liberally construed to effectuate its purpose of providing protection for homeowners. As such, Iowa has consistently followed what may be the minority position in allowing the proceeds of a sale to constitute exempt property for a reasonable period of time pending reinvestment in another homestead. In re Jacobsen, No. 93-10724LC, slip op. at 3 (N.D. Iowa Sept. 8, 1993).

This Court concludes that the appropriate rule of law is that the burden of proof is upon the person claiming the exemption to establish by a preponderance of evidence the intention to reinvest the proceeds of the disposition of a homestead into another homestead within a reasonable period of time. The Court will apply that standard to the matter before the Court.

The first issue for determination is to define proceeds. Trustee alleges that the judgment entered in favor of Debtor in this dissolution does not constitute proceeds as defined by Iowa law. This Court has searched the Iowa decisions, as well as bankruptcy decisions, addressing the homestead issue and has found no cases which expressly define a judgment entered in a dissolution proceeding as proceeds in a homestead disposition. However, it is the finding of this Court that Iowa law would mandate that proceeds gathered from this type of proceeding constitute proceeds subject to the homestead exemption rule. First, as previously stated, Iowa law has consistently interpreted these provisions liberally in order to protect the homestead exemption. In so doing, Iowa Courts have allowed the real property exemption to change its form until such time as it is reinvested in real estate. The issue, therefore, is whether this form of disposition is consistent with Iowa law. While the Iowa cases have not discussed this specific issue, Iowa law has invariably allowed a wide range of dispositions to be covered by the homestead exemption rule. Iowa Courts have held that a judgment for damages to a homestead is considered proceeds subject to the homestead exemption. Mudge v. Laming, 68 Iowa 641, 279 N.W. 793 (1886). Proceeds paid as a result of a condemnation proceeding in which a portion of a homestead was acquired by public authority constitutes proceeds subject to the homestead exemption. Kaiser v. Seaton, 62 Iowa 463, 17 N.W. 664 (1883). Proceeds of an insurance policy, if properly claimed, can constitute proceeds subject to the homestead exemption. Benjamin v. Doerschler, 105 Iowa 391, 75 N.W. 330 (1898).

The Iowa cases speak in terms of proceeds and not proceeds of sale. As such, the Iowa cases discussing this general proposition have given a broad interpretation to the meaning of proceeds. No Iowa cases intimate that a different interpretation would be given to the proceeds gathered from a dissolution proceeding than from the wide ranging possibilities already discussed. It is the ultimate conclusion of this Court that Iowa law provides that proceeds acquired

from the disposition of a homestead in a dissolution proceeding constitute proceeds subject to homestead protection.

The general rule requires that Debtor establish by a preponderance of evidence his intent to reinvest the proceeds into another homestead. Debtor asserts, through counsel, that it is his intention to do so. Trustee asserts that Debtor has claimed a new homestead exemption in the mobile home. The schedules filed in this bankruptcy proceeding establish that Debtor did indeed claim the Marshfield Mobile Home purchased toward the end of 1991 as his homestead exemption. Debtor now, however, states that this was a mistake and the Marshfield Mobile Home was not intended and is, in fact, not his homestead. The Court is willing to accept that it is the intention of Debtor to invest these proceeds in a substitute homestead. While somewhat curious, the Court is also willing to accept the assertion that Debtor did not intend the Marshfield Mobile Home to be his homestead either at the time of its purchase, during the time that he has resided in the homestead, or at the time when the bankruptcy schedules were filed.

If the Court accepts Debtor's present position that the Marshfield Mobile Home is not his present homestead, then Debtor is entitled to the more limited rights of a homestead exemption in the proceeds for a reasonable period of time pending reinvestment in a permanent homestead. The defining clause in this concept, however, is a reasonable period of time. Generally, one year has been construed as a reasonable time within which to acquire reinvestment of the homestead proceeds into a new homestead. Millsap v. Faulkes, 236 Iowa 848, 20 N.W.2d 40 (1947). In the present case, the dissolution was entered in 1991. More than two years have transpired since the homestead exemption was converted into proceeds. The record establishes that, during that time, Debtor has purchased a mobile home in which he does not claim a homestead exemption. There is nothing in this record to establish that Debtor has any immediate plans to place the proceeds into a homestead exemption.

It is the conclusion of this Court, based upon the matters presented, that more than a reasonable period of time has transpired since the entry of the decree of dissolution and that Debtor has not made significant efforts to convert these cash proceeds to a long term homestead. While Iowa law is liberal in establishing and protecting homestead rights, an individual's rights in proceeds are construed more narrowly because of their transitory nature than an actual homestead exemption. Debtor has had a substantial period of time within which to transform these proceeds into an actual homestead and has failed to do so. This Court must conclude that Debtor does not have a good faith intention of doing so and has, in fact, not done so within what the Court determines to be a reasonable period of time. For those reasons, the proceeds have lost their character as a homestead exemption. As these proceeds are no longer subject to the homestead exemption, they become property of the bankruptcy estate, are subject to claims of creditors, and are subject to appropriate disposition by Trustee.

As an asset of the estate, Trustee has asked the Court to allow this judgment to be reduced to present value which Trustee asserts is \$8,000. Debtor objects to this amount. The Court has examined the record and though this is a judgment in the amount of \$20,000, it is subject to payment over a period of ten years. As this is a Chapter 7 Bankruptcy and it is important to reduce assets to their present value and liquidate them in order to pay the claims of creditors, the Court feels that, under the circumstances, an offer of \$8,000 for this judgment is fair and reasonable and should be approved.

**WHEREFORE**, it is the conclusion of this Court that the proceeds of a homestead acquired through dissolution proceedings can constitute proceeds entitled to the protection of the homestead exemption.

**FURTHER**, the Court finds, based upon this record, that Debtor has failed to establish by a preponderance of evidence that Debtor has an intention to reinvest the proceeds into another homestead within a reasonable period of time.

**FURTHER**, the judgment granted to Debtor in the dissolution proceeding (Dubuque County Dissolution File No. 6797) is an asset of the estate subject to disposition by the Trustee.

**FURTHER**, the Court finds that the offer of \$8,000 for this judgment is fair and reasonable under the circumstances and the sale of said judgment by Trustee is hereby approved.

**SO ORDERED** this 30th day of November, 1993.

Paul J. Kilburg, Judge

## U.S. Bankruptcy Court