

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

BONNIE J. SCHEER
Debtor.

Bankruptcy No. 96-50422XS
Chapter 7

ORDER RE: OBJECTION TO CLAIM OF EXEMPTIONS

The matter before the court is the trustee's objection to the debtor's claim of exemption in a savings account and certificate of deposit as proceeds of her homestead. Hearing was held June 27, 1996 in Sioux City, Iowa. Craig H. Lane appeared for the debtor. Trustee Wil L. Forker appeared for himself. The court now issues its findings of fact and conclusions of law as required by Fed. R. Bankr. P. 7052. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

FINDINGS OF FACT

On February 29, 1996, the debtor, Bonnie J. Scheer, filed a Chapter 7 bankruptcy petition. Her scheduled assets included a \$4,000 savings account and a \$10,000 certificate of deposit. Scheer claimed the accounts exempt as proceeds from the sale of her homestead under Iowa Code Chapter 561. Document 1, Schedule C. The trustee objected to the claim of exemption on the ground that the homestead lost its exempt status when it was converted to cash. Document 10.

Scheer sold her home in Mapleton, Iowa on October 20, 1995, and moved to Sioux City. At the time of sale she had lived in the house approximately five years. The sale price of the home was \$36,500. The net proceeds of the sale totaled approximately \$26,000. At closing, Scheer deposited \$13,000 into a "super NOW" bank account and purchased a six-month \$10,000 certificate of deposit. She used the remaining \$3000 to pay off her car loan. Prior to filing her bankruptcy petition, Scheer used some of the money in the bank account to pay for living expenses, moving costs and expenses for her children. Scheer testified that over time she deposited approximately \$200 from her wages into the NOW account. However, Scheer believes the entire \$4000 account balance claimed exempt represents proceeds of her homestead. She does not use the account to pay her monthly expenses.

A few weeks after her arrival in Sioux City, Scheer met with a realtor to discuss the purchase of a new home. Scheer then applied for a home loan with Security National Bank in Sioux City and First State Bank in Mapleton. By this time, she had contacted attorney Lane regarding a bankruptcy filing. The loan officers informed Scheer that she would be unable to obtain financing until the bankruptcy was resolved.

Scheer has continued to look for a home since the filing of her bankruptcy petition and intends to purchase a home once she is able to obtain financing.

DISCUSSION

Scheer claims the proceeds from the sale of her homestead exempt under Iowa Code § 561.20. Section 561.20 provides:

Where there has been a change in the limits of the homestead, or a new 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 (1995). The Iowa Supreme Court has interpreted the statute to exempt proceeds of a homestead for a "reasonable time" so that the proceeds may be reinvested in a new homestead. Millsap v. Faulkes, 236 Iowa 848, 20 N.W.2d 40, 41 (1945); Campbell v. Campbell, 129 Iowa 317, 105 N.W. 583, 585 (1906). Scheer argues that the four months that she held the proceeds prior to filing her bankruptcy petition is a "reasonable time." She cites In re L.G. Blair, 125 B.R. 303, 304 (Bankr. D.N.M. 1991), to demonstrate that other states have provided for exemption of the proceeds from the sale of a homestead for a minimum of six months. Scheer argues that in light of this, four months is reasonable.

The trustee contends that the proceeds of the homestead should not be exempt under the facts of this case because Scheer has not purchased a new homestead. She has not even found a desirable home and is unable to obtain financing.

There is no formula to determine what constitutes a "reasonable time." Indeed, the length of time between the sale of the old homestead and the purchase of the new is not the controlling factor. Elliott v. Till, 219 Iowa 649, 259 N.W. 460, 464 (1935) (discussing State v. Geddis, 44 Iowa 537 (1876)). The issue is whether a person intends to invest the proceeds in a new homestead. If so, the proceeds are exempt. Schuttloffel v. Collins, 98 Iowa 576, 67 N.W. 397, 399 (1896). If the old homestead is sold with the intent of purchasing a new one, a person should have a "sufficient time" in which to exercise that right. Id.

In Richards v. Orr, 118 Iowa 724, 92 N.W. 655, 656 (1902), proceeds from the sale of a farm were held from June 1897 to February 1898. The farm had been sold with the intention of purchasing a new homestead. The court held that the eight-month period was a "reasonable time" for the proceeds to be held before reinvestment, and that the proceeds were exempt during that time. Id.

In Elliott, 259 N.W. at 464, the Elliots moved from their home in Knoxville in 1915 to be with Mrs. Elliott's mother in Des Moines who was very ill. They intended to return to their home in Knoxville until 1918 when they sold the home. They intended to use the proceeds of the sale for the purchase of a new home. The Elliots deposited the proceeds in a bank for investment with the understanding that they had access to the money at any time. Whenever the Elliots would discuss the purchase of a new home, Mrs. Elliott's mother would protest against them purchasing a new home and leaving the neighborhood. The mother died in 1923 and the Elliots used the proceeds from the sale of their old home to purchase a new home in 1924. The court determined that the time between the sale of the Elliott's old home and the purchase of their new one was reasonable under the circumstances and that the proceeds retained their exempt status until reinvested in the new homestead in 1924. As a result, an exemption in the new home was allowed. Id.

In those cases where an exemption in proceeds was not allowed, the courts did not base their holdings on the period of time the proceeds had been held. Rather, the courts based their holdings on the lack

of intent to purchase a new homestead. See e.g., Huskins v. Hanlon, 72 Iowa 37, 33 N.W. 352, 353 (1887) (proceeds from the sale of the homestead not exempt where no claim of an intention to change homesteads was made); Campbell, 105 N.W. at 585 (exemption in proceeds of homestead sale not allowed as there was no indication of any intent to attempt to acquire a new homestead).

In the present case, Ms. Scheer held the proceeds four months prior to filing her bankruptcy petition. She testified that her intent was, and still is, to use the proceeds for investment in a new homestead. To that end she has searched for a new home and attempted to obtain financing for a new home. Her uncontroverted inability to obtain financing can be explained by the bankruptcy filing itself. Given her intention of purchasing a new home with the proceeds and the circumstances surrounding her present inability to obtain financing, the four month period of time is not unreasonable. The trustee's objection should be overruled.

Scheer testified that the proceeds deposited in the NOW account may have been commingled with her wages. The court does not have to decide whether funds were in fact commingled, since commingling does not affect the exempt status of proceeds from a homestead. Harm v. Hale, 206 Iowa 920, 221 N.W. 582, 583 (1928). "Segregation of the precise moneys received from the sale of the former abode is not essential. Use of the exact 'proceeds' is not imperative, but, rather, the criterion is whether or not that part of the same actually employed, added to other capital, amounts to no more in the aggregate than the value of the original homestead." Id. Under the Hale decision, as long as the amount of proceeds claimed to be exempt is not greater than the amount of proceeds received from the sale, the exact origin of the proceeds is immaterial. Since the \$14,000 claimed by Scheer is less than the net proceeds from sale of \$26,000, any commingling that may have occurred in the now account is irrelevant.

IT IS ORDERED that the trustee's objection to the debtor's claim of exemption in the \$4000 savings account and \$10,000 certificate of deposit is overruled.

SO ORDERED THIS 10th DAY OF JULY 1996.

William L. Edmonds
Chief Bankruptcy Judge