

In the United States Bankruptcy Court

for the Northern District of Iowa

BEVERLY JO WHYLE

Debtor(s).

Bankruptcy No. 96-31970XF

Chapter 7

MEMORANDUM DECISION RE: TRUSTEE'S OBJECTION TO HOMESTEAD EXEMPTION

The matter before the court is the trustee's objection to the debtor's claim of exemption in a homestead. The parties have stipulated to the facts (docket nos. 16 and 17). Hearing was held by telephone on November 26, 1996. Habbo G. Fokkena appeared as trustee; James W. McCarthy, Esq. appeared for debtor Beverly Jo Whyte. This is a core proceeding under 28 U.S.C. § 157(b) (2) (B).

Debtor and her former husband acquired a homestead in Fort Dodge in 1982 (the Knollcrest residence). All of the debts scheduled in this case arose subsequent to the debtor's acquisition of the Knollcrest residence as her homestead. Debtor and her husband divorced in June 1995.

Debtor acquired her present residence in Fort Dodge (the 8th Avenue property) on or about August 1, 1996 and occupied it as a homestead at about that time. She paid \$35,000.00 for the property. She bought the property with the sale proceeds of real estate owned by her husband. She became entitled to the proceeds pursuant to the divorce decree. No part of the money used to purchase the 8th Avenue property came from the Knollcrest residence. The Knollcrest residence had a value greater than \$35,000.00, but it was overencumbered and was lost by the couple to the mortgagee through nonjudicial foreclosure under Iowa Code Chapter 655A. The foreclosure was completed in June 1996.

Beverly Jo Whyte filed her chapter 7 petition August 8 1996 and claimed the 8th Avenue residence exempt as her homestead. The trustee objects to the claim contending that it is not exempt under Iowa Code § 561.16 because the debtor had no equity in her former homestead, the Knollcrest residence, and because the money used for the purchase of the claimed homestead did not come from the former homestead.

Having considered the stipulated facts, the arguments of counsel, and the applicable law, I conclude that the debtor's claim of homestead in the 8th Avenue residence must be upheld and the trustee's objection overruled. I rely on the debtor's right to change her homestead and hold the new homestead exempt to the extent of the value of the old. Iowa Code §561.20. The Iowa Supreme Court's construction of that statute makes irrelevant the facts that debtor had no equity in the former homestead and that she did not use cash from the former homestead to buy the 8th Avenue residence. American Savings Bank of Marengo v. Willenbrock, 209 Iowa 250, 228 N.W. 295 (1929).

No present debt arose prior to the acquisition of the former homestead, and its value exceeded that of the present home. That debtor's debts preceded the acquisition of the present home avails creditors no advantage as to the present homestead. Accordingly,

IT IS ORDERED that the trustee's objection to debtor's claim of homestead in the following property is overruled:

Lot No. Five (5) of Elmo W. Anderson's Addition to Fort Dodge, Iowa, and Lot No. Nine (9) of the County Auditor's Taxation Plat of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of Section 20, Township 89, Range 28 Lands Inside the City of Fort Dodge, Iowa.

Judgment shall enter accordingly.

So ORDERED THIS 26th DAY Of NOVEMBER 1996.

William L. Edmonds
Chief Bankruptcy Judge