

In the United States Bankruptcy Court

for the Northern District of Iowa

DENNIS WAYNE AND LAWONNA ELAINE
OPEL
Debtor(s).

Bankruptcy No. 98-01862-C

Chapter 7

ORDER RE OBJECTION TO EXEMPTION

On August 13, 1998, the above-captioned matter came on for hearing on the Chapter 7 Trustee's objection to exemption. Debtors resist this objection. Debtors appeared in person with Attorney Michael Mollman. Trustee, Wesley Huisinga, appeared in person. After the presentation of evidence and arguments of counsel, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B).

STATEMENT OF THE CASE

Debtors Dennis and LaWonna Opel claim one homestead exemption. Trustee objects to the claimed homestead exemption on the basis that it is subject to Mrs. Opel's preacquisition debt. Debtors allege that since LaWonna Opel provided no initial consideration for the house, her interest is not truly an ownership interest and is more in the nature of dower. Thus, Debtors' argument impliedly asserts that LaWonna's preacquisition creditors cannot reach the couple's homestead to satisfy her debts.

FINDINGS OF FACT

Debtors filed their Chapter 7 petition on June 19, 1998. In Schedule F (Creditors Holding Unsecured Nonpriority Claims), Debtors list 210 creditors with a total indebtedness of \$241,287. In Schedule C (Property Claimed Exempt), Debtors list real property at 979 Jackson Road, Tipton, Iowa with a listed current market value of \$56,000. They assert that the value of the claimed exemption is \$27,000.

Debtors lived together before marriage but make no claim that a common law marriage relationship existed. The parties purchased the property claimed exempt on January 27, 1997 under a real estate contract. (Debtors' Exhibit No. 1). Though the real estate contract lists Dennis W. Opel and LaWonna E. Opel as husband and wife, the parties were not husband and wife and were not formally and legally married until May 25, 1997. Debtor Dennis Opel has diabetes which was controlled until approximately one year after the parties' marriage. Prior to that time, Debtors resided at the Jackson Road address and claimed the property as their homestead. Since then, Mr. Opel's health has deteriorated and he now resides in a retirement home. The home on Jackson Road continues to be occupied by Debtor LaWonna Opel and her daughter by a prior marriage.

When the parties purchased this property, a down payment of \$20,000 was applied toward the purchase price. This \$20,000 was contributed exclusively by Mr. Opel. Mr. Opel's father passed away and after probate administration, Mr. Opel inherited \$20,000. He immediately took this money and

applied it to the purchase of this home. Of the scheduled debts, at the time of acquisition of the parties' homestead, Dennis Opel's indebtedness was between \$500 and \$1,000. He acknowledges that debt nos. 26, 63, 75, 114, 141, 164, and 195 on schedule F are his preacquisition debts. The remaining preacquisition debts were either paid by insurance or consist of debts of LaWonna Opel who acknowledges that she brought into the relationship approximately \$29,000 of debt including a large credit card obligation.

The real estate contract dated January 27, 1997 was received into evidence. (Debtors' Exhibit 1). The parties also offered an appraisal which values this property at approximately \$56,230. The current indebtedness against the property is \$28,374.01. The net equity of \$27,855.99 approximates the value of the exemption claimed by Debtors. Debtor Dennis Opel argues that the homestead is exempt from his preacquisition debt. Debtor argues that his father possessed a house as his homestead at the time of his death. Debtor had an opportunity to possess this home. His sister, however, took possession of the home and debtor was given \$20,000. Debtor argues that the cash which he received in lieu of a possessory interest in the homestead, since it was then used to purchase a new homestead, enables him to benefit from an exemption as of the time his father's homestead interest was established.

Debtor LaWonna Opel asserts that Mr. Opel provided all of the initial consideration for this house. As it is his house, her interest is more in the nature of dower and does not constitute an ownership interest. Therefore, she claims that since she provided no consideration toward the purchase of this property, the property is not subject to her preacquisition debt.

NATURE OF PROPERTY INTEREST CREATED

In bankruptcy proceedings, state law governs the determination of property rights. Chiu v. Wong, 16 F.3d 306, 309 (8th Cir. 1994). In these proceedings, the burden of proof is also determined by state law. In In re McLaughlin Farms, Inc., 120 B.R. 493, 503 (Bankr. N.D. Iowa 1990). Chapter 557 of the Iowa Code governs real property in general. Under Iowa law, a conveyance to two or more people, without more, creates a tenancy in common. Iowa Code §557.15 (1992). Iowa law provides that if a conveyance does not specify the percentage share each grantee takes, it is presumed they take equal shares. See Williams v. Monzingo, 16 N.W.2d 619, 622 (Iowa 1944). This presumption may be rebutted by proof that the grantees contributed unequal amounts to the purchase price. Id. at 621.

Iowa law distinguishes between instances where there is partial contribution by one of the parties and where one of the parties provides the entire consideration. Compare Williams, 16 N.W.2d at 622, with Frederick v. Shorman, 147 N.W.2d 478, 484 (Iowa 1966). When a wife contributes a portion of the funds to purchase land as a tenant in common with her husband, the Iowa Supreme Court holds that upon a showing of unequal contribution, in the absence of further proof, a presumption arises that the parties share in proportion to the amount they individually contribute to the purchase price. Williams, 16 N.W. at 622. In contrast, where a parent contributes the entire consideration for a joint tenancy with right of survivorship with a child, the issue of a gift is inherent to the determination of the parties' property interests. Frederick, 147 N.W.2d at 482. Furthermore, due to the relationship between parent and child where a child is the natural object of the parent's affection, the joint tenants each hold an undivided half interest. See Frederick, 147 N.W.2d at 484; see also Abegg v. Hirst, 122 N.W. 838 (Iowa 1909) (where a husband purchases a mortgage security and directs that the assignees should be himself and his wife, thereby creating a tenancy in common, the Iowa Supreme Court holds there is a gift of a half interest to the wife even though the husband retains possession of the personal property during his lifetime, all of the accrued interest is paid to him, and there is no evidence that the wife had any knowledge of the transaction).

The conclusion to be drawn is that when parties to a tenancy in common each provide some consideration, proof of unequal contributions, without more, reflects the parties' intention to take in proportion to their contributions. However, where one party provides the entire initial consideration and the other co-tenant is a natural object of affection, the presumption that they take in proportion to their contributions is replaced by a presumption of a gift of equal shares.

LaWonna's argument that she possesses only a dower interest in the homestead finds little support in Iowa case law. The result most closely approximating this argument arises in the context of a mistakenly executed deed. O'Dell v. Browning, 165 N.W. 395 (Iowa 1917). In O'Dell, a husband purchased land exclusively with his funds and neither he nor his wife discovered for over twenty years that the deed had been made out to the wife as well as the husband. Id. at 396. In an action in which the wife sought to establish ownership rights against the current owners of the land, the Iowa Supreme Court held that the evidence of mistake was "clearly established and without conflict". Id. Thus the wife had only been seized with an inchoate dower right at the time the deed was executed. However, O'Dell does not apply here because LaWonna Opel signed and had knowledge of the real estate contract, thereby precluding any contention of mistake.

On January 27, 1997, the parties purchased the property at 979 Jackson Road. The contract for the property included the names of both Dennis Opel and LaWonna Opel. The contract further specified that the parties were husband and wife. Although this designation was inaccurate, the creation of a tenancy in common does not depend on any particular language. See Iowa Code § 557.15. A deed naming multiple grantees, without more, is presumed to create a tenancy in common. Id.

After the contract was executed, Dennis and LaWonna began a period of co-habitation in the homestead. They were legally married approximately four months later. The fact that the contract specified that the parties take as "husband and wife", coupled with the subsequent marriage, establishes LaWonna as a natural object of Dennis' affection. When Dennis and LaWonna purchased the homestead, the fact that they took as tenants in common, that she provided no consideration, and that she was a natural object of Dennis' affection creates the presumption of a gift. The contract created a tenancy in common with each party possessed of an undivided half interest.

CONTINUED EXISTENCE OF THE HOMESTEAD EXEMPTION OF DENNIS OPEL

A threshold issue is whether Debtor Dennis Opel continues to retain a homestead exemption on this property despite his absence. At the time of hearing, Debtor Dennis Opel was in a retirement home because of illness. LaWonna Opel and her daughter continue to reside in the parties' home and continue to retain the homestead exemption. The homestead right in Iowa is peculiarly favored. Gustafson v. Fogleman, 551 N.W.2d 312, 314 (Iowa 1996); and is provided even more deference than other Iowa exemptions. See Berner v. Dellinger, 222 N.W. 370, 372 (Iowa 1928) (holding that the court must liberally construe the homestead exemption statutes in debtor's favor). Because of this status, once a homestead has been acquired, it is given great deference and continues until such time as it is clearly established that the homestead status has been abandoned.

The homestead character of property is not lost where a party leaves the property because of illness, without evidence of intent to abandon the homestead. See Southwick v. Strong, 255 N.W. 523 (Iowa 1934). Iowa, like most jurisdictions, is reluctant to declare the abandonment of a homestead based upon illness. 40 Am.Jur.2d Homestead §182 (1968); Elliott v. Till, 259 N.W. 460, 463 (Iowa 1935); Schaffer v. Campbell, 199 N.W. 334, 338 (Iowa 1924). As there is no showing of an intent to abandon the homestead, it is the conclusion of this Court that the homestead exemption status previously

acquired by Debtor Dennis Opel continues as of the time of hearing. Both Debtors are, therefore, entitled to the protections of the marital homestead provided under Iowa law.

**DEBTOR DENNIS OPELS' CLAIM OF PRESERVATION
OF A PRIOR HOMESTEAD EXEMPTION**

Dennis inherited \$20,000 from his father's estate and claims that since he immediately invested the money in a new homestead he benefits from an exemption from execution as of the time his father's homestead interest was established. Debtor seems to fashion his argument based on a tenuous association of Iowa Code sec. 561.19 and Iowa Code sec. 561.20. It is well established under Iowa law that a person may preserve a homestead exemption when proceeds from the sale of an old homestead are used to purchase a new homestead. American Sav. Bank v. Millenbrock, 228 N.W. 295, 298 (Iowa 1929). However, Dennis received cash in lieu of a property interest in the homestead. Furthermore, the father's homestead was not sold. Debtor's sister took possession of their father's homestead and she could benefit from its exemption from execution. Iowa Code §561.19. Debtor's contention that he is entitled to an extension of a homestead exemption based on his father's homestead interest is incorrect because this would necessitate an impermissible expansion of the homestead interest vested in his sister. For purposes of this opinion, the first homestead Debtor Dennis Opel acquired originates with the January 27, 1997 contract. Debt arising prior to that date is preacquisition debt.

**WHETHER DEBTORS' PREACQUISITION CREDITORS
MAY REACH THE HOMESTEAD EXEMPTION**

In Iowa, the homestead rights of a husband and wife cannot be split. Decorah State Bank v. Zidlicky, 426 N.W.2d 388, 391 (Iowa 1988); Merchants Mut. Bonding Co. v. Underberg, 291 N.W.2d 19 (Iowa 1980); In re Streeper, 158 B.R. 783, 789 (Bankr. N.D. Iowa 1993). If the homestead interests of one spouse are not subject to execution, neither are the interests of the other. Zidlicky, 426 N.W.2d at 391; Gustafson v. Fogleman, 551 N.W.2d at 314; 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.").

As previously stated, the homestead status in Iowa enjoys a favored status.

In this state, homestead statutes are broadly and liberally construed in favor of exemption. "Regard should be had to the spirit of the law rather than its strict letter." The homestead exemption is not "for the benefit of the husband or wife alone, but for the family of which they are a part." 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." The policy of our law is to jealously safeguard homestead rights.

In re Matter of Bly, 456 N.W.2d 195, 199 (Iowa 1990) (citations omitted).

This Court holds that the contract establishes that Dennis and LaWonna intended to take as tenants in common with equal shares. Thus, the issue presented is whether established Iowa case law, with its strong support for the indivisibility of the marital homestead, protects the homestead from the reach of Debtors' individual preacquisition creditors.

The Iowa Code provides that a husband or wife is generally not liable for the other spouse's separate debts incurred before or after the marriage. Iowa Code §597.17. Therefore, both Dennis and LaWonna's individual preacquisition debts remain separate after their marriage. At the time this joint bankruptcy petition was filed, Debtors were legally married and claimed the homestead exemption as husband and wife.

This Court has adopted, in bankruptcy settings, the indivisibility of the marital homestead. See In re Streeper, 158 B.R. 783 (Bankr. N.D. Iowa 1993). Where a husband and wife listed their obligation to a creditor as a joint debt but the creditor obtained a judgment against the husband alone, this debt could not be satisfied by the homestead because the wife had claimed a homestead exemption and her interest was not subject to execution. Streeper, 158 B.R. at 789. Likewise, where a wife incurred debts prior to marriage and later owned a homestead in joint tenancy with her husband, the husband's interest in the homestead prevented a judicial sale of the property to satisfy the wife's preacquisition debts. In re Knode, No. C 98-12-MJM, slip op. at 4 (N.D. Iowa Aug. 26, 1998), aff'g No. 97-1814C (Bankr. N.D. Iowa Nov. 24, 1997).

The Trustee asserts that Debtors contracted for their property rights prior to their marriage. He asserts that, as Debtors took title as single individuals, Debtors are only entitled to claim an exemption for their one-half interest with no statutory marital interest in the other's interest. Because of this, the Trustee asserts that each parties' one-half undivided interest in this property should be subject to that individual's preacquisition debt. In the case of Mr. Opel, his equity of approximately \$13,000 would be subject to his preacquisition debt of between \$500 and \$1,000. Likewise, Mrs. Opel's equity of approximately \$13,000 would be subject to her preacquisition debt of approximately \$30,000. Under the Trustee's analysis, Mrs. Opel would lose her entire equity in the property and Mr. Opel would retain somewhat in excess of \$12,000 in equity.

Mr. and Mrs. Opel are tenants in common of an undivided one-half interest in this property and each possesses a property interest of one-half of the equity. Each party moved into the property at the time of its acquisition and their homestead rights were established at that time. If the parties had never married, the Trustee's analysis of the preacquisition debt may be correct and the property may be subject to disposition in the manner sought by the Trustee. However, this issue need not be decided with finality because the parties' marriage did intervene between the acquisition of the homestead and the filing of the bankruptcy petition. Debtors' rights under Iowa case law give the marital relationship an additional layer of protection. The fact that the marriage occurred after the creation of the property interest and the homestead exemption does not form a basis for denial of these protections. On the date of the filing of the petition, Debtors each held an undivided interest in the homestead property and were guaranteed the protections of a marital relationship.

The Trustee cites In re Knode, No. 97-01814-C, slip op. at 4 (Bankr. N.D. Iowa Nov. 24, 1997), as authority for the proposition that the homestead and marital rights of Debtors should be treated separately. However, Knode is not applicable to the present case. Knode is based on very narrow facts in which the debtor/wife incurred debts prior to marriage and later owned a homestead in joint tenancy with her husband. This joint tenancy prevented a judicial sale of the property to satisfy preacquisition debts. The wife later became seized of a fee simple interest in the property as a result of a divorce, and then remarried. The new husband had no ownership interest in the property and his interest was limited solely to that acquired through the marital relationship. As the husband's interest was purely derivative from that of his spouse and as the interest sought to be protected was the preacquisition debt of the wife, the Court determined that the homestead property was subject to the preacquisition debt of the wife. However, that ruling is narrowly based upon its facts and is not

applicable here. The interests of Debtors are not derivative and were acquired simultaneously through the ownership interest created by the contract dated January 27, 1997.

It is the conclusion of this Court that Debtors' homestead interest is exempt from all prepetition debts. Under Iowa law, Debtors are authorized to exempt from the estate any property which is exempt from execution under Iowa law on the date of filing. 11 U.S.C. §522(b); Iowa Code §627.10. The homestead is exempt from judicial sale under Iowa law. Iowa Code §561.16. Though the homestead is exempt from judicial sale, there are certain exceptions which include debts contracted prior to the acquisition. Iowa Code §561.21(1). In this case, both Mr. and Mrs. Opel came into the homestead status with preacquisition debt. None of this debt was joint preacquisition debt. Under Iowa law, the homestead is liable for and subject to judicial sale only to satisfy joint preacquisition debt. The Iowa Supreme Court has consistently held that in order for a creditor to satisfy a debt out of a marital homestead, the creditor must have rights against the whole property and not part of it. Merchants Mut. Bonding Co. v. Underberg, 291 N.W.2d 19, 21 (Iowa 1980). In other words, Mr. Opel's interest cannot be held liable for Mrs. Opel's preacquisition debt and vice versa. As there are no jointly acquired preacquisition debts, the exemption as to both Mr. and Mrs. Opel is valid.

WHEREFORE, for the reasons set forth in this opinion, the Trustee's objections to Debtors' claim of homestead exemption is OVERRULED and DENIED.

FURTHER, judgment shall enter accordingly.

SO ORDERED this 30th day of September, 1998.

PAUL J. KILBURG

Paul J. Kilburg
U.S. Bankruptcy Judge