In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

DOUGLAS ROY LINMAN and
VICKIE LYNN LINMAN
Debtor(s).

Bankruptcy No. 98-03770S

Chapter 7

Contested No. 9030

MEMORANDUM ORDER RE MOTION TO AVOID LIENS

On March 12, 1999, debtors Douglas and Vickie Linman filed a motion to avoid the judgment liens of Kent Feeds, Berne Cooperative Association, and Hemer Farm Supply under 11 U.S.C. § 522(f). The motion alleges that the liens impair the Linmans' exemptions in their homestead. Creditors Hemer Farm Supply and Berne Coop resist.

Hearing on the motion was held July 13, 1999 in Sioux City. Attorneys appearing were Donald H. Molstad for the Linmans, Peter A. Goldsmith for Hemer Farm Supply, and Allen Nepper for the Berne Coop. This is a core proceeding under 28 U.S.C. § 157(b)(2)(K).

Linmans attached to their motion a legal description of three parcels of real property within Section 33 of Township 87 North, Range 39 West in Ida County, Iowa. The parcels have since been labeled, from north to south, Parcels A, B and C. There was an error in the legal description. Plotting the description of Parcel C resulted in an open-sided figure. On July 30, 1999, Linmans amended Schedules A and C to correct the legal description and to claim the three parcels exempt.

At the hearing on the motion, the creditors stated they did not know where the Linmans' home is located. They argued that the Linmans, in any event, were not entitled to claim homestead exemptions in all three parcels of real property, because Parcel C is not contiguous with the other two. Linmans' counsel stated the tracts were separated by a road. He argued that Iowa law provides such parcels are "contiguous" within the meaning of Iowa Code § 561.1.

The court continued the matter and set deadlines of July 30 to file affidavits and briefs and August 9 to request an in-court hearing. No one requested a hearing. Accordingly, the court deems the matter submitted.

Hemer Farm Supply filed an affidavit of Everett Tice, the County Engineer for Ida County. Accompanying the affidavit was a highway and transportation map for Ida County. Tice stated that Township 87 North, Range 39 West in Ida County is Blaine Township, and that there are no roads going through Section 33 of Blaine Township in Ida County.

On July 30, 1999, Linmans filed a brief in support of their motion. They also filed affidavits of Douglas Linman, his mother Virginia Linman, and attorney Daniel Williamson. Debtors purchased the three parcels of land from Virginia Linman in about 1982. Attorney Williamson was hired to prepare the deed. A survey was prepared, a copy of which is attached to Williamson's affidavit as Exhibit A.

Linmans reside on Parcel A. Parcels A and B share a border. Parcels B and C are separated by an irregularly shaped piece of ground described as "rough grass ground." Two creeks run through this "gap" area, which is 40 feet wide at the narrowest point. The affidavits filed by the debtors state that the parties to the real estate transaction, at the time of the sale, did not intend the parcels to be separated by a piece of ground.

Discussion

Homestead exemption law is to be liberally construed in favor of the debtor. American Savings Bank of Marengo v. Willenbrock, 209 Iowa 250, 228 N.W. 295, 297 (1929). The court may not, however, depart from the express language of an exemption statute nor extend the legislative grant. In re Hahn, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980). A "homestead" is defined in Iowa Code § 561.1, which provides:

> The homestead must embrace the house used as a home by the owner, and, if the owner has two or more houses thus used, the owner may select which the owner will retain. 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.[(1)]

From the Ida County Engineer's map it appears that the Linmans' property is not within any city plat. The court assumes for this decision that their claims of exemptions do not exceed the statutory limit of 40 acres. Iowa Code § 561.2.

The issue is whether Parcels B and C are "contiguous" within the meaning of § 561.1, notwithstanding the separation between the two parcels. One definition of the term is "in close proximity." Black's Law Dictionary 290 (5th ed. 1979). Another is "touching at a point or along a boundary." Id. Cases discussing the homestead exemption law of other states have determined that contiguity means actual physical contact. See, e.g., In re Jackson, 169 B.R. 742, 745 (Bankr. N.D. Fla. 1994) ("detached tract separated from the homestead by other parcels of land neither owned nor occupied by the debtor" does not satisfy contiguity requirement); Piersol v. Northeast Kansas Production Credit Assn. (In re Piersol), 35 B.R. 121, 122 (D. Kan. 1983) (homestead includes dwelling place and land contiguous to it; "contiguous means touching sides, adjoining, adjacent"). The case of Ehle v. Tenney Trading Co., 56 Ariz. 241, 107 P.2d 210, 212 (1940), cited in the Black's Dictionary definition of "contiguous," involved an Arizona statute granting certain leasing rights on land contiguous to a person's homestead. The court stated that the term in that statute means having "actual contact or touching." Id.

While Iowa homestead cases may not have recited a dictionary definition of the term "contiguous," the courts have applied it consistently to require actual contact and not merely close proximity. In cases where lots are separated by some distance, the courts have simply concluded that the lots are not contiguous. Whether the lots are "close enough" is not an issue. In White v. Danforth, 122 Iowa 403, 98 N.W. 136 (1904), the judgment debtor owned two lots where he built a barn and kept livestock. His dwelling place was on another lot a block away. He changed homesteads to a lot two blocks from

the livestock lots, then moved again to a place "in the next block across the corner." The court rejected the argument that the livestock lots were impressed with the homestead character by his use of them for his livelihood. The lots were not contiguous. In Kelley v. Williams, 110 Iowa 153, 81 N.W. 230 (1899), the court found a lot 66 feet north and the same distance east of the homestead was not contiguous with it. The court found similarly in Reynolds v. Hull, 36 Iowa 394 (1873), as to a dwelling house and farm separated by a distance of a mile. In Livasy v. State Bank of Redfield, 185 Iowa 442, 170 N.W. 756 (1919), the court stated that a 40-acre homestead may be made up of "several adjoining tracts." This court finds and concludes that the Linmans' Parcels B and C are not contiguous.

The Linmans state that the land separating the two parcels consists of waste ground and two streams. They argue the situation is analogous to property separated by a road. Several courts have held that a person may have homestead rights in different lots separated only by a street or road. See, e.g., In re Thomas' Estate, 134 N.W.2d 237, 241 (Neb. 1965) (tracts separated by a public highway are contiguous for homestead purposes); In re McCall, 195 B.R. 911, 913 n.3 (Bankr. E.D. Ark. 1995) (tract was contiguous to homestead parcel despite separation by road); but see In re Schriock, 192 B.R. 514, 515 (Bankr. D. N.D. 1995) (distinguishing situation of urban lots separated by alley or city street from dwelling lot). In some cases, the result has been based on a finding that the landowner also owned the land under the road, thus satisfying the statutory requirement of contiguity. Hambleton v. Coopwood, 388 S.W.2d 92, 94 (Ark. 1965) (public road gave easement to public, fee title remained in owner); In re Jackson, 169 B.R. 742, 748 (Bankr. N.D. Fla. 1994) (road was prescriptive easement, fee title to land under road was in debtor). In others, the homestead statute did not expressly require separate lots to be contiguous. The courts applied a liberal construction of the homestead exemption law and considered the use of the separate tracts. In re Flatt, 160 B.R. 497, 501-02 (Bankr. N.D.N.Y. 1993) (parcels would have been contiguous but for roadway); Daily v. City of Gulfport, 54 So.2d 485, 488 (Miss. 1951) (separation of parcels by road does not necessarily defeat homestead).

According to the court's research, the issue has not been decided in Iowa. The Linmans have not cited an Iowa case on point. The court will assume for argument that an Iowa court would find two lots separated only by a public road contiguous for purposes of the Iowa homestead law.

The Linmans have not explained how their situation is analogous to owning land divided by a road. They claim to have the use of the land between Parcels B and C. In contrast, a roadway might be controlled or owned by a governmental entity. See Hambleton v. Coopwood, 388 S.W.2d 92, 94 n.3 (Ark. 1965) (without deciding the issue, court notes if highway authority held fee title to road, homestead claim to separate parcels would not necessarily be destroyed). If the Linmans have an interest in the gap property that supports a claim of homestead, the physical features of the land are irrelevant. If a third party individual owns the land, however, the Linmans' argument makes nonsense of the contiguity requirement.

The critical issue, then, is whether the Linmans have, as they claim, an interest in the gap property that supports a claim of homestead, making the parcels contiguous. They contend they have an equitable interest in the gap property by reason of their use of the land and the mutual intention of the buyers and the seller, at the time of the sale, that Linmans would acquire title to the property.

It is not essential that a homestead claimant hold fee title to the land. "The homestead may exist in a life estate, a leasehold estate, or in an equitable estate." Livasy v. State Bank of Redfield, 185 Iowa 442, 170 N.W. 756 (1919) (citation omitted). Nor is it necessary to have "perfect or complete legal title" to the property claimed as a homestead. "It is essential that [the claimant] have a sufficient title to justify his occupancy." Rutledge v. Wright, 186 Iowa 777, 171 N.W. 28, 30 (1919).

An equitable title holder often is a purchaser of real property who gives a mortgage to secure repayment of the purchase money loan. Holders of equitable title have "the right to have the legal title transferred to them by discharging their debt to [the mortgagee]." Johnson v. Board of Supervisors of Jefferson County, 237 Iowa 1103, 24 N.W.2 449, 452 (1946).

It appears that the Linmans had, at the time of the filing of their petition, a claim to obtain legal title to the property through an action for reformation of the deed from Virginia Linman. A court of equity has authority to reform a deed to correct a mistake in describing the property. Olsen v. Olsen, 236 Iowa 313, 18 N.W.2d 602, 604 (1945). Generally, the effect of a reformation decree is the correction of the instrument, relating back to the date of the original document, which is "binding upon all except bona fide purchasers without notice and those standing in similar relations." M.T. Straight's Trust v. Commissioner of Internal Revenue, 245 F.2d 327, 329 (8th Cir. 1957).

If the Linmans' claim is an equitable interest in the real estate between Parcels B and C sufficient to support a claim of homestead, the parcels are contiguous. It is premature to decide this issue, however, because the Linmans have not listed an interest in the gap property in their schedule of real property nor have they claimed it exempt. The Linmans will be given time to amend their schedules to claim the property. The court will then join any objections to the claim of exemptions to the motion to avoid liens and issue a combined ruling on both matters.

IT IS ORDERED that Linmans shall have to and including September 10, 1999 to amend their schedules of real property and claims of exemptions.

SO ORDERED THIS 20th DAY OF AUGUST 1999.

William L. Edmonds
U.S. Bankruptcy Judge

1. Prior to 1897, an Iowa homestead could include different lots or tracts not contiguous if they were "habitually and in good faith used as a part of the same homestead." Kelley v. Williams, 110 Iowa 153, 81 N.W. 230 (1899); Reynolds v. Hull, 36 Iowa 394, 395 (1873); see also White v. Danforth, 122 Iowa 403, 98 N.W. 136, 137 (1904) (effective date of new law requiring multiple lots or tracts to be contiguous was October 1, 1897).