

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

TROY DOUGLAS BAINBRIDGE
Debtor(s).

Bankruptcy No. 99-3293-S
Chapter 13

ORDER RE: CONFIRMATION OF PLAN

Final hearing on the confirmation of debtor's Chapter 13 plan came before the court on March 22, 2000 in Sioux City. Appearing were Glenn A. Metcalf for the debtor, Carol F. Dunbar, the standing Chapter 13 trustee, and John P. Loughlin for objecting creditor Thomasina Bainbridge. This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

Findings of Fact

Troy Douglas Bainbridge filed a Chapter 13 petition on December 20, 1999 and a Chapter 13 plan on January 3, 2000. Debtor is 29 years old. He resides in Kingsley, Iowa in a house purchased during his marriage to Thomasina Bainbridge, his former spouse. Debtor has been employed by Irving F. Jensen Co. in Sioux City for about 12 years. Approximately one year ago he was promoted to the position of construction supervisor.

The Bainbridges were married in 1992, separated in 1998, and were divorced August 25, 1999 by decree of the Iowa District Court for Plymouth County. Exhibit 1. They are the parents of three children who were ages two to six at the time of the dissolution. Thomasina was awarded physical care of the children; Troy was ordered to pay child support in the amount of \$1,275 per month.

The decree awarded Troy the following assets:

Kingsley residence	\$52,750
401(k) account	9,110
household goods	8,260
tools	8,535
trailer	263
guns	550
1998 tax refunds	7,000
dog	

Troy was assigned liability for the home mortgage debt to Kingsley State Bank in the amount of \$41,713 and debt on five credit cards totaling \$6,977. He was further ordered to pay \$2,500 toward Thomasina's attorney fees. Exhibit 1 at 15-16.

Thomasina was awarded a vehicle valued at \$9,475, bonds valued at \$6,600 and household goods in the amount of \$6,712. She was assigned liability for debt of \$5,200 on the vehicle, her student loans in the amount of \$13,700, and debt on two credit cards totaling \$3,200. Following the division of specific assets and debts, the decree stated, "Finally, [Thomasina Bainbridge] is hereby given judgment for property settlement in the sum of \$9,500 which is due on September 15, 1999, and shall incur interest after that date at the rate of 10 percent per annum." Id. at 16.

The debt secured by the first mortgage to Kingsley State Bank was incurred by the Bainbridges in 1997. Thomasina remains jointly liable on the note. In January 1999, when the Bainbridges were still married, Troy purchased windows for the Kingsley house from Pacesetter Corporation. He signed an "Installment Sales Contract, Security Agreement and Mortgage" stating the amount financed was \$4,713.44 at 14.65% annual interest. Exhibit 4. Thomasina was not aware of the purchase and did not sign the mortgage. On December 15, 1999, Troy borrowed \$3,250 from Kingsley State Bank and gave the bank a second mortgage. He used \$1,500 to pay off another loan with the Bank and used the rest for living expenses.

On the date of his petition, Troy's employer was holding \$820.06 garnished from his paycheck as a result of garnishment proceedings begun by Thomasina. The employer turned the money over to the standing Chapter 13 trustee. She deducted \$190 for the February plan payment and returned the balance of the funds to the debtor.

On his bankruptcy Schedule A, debtor listed his interest in the Kingsley real property valued at \$52,750. Schedule D shows the property is encumbered by the two mortgage loans for \$41,713 and \$3,250. Debtor scheduled a total of \$23,715 of personal property. (The total shown on Schedule B, \$22,915, is in error.) This property included \$350 of "household tools," a half interest in \$500 of "household and shop" tools, \$250 of miscellaneous tools, and \$3,000 of mechanic's tools described as tools of the trade. He claimed the following personal property exempt:

household goods (itemized)	\$ 2,000
clothing	400
garnished funds	800
401(k) plan	9,110
checking account	100
life insurance policies	1 3,000
ring	100
two shotguns	100
tools of the trade	<u>3,000</u>
Total	\$18,610

Doc. 1, Schedule C. The trustee's objection to the claim of exemption in the shotguns was sustained.

Doc. 27. Because the two shotguns were valued at a total of \$200, the court assumes the debtor claims an exemption in one shotgun valued at \$100. Pre-petition, debtor purchased a set of bedroom furniture he values at \$2,500. The plan proposes to surrender the collateral to creditor Dial National Bank. Doc.

1, Schedule D; doc. 8, plan ¶ 3.C. The total value of personal property that debtor plans to keep and that has not been claimed exempt is \$2,605.

Debtor listed unsecured debts in the total amount of \$23,088.74. They include the \$9,500 property settlement owed to Thomasina Bainbridge and \$4,713.44 owed to Pacesetter for windows.

Debtor's gross salary is \$5,032 per month. His employment benefits include the use of a company car and free health insurance. He receives annual raises and a Christmas bonus. His raise last year was between \$6,000 and \$8,000 because of his promotion to a supervisory position. This year he expects the raise to be not much more than the cost of living. After deductions for taxes, other insurance and child support, his net monthly income is approximately \$1,953. Schedule J shows that debtor has approximately \$1,763 in monthly expenses.

Debtor's Schedules I and J initially showed a paycheck deduction of \$165 for insurance and monthly expenses of \$60 for dental insurance and \$105 for life insurance. Schedule J was amended to eliminate the expenses for insurance as duplicative of the paycheck deduction. New expenses coincidentally also totaling \$165 were added, resulting in no net change in disposable income. There was an unexplained increase of \$150.00 per month for medical expenses. Doc. 23.

Troy testified that the \$105 life insurance payment, for insurance on all four members of the family, is no longer being made. The premiums for one or more life insurance policies have been taken from the cash value of the policies. Thomasina testified that she cashed in a policy that she owned. Exhibit 2 refers to a policy insuring the life of Troy D. Bainbridge for which the monthly premium \$34.67. The court assumes that Troy continues to have a monthly paycheck deduction of \$60 for dental insurance. It is not clear from the evidence what his monthly expense is for life insurance. He is required by the dissolution decree to keep in force insurance on his life. Exhibit 1 at 16.

Debtor is engaged to marry Amanda Lindgren. They have been living together for about a year. She is pregnant. She is a student and works part time. They have a joint checking account. Debtor's Schedules I and J do not reflect her income or any contribution from her toward household expenses. She does not share the expenses for the house payment or utilities.

Debtor's Chapter 13 plan proposes to make payments of \$190 to the trustee for 24 months and \$340 for 12 months. The plan commits future disposable income to be applied toward payments under the plan. Debtor is current on his mortgage payments to Kingsley State Bank. He will continue to make payments directly to the Bank. The second mortgage is scheduled to be paid in full in 24 months. Thus, the plan payment will increase by \$150 after that time.

Debtor proposes to pay \$1,210 to his own attorney and \$2,500 to John Laughlin, Thomasina's attorney in the dissolution proceedings. The debt to Laughlin is being treated as a priority claim for debt in the nature of support. Debtor will continue his child support payments of \$1,275 per month through payroll deductions. Debtor projects that unsecured creditors will receive a pro rata share of \$4,144.

Discussion

Thomasina Bainbridge objects to the debtor's claim of exemption for tools of the trade and objects to confirmation of the plan. She contends that debtor does not use mechanic's tools in his job as a construction supervisor and that he has undervalued his tools. She claims the tools are worth approximately \$8,535. Therefore, she argues, the plan is not confirmable because it does not meet the best interest of creditors test in 11 U.S.C. § 1325(a)(4). As a second ground for denial of

confirmation, she argues her claim is entitled to treatment under 11 U.S.C. § 1325(a)(5) as a secured claim. She claims her judgment for \$9,500 for property settlement should be treated as secured by a lien on the Kingsley house. She further claims that she held a pre-petition garnishment lien on the \$820.06 in the hands of debtor's employer, and that she is entitled to a secured claim in that amount. Finally, she has raised a number of items which, collectively, appear to be an argument that the debtor's plan was not proposed in good faith.

Exemptions/Best Interest Test

Troy claimed \$3,000 of mechanic's tools exempt as tools of the trade. The burden of proving that an exemption is improperly claimed is on the objector. Fed.R.Bankr.P. 4003(c). The test for determining whether tools are exempt as a debtor's tools of the trade is "whether the items are the proper implements in the reasonable conduct of the debtor's trade or profession." In re Indvik, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990). Neither party itemized the tools. Troy identified them as tools that would be used to maintain equipment in a concrete batch plant. Thomasina admitted Troy has used such tools on his job in the past. She argues that Troy, as a construction supervisor, does not use mechanic's tools. She does not have personal knowledge of his use of the tools since the parties' separation. Troy says that, although he has hired a foreman for the concrete plant, maintenance of the equipment is still his own responsibility. The court concludes the evidence is insufficient to deny the exemption. Because Thomasina's estimation of the value of all Troy's tools is within the \$10,000 limit for tools of the trade, it is unnecessary to determine for exemption purposes whether the tools which the court finds exempt were properly valued.

Secured Claims

Thomasina contends that she has a secured claim to the extent of the funds garnished pre-petition. The court agrees. The garnishment created a lien on Troy's wages prior to the filing of his bankruptcy petition. Matter of Yetter, 112 B.R. 301, 303 (Bankr. S.D. Iowa 1990). The lien was not destroyed when his employer turned the funds over to the trustee. No action was taken to remove the lien. The plan is not confirmable because it fails to provide for Thomasina's secured claim against the garnished funds.

The court next considers whether the \$9,500 judgment for property settlement should be treated as a secured claim. Troy contends the property settlement is merely a money judgment for \$9,500, which did not attach to the homestead. Thomasina argues that the decree created a lien on the Kingsley property; alternatively, she contends that a lien should be imposed on the property under a theory of equitable lien or constructive trust.

Iowa homesteads are exempt under Iowa Code § 561.16, which provides that "[t]he homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary." Section 598.21 of the Iowa Code, which authorizes Iowa courts to make an equitable distribution of property in a dissolution action, has been held to be such a "special declaration of statute." In re Reinders, 138 B.R. 937, 942 (1992) (citing Iowa Supreme Court cases). The state court has authority under § 598.21 to enter a dissolution decree ordering the sale of a homestead, creating an exception to the homestead exemption. Id. The state court has authority, moreover, to award a lien on the family homestead if such award would effect an equitable distribution of the property of the parties, considering their overall economic condition. In re Marriage of Cupples, 531 N.W.2d 656, 658 (Iowa App. 1995). The court may place conditions on the award of such a lien. See, e.g., In re Marriage of Richards, 439 N.W.2d 876, 882-83 (Iowa App. 1989) (affirming award of lien of certain duration that would accrue no interest). The court may determine that imposing a lien in a particular

case would be inequitable. Marriage of Cupples, 531 N.W.2d at 658 (eliminating award of lien on homestead; nearly all equity attributable to gift of husband's mother). Whether the court finds it appropriate to award a lien depends on the circumstances of each case. It seems, therefore, if the court intended to award a lien, it would use express language in the decree to do so. In the Bainbridges' case, the decree did not grant a lien. After listing the assets and debts awarded and assigned to each party, the court stated that Thomasina "is hereby given judgment for property settlement in the sum of \$9,500...." There is no indication that the court intended to create an interest in the homestead to secure the property settlement.

Nor is this court able to find that the judgment for \$9,500 created a judgment lien against the homestead. The judgment lien that attaches to a debtor's real property pursuant to Iowa Code § 624.23 does not attach to an exempt homestead. Baratta v. Polk County Health Services, Inc., 588 N.W.2d 107, 110 (Iowa 1999) (citing Lamb v. Shays, 14 Iowa 567 (1863)). Cases cited in creditor's brief for the proposition that a judicial lien created by dissolution decree is not avoidable under 11 U.S.C. § 522(f) are cases in which it was undisputed that the decree awarded a lien. See Farrey v. Sanderfoot, 111 S.Ct. 1825, 1827 (1991); In re Wells, 139 B.R. 255 (Bankr. D. N.M. 1992); Matter of Macke, 136 B.R. 209, 210 (Bankr. S.D. Iowa 1992). A judgment lien arising from a dissolution decree is subject to the same limitations on attachment as other judgment liens. It may attach to an otherwise exempt homestead if a statutory exception is applicable. See In re Marriage of McMorrow, 342 N.W.2d 73, 76 (Iowa 1983) (child support judgment entered pre-acquisition was debt within the exception of Iowa Code § 521.21(1)); see also Baratta v. Polk County Health Services, 588 N.W.2d at 111-12 (common law prohibition against splitting homesteads prevented child support judgment lien from attaching). The court, therefore, concludes that the money judgment awarded for property settlement in Bainbridges' dissolution decree did not create a judgment lien against the Kingsley homestead.

Thomasina's alternative argument for a secured claim is that the court should impose an equitable lien or constructive trust. Equitable liens and constructive trusts are alternative remedies that may be imposed by a court of equity to avoid injustice. Nachazel v. Mira Co., Mfg., 466 N.W.2d 248, 253 (Iowa 1991); Matter of Receivership of Hollingsworth, 386 N.W.2d 93, 96-97 (Iowa 1986). Although an equitable lien is not recognized at law, "equity allows the right to have property subjected to the payment of a particular debt or claim. The essential elements of an equitable lien include a debt, duty, or obligation owing by one person to another, and a *res* to which that obligation fastens. It is a remedy for a debt and provides a method for the enforcement of an obligation." Federal Land Bank of Omaha v. Boese, 373 N.W.2d 118, 121 (Iowa 1985) (citations omitted). "A constructive trust is an equitable remedy courts apply to provide restitution and prevent unjust enrichment. [It] is a remedial device under which the holder of legal title to property is held to be a trustee for the benefit of another who in good conscience is entitled to the beneficial interest." Benson v. Richardson, 537 N.W.2d 748, 760 (Iowa 1995) (citations omitted). A court imposing a constructive trust may give restitution by requiring the surrender of the property. Hollingsworth, 386 N.W.2d at 96.

In two cases, XL/Datacomp, Inc. v. Wilson (In re Omegas Group, Inc.), 16 F.3d 1443, 1448-53 (6th Cir. 1994), and McCafferty v. McCafferty (In re McCafferty), 96 F.3d 192, 196-97 (6th Cir. 1996), the Sixth Circuit has discussed extensively the problem of imposing a constructive trust on what would otherwise be property of the bankruptcy estate. The remedy removes property from the estate to satisfy a claim. Imposing the remedy may conflict with the trustee's avoidance powers and thwart the goal of an equitable distribution among unsecured creditors. The Sixth Circuit has concluded that, in order to have a constructive trust recognized in bankruptcy, there must have been a pre-petition proceeding "impressing" a constructive trust on the assets at issue, whether or not the court used that term. Omegas Group, 16 F.3d at 1451; McCafferty, 96 F.3d at 197. Cf. N.S. Garrott & Sons v. Union

Planters National Bank (In re N.S. Garrott & Sons), 772 F.2d 462, 466-67 (8th Cir. 1985) (in action for turnover, facts justified imposition of constructive trust under Arkansas law; debtor had only bare legal title to escrowed funds).

Granting an equitable lien in a bankruptcy case creates a similar potential for conflict with the Bankruptcy Code. The remedy may create a preference. Eide v. Mason (In re Mason), 189 B.R. 932, 939 (Bankr. N.D. Iowa 1995). In Swanson v. Stoffregen (In re Stoffregen), 206 B.R. 939, 943 (Bankr. E.D. Wis. 1997), the court stated that it could impose an equitable lien only if a party has what amounts to a property interest under state law.

Principles of preclusion further limit this court's ability to impose equitable remedies. In Bainbridges' dissolution proceeding, the state court determined the respective rights of the parties in their property, including the homestead. They are barred from now attacking the state court order in bankruptcy court. Foss v. Foss (In re Foss), 200 B.R. 660, 663 n.3 (B.A.P. 9th Cir. 1996); In re Purpura, 170 B.R. 202, 209-10 (Bankr. E.D.N.Y. 1994). This court, therefore, should determine only whether the state court effectively imposed a constructive trust or equitable lien on the homestead in the dissolution decree. Because the court concludes the state court did not do so, it is unnecessary to discuss whether either remedy would be effective in light of the bankruptcy trustee's powers under 11 U.S.C. § 544.

In Hart v. Hart (In re Hart), 50 B.R. 956 (Bankr. D. Nev. 1985), the dissolution decree, incorporating a property settlement agreement, awarded the family home to the former wife. She agreed to pay her former husband \$15,000 as his share of the equity in the home if she remarried or sold the home. The court held that the decree created an equitable lien. "The intent of the parties was to attach some definite obligation to the family home, or in other words, to secure the [former husband's] claim to his share of the equity in the former family home." Id. at 960. In Parker v. Donahue (In re Donahue), 862 F.2d 259 (10th Cir. 1988), the decree awarded property to the debtor "subject to" the judgment awarded to his former spouse. The judgment was payable upon the debtor's remarriage or sale of the property. The court found that the property was "intended to be the source from which the debt to [the former spouse] would be paid," and concluded that the decree had created an equitable lien on the property. Id. at 265-66.

In Bainbridges' case, the court divided the parties' assets and debts, then simply awarded Thomasina a judgment for \$9,500. The award of the homestead to Troy is inconsistent with a constructive trust in Thomasina's favor. The court made no connection between the homestead and the property settlement award that might amount to an interest to secure the claim. This court finds and concludes that Thomasina is not entitled to have an equitable lien or constructive trust imposed on the Kingsley home. Her claim for property settlement may be treated as an unsecured claim.

Good Faith

A requirement for confirmation of a Chapter 13 plan is that the plan has been proposed in good faith. 11 U.S.C. § 1325(a)(3). The court should consider "whether the plan constitutes an abuse of the provisions, purpose or spirit of Chapter 13." Noreen v. Slattengren, 974 F.2d 75, 76 (8th Cir. 1992) (quoting United States v. Estus (In re Estus), 695 F.2d 311, 316 (8th Cir. 1982)). This inquiry should be made considering the totality of the circumstances in each case. Noreen v. Slattengren, 974 F.2d at 76. One of the factors the court may consider is whether the debtor is attempting to discharge debts that would be nondischargeable in a Chapter 7 case. In re Turpen, 218 B.R. 908, 914 (Bankr. N.D. Iowa 1998).

Thomasina argues that the purpose of Troy's filing was to subvert the order of the divorce court. She claims he has not scheduled all his property, has undervalued his tools and homestead, and has omitted information from his statement of affairs. Troy filed his Chapter 13 petition approximately four months after the dissolution decree entered. In addition to Thomasina's claim for \$9,500, he scheduled \$13,588.74 in other unsecured claims. He also owed \$2,500 to Thomasina's dissolution attorney and child support in the amount of \$1,275 per month. Thomasina did not offer an alternative valuation of the homestead. She claims Troy's tools are worth \$8,535, the figure she placed on them in the dissolution proceedings and adopted by the state court. See Exhibit 3, Form B; Exhibit 1, page 16. At the confirmation hearing, neither party itemized the tools Troy owned either when the dissolution pretrial stipulation was prepared or when the bankruptcy schedules were filed. Thomasina did not offer evidence of the value of any particular item. There was no evidence of claimed gifts made by Troy to his fiancée. Troy omitted a grill from his schedule of personal property, which he said was purchased for about \$180. On his statement of financial affairs, he failed to disclose the payment of a \$1,500 loan balance with the proceeds of the loan made on December 15, 1999. Doc. 1, Statement of Financial Affairs, question 3. He referred to the loan in Schedule D. Debt for property settlement is dischargeable in a Chapter 13 case. 11 U.S.C. § 1328(a). It is not clear, without trial of a claim under 11 U.S.C. § 523(a)(15), whether the debt would be dischargeable in a Chapter 7 case. Considering all the circumstances of this case, the court finds insufficient basis to deny confirmation of the plan for lack of good faith.

IT IS ORDERED that confirmation is denied. Debtor shall have 20 days from the date of this order to file an amended plan.

SO ORDERED THIS 1st DAY OF MAY 2000.

William L. Edmonds
U.S. Bankruptcy Judge