

In the United States Bankruptcy Court

for the Northern District of Iowa

VAN RALPH BUTLER and
MARGIE ARLENE BUTLER
Debtor(s).

Bankruptcy No. 00-00037M

Chapter 7

ORDER RE OBJECTIONS TO EXEMPTIONS

Farmers State Bank, Grafton, Iowa, objects to the debtors' claims of exemptions. The Chapter 7 trustee, Habbo G. Fokkena, joins in the Bank's objection. The debtors, Van Butler and Margie Butler, resist. Hearing on the matter was held June 20, 2000 in Mason City. Appearing were Larry S. Eide for Farmers State Bank, Patrick G. Vickers for the Butlers, and Fokkena on his own behalf. The Bank and the Butlers have each filed a brief. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

Findings of Fact

Butlers filed a Chapter 7 petition on January 7, 2000. On March 6, 2000, Bank objected to the Butlers' claims of exemptions in several items of personal property and their homestead. Items of construction equipment and farm equipment claimed exempt are listed, respectively, on the attached Exhibits A and B. On June 20, 2000, Butlers, Bank and the trustee filed a joint stipulation of facts stating that the only remaining dispute relates to the homestead. Docket no. 34. The court adopts the parties' stipulation as part of its findings of fact. Facts from the stipulation will be summarized here as necessary for discussion.

Butlers have claimed exempt as their homestead a tract of land in the northwest quarter of Section 29, Township 99 N., Range 20 West of the 5th P.M. in Worth County. The parties attached a diagram of this irregularly shaped tract to their stipulation of facts. A copy of the diagram is attached to this decision as Exhibit C. The Butlers live on an acreage of about 1.66 acres, labeled "AB" in the diagram, which is located on the western border of the quarter section. A 15-foot-wide strip of land, labeled "BCD," extends east of the acreage across the northwest quarter of the quarter section. The strip connects the acreage to 37 acres, labeled "CD," in the northeast quarter of the quarter section. The three parcels, AB, BCD and CD, make up the homestead claim. The total area of the property claimed exempt does not exceed 40 acres.

Butlers and Van Butler's parents incurred debt with Farm Credit Services in 1978, secured by a mortgage on a portion of the parents' farm. The western half of the quarter section at issue is mortgaged to Farm Credit. The Butlers acquired their acreage by deed from Van's parents in 1981. In 1984, Van's father died. Under the terms of the father's will, Van acquired a remainder interest in an undivided one-half interest in the northern half of the quarter section at issue (the north 80 acres). The remainder interest is subject to a life estate in Van's 71-year-old mother.

The court finds the following additional facts. The homestead claim is located within a 240-acre farm acquired by Van Butler's parents in the late 1960s. Van Butler has lived on the farm all his life. Margie Butler has lived on the farm since her marriage to Van 26 years ago. Over the past ten years, the Butlers have farmed individually and through a family farm corporation called Butler Farms, Inc. Since the death of Van's father, Van and Margie Butler have been the sole shareholders of the corporation. The corporation has grown crops on the exempt property, renting the land from Van Butler's mother. The corporation last farmed in 1998. A local farmer farmed the land in 1999. The Butlers, farming as individuals, have had a livestock operation from 1978 through the spring of 1999. Buildings used for the livestock operation were located on the north 80 acres. Van Butler has spread manure on the north 80 acres. When doing field work on the land, he has used machinery owned by himself individually. He received wages from the corporation. He has used the land for hunting. The Butlers would like to farm the land again.

Discussion

Bank does not object to the Butlers' claim of exemption in the acreage where their home is located. Bank objects only to the claim of exemption in the 15-foot-wide strip of land and the 37 acres, the parcels labeled BCD and CD in the diagram. The objection is made on three grounds. Bank contends that the two parcels are not exempt because the debt to Farm Credit Services predates acquisition of an interest in the property. Bank further argues that the Butlers may not claim a homestead right in a remainder interest in property subject to a life estate. Lastly, Bank claims Butlers should not be allowed to exempt a "gerrymandered" tract, which was admittedly selected in order to exempt unencumbered property. The trustee joins the Bank's objection to the homestead only on the issue of whether a homestead may be based on a remainder interest in real property.

Iowa Code § 561.21(1) provides that a homestead may be sold to satisfy debts contracted prior to the acquisition of the homestead, "but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution." A bankruptcy debtor's homestead is subject to the preacquisition debt exception even if the objection is raised by other than the preacquisition creditor. In re Thompson, No. 95-32455XF (July 29, 1996). The homestead is not exempt to the extent of preacquisition debt, absent sufficient other non-exempt property. Id., slip op. at 5-6. The proceeds of a non-exempt homestead are to be distributed pro rata among all unsecured creditors. In re Wulff, No. 95-41790XM, slip op. at 4-6 (Feb. 6, 1998).

Butlers incurred the debt with Farm Credit prior to Van's acquisition of the remainder interest and, indeed, prior to the Butlers' acquisition of the acreage. However, there is a factual issue whether there would be a deficiency owed to Farm Credit if it executed against property other than the Butlers' homestead. Counsel for the Bank concedes that the value of other property securing the Farm Credit debt is far greater than the amount owed to Farm Credit. Because the court determines that Butlers may not claim a homestead in the property held in remainder, it need not resolve the preacquisition debt and gerrymandering issues.

Iowa Code § 561.1 defines a homestead as follows:

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.

Iowa Code § 561.1. Bank argues that, because Van Butler has merely a remainder interest in part of the real estate, he cannot show that he has "habitually and in good faith used" that property as part of his homestead within the meaning of § 561.1.

The Iowa Supreme Court has frequently discussed the quality of title necessary to the existence of homestead rights. "It is not essential to the acquisition of a homestead ... that the claimant have a perfect or complete legal title. It is essential that he have a sufficient title to justify his occupancy." Rutledge v. Wright, 186 Iowa 777, 171 N.W. 28, 30 (1919).

The homestead may exist in a life estate, a leasehold estate ... or in an equitable estate or possibly one and partly another. The tenure has nothing to do with the homestead except as a basis for its support. The homestead right is that of possession and enjoyment, use and occupancy. A tenant in common may enjoy the tenancy of property and claim the same as a homestead.... A tenant in common or joint tenant has, by reason of his estate or interest, a right to the possession, to the exclusive possession, as against all the world but his cotenant.

Livasy v. State Bank of Redfield, 185 Iowa 442, 170 N.W. 756 (1919) (emphasis added). "The homestead right depends not only upon the interest or estate which is claimed in the property, but also upon the occupation of the property as a homestead pursuant to such interest or estate." Kramer v. Hofmann, 218 Iowa 1269, 257 N.W. 361, 364 (1934), rev'd on other grounds by In re Ferris' Estate, 234 Iowa 960, 14 N.W.2d 889 (1944).

The rule in a majority of jurisdictions is that a homestead right does not generally attach to a future interest in real property. See generally 40 Am.Jur.2d Homestead § 56 (1999);

W. W. Allen, Annotation, *Estate or Interest in Real Property to Which a Homestead Claim May Attach*, 74 A.L.R.2d 1355, §§ 11-13 (1960). It appears that Iowa follows the majority rule. In Therme v. Bethenoid, 106 Iowa 697, 77 N.W. 497 (1898), a Mrs. Dickey transferred property to Mark Bethenoid in 1886, subject to a life estate in herself. The Bethenoid family then lived in the house with Mrs. Dickey with her consent for approximately one year. The court stated that their use of the premises during this time "was by sufferance of Mrs. Dickey, who had reserved the rents and use of the property during her lifetime." Id., 77 N.W. at 498. The Bethenoids could not have acquired a homestead interest in the property until after Mrs. Dickey's death. Id. Thus, a remainderman does not acquire a homestead interest in property subject to a life estate, even by actual use of the property. Such use is not pursuant to a real estate interest that creates the right of present possession.

In Solnar v. Solnar, 205 Iowa 701, 216 N.W. 288 (1927), the issue was whether the home was occupied by a "family," a requirement of the homestead statute at that time. Although not necessary to the decision, the court again stated the general rule that occupation of premises subject to the rights of a life tenant does not create homestead rights in the holder of the future interest. Id., 216 N.W. at 289-90.

In In re Guynn, No. L-91-1545C (Bankr. N.D. Iowa Aug. 17, 1993) (Kilburg, J.), the debtor owned a remainder interest in a farmstead, subject to a life estate in his mother. The debtor was living on the farmstead. The court noted that the debtor could claim an exemption in any leasehold interest he had in the property. His remainder interest, however, was not exempt. Id., slip op. at 2 (citing In re Nielsen, No. 84-00352 (Bankr. N.D. Iowa Jan. 14, 1986) (Wood, J., sitting by designation)). In Nielsen, Virginia Nielsen had an undivided one-third remainder interest in 157.5 acres of farmland. The joint debtors claimed 40 acres exempt, including the 4.5 acres where they lived with the consent

of the life tenant. The court held that the debtors had a leasehold interest in the acreage where their home was located that could be claimed exempt. Because there was no present possessory interest in the balance of the 40 acres, however, the court denied the exemption claim in the property held only in remainder. The court stated that "there is no 'merger' of Debtors' homestead rights in their leasehold with their alleged homestead rights in Virginia's remainder." Id., slip op. at 3. Establishing a homestead in one parcel, therefore, did not entitle the debtors to extend their homestead to contiguous land in which they held a real estate interest.

In this case, there was no evidence that the Butlers, individually, have ever leased the remainder property at issue. Butler Farms, Inc. has leased the land in the past, but corporations do not have exemption rights. Iowa Code § 561.16 ("homestead of every person is exempt from judicial sale"). Van Butler's mother enjoys the rights of rents and use of the property during her lifetime. Van's interest is not a present possessory interest. His use has been at sufferance of the life tenant or the leasehold tenant, not pursuant to a right in the property. Moreover, Butler's rights in the acreage do not create homestead rights in the contiguous property used by permission of the life tenant.

The Bank's and the trustee's objections to the claim of exemption in the homestead should be sustained. Butlers' homestead will be limited to the acreage as described in Exhibit F to the joint stipulation of facts. The court will rule as to other claims of exemptions as stipulated by the parties.

ORDER

IT IS ORDERED that the objections of Farmers State Bank and the Chapter 7 trustee to the debtors' claims of exemptions are sustained in part and overruled in part. The objections to the exemption of the property set forth in the attached Exhibit A are overruled.

IT IS ORDERED that the objections with respect to \$7,700 of the value of the 1997 Chevrolet pickup and topper, the amount by which the parties agree the value of the pickup exceeds the sum of the debtor's exemption and the lien to First Premier Bank, are sustained.

IT IS ORDERED that the objections with respect to \$2,000 of the value of the farm equipment and machinery set forth in the attached Exhibit B, the amount by which the parties agree the value of the equipment and machinery exceeds the debtor's allowable exemption, are sustained. The objections with respect to the remainder of said exemption are overruled.

IT IS ORDERED that the objections with respect to \$250 of the value of debtor Margie Arlene Butler's wedding ring, the amount by which the parties agree the value of the ring exceeds the amount which can be exempted under Iowa Code § 627.6(1), are sustained. The objections with respect to the remaining value of the ring are overruled.

IT IS ORDERED that the objections with respect to the John Deere lawn tractor and mower deck are sustained in part and overruled in part. The parties agree that the value of the tractor is \$2,000 and that said value, taken together with other household goods already claimed exempt by the debtors, exceeds the allowable amount of the exemption by \$500. The John Deere lawn tractor and mower deck are exempt to the extent of \$1,500 in value. The objection is sustained with respect to \$500 in value of the tractor.

IT IS ORDERED that the objections with respect to life insurance policies Lutheran Brotherhood Policy No. 0598878 (W), State Farm Policy No. LF07415291 (H&W), State Farm Policy No. LF10238539 (H), and State Farm Policy No. LF10238521 (W) are overruled.

IT IS ORDERED that the objections with respect to life insurance policies State Farm Policy No. LF07415950 (H), State Farm Policy No. LF07415957 (H), and State Farm Policy No. LF07976259 (W) are sustained.

IT IS ORDERED that the objections with respect to the Avon plates are sustained.

IT IS ORDERED that the objections with respect to the homestead are overruled in part. Butlers may exempt as their homestead real property legally described as a tract of land in the Northwest Quarter (NW-1/4) of Section Twenty-nine (29), Township Ninety-nine (99) North, Range Twenty (20) West of the 5th P.M. Worth County, Iowa; more particularly described as follows: Commencing at the NW Corner of said Section 29, thence South 1134.41 feet to point of beginning, thence South 316.00 feet thence N85 30'E 215 feet, thence North 95.00 feet, thence N30 50'E 197.00 feet, thence N83 40'W 317.24 feet, to point of beginning containing 1.66 acres. The objections are sustained as to all other real property claimed exempt.

SO ORDERED THIS 31st DAY OF JULY 2000.

William L. Edmonds
U.S. Bankruptcy Judge