

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

GALE A. GOODVIN
Debtor(s).

Bankruptcy No. 00-00573S
Chapter 7
Contested No. 5081

ORDER RE: MOTION TO AVOID LIENS

On May 12, 2000, debtor Gale A. Goodvin filed a motion to avoid the judgment liens of Hawkeye Adjustment Service, Sam Raphtis and Palmer House Restaurant, Inc. The motion was filed pursuant to 11 U.S.C. § 522(f) and alleges that the liens impair Goodvin's claim of exemption in her homestead. Raphtis and Palmer House resisted the motion. Hearing on the matter was held July 11, 2000 in Sioux City. Appearing for Goodvin was Donald H. Molstad. Paul J. Yaneff appeared for creditors Raphtis and Palmer House. This is a core proceeding under 28 U.S.C. § 157(b)(2)(K).

Findings of Fact

Goodvin was formerly employed by a bookkeeping firm. In that capacity she performed bookkeeping duties for the Palmer House Restaurant. Raphtis is president of Palmer House. Over a period of time, Goodvin forged checks on the account of Palmer House and took the money for her own use. In 1997, she pleaded guilty to first degree theft. She served a 13-month sentence from the end of December 1997 to January 29, 1999.

In 1998, Raphtis and Palmer House obtained judgment against Goodvin in the Iowa District Court for Woodbury County, Case No. LACV112579, for actual damages of approximately \$118,000. A second judgment entered against Goodvin for punitive damages in the approximate amount of \$11,000.

Goodvin claims an exemption in her house at 2800 South Martha Street in Sioux City. She and her husband, who died in 1987, purchased the home in 1973. She lived there continuously from 1973 until her imprisonment. After Goodvin began her prison term, her 24-year-old son and 16-year-old daughter occupied the house for approximately six months. Her son was not able to make the \$450 mortgage payment for the house, so Goodvin asked them to leave.

Richard Newton, a friend of Goodvin, managed the property for her. He rented the property to people by the name of Carroll. The Carrolls had a one-year lease, but they were transferred in early February 1999 with approximately six months left on the lease. On February 10, 1999, the property was rented to Rydstroms under a month-to-month written lease. Goodvin thought the Rydstroms had a year lease and told them they could stay for a year.

One of the conditions of Goodvin's release from prison was that she could not live alone; she had to live with a relative. Richard Newton's father owned property at 2420 South Palmetto Street in Sioux City that was available for rent. Goodvin rented the Palmetto property for a year's term. She did not sign a lease. Carla Anderson, her sister or sister-in-law, moved in with her. Anderson stayed there about six weeks. Goodvin's probation officer agreed that she could live alone after that time.

In September 1999, the Woodbury County Sheriff levied on the Martha Street property and noticed a date for execution sale to satisfy the judgments of Raptis and Palmer House. Exhibit 1. Goodvin claimed the property exempt as her homestead in those proceedings. Exhibit A. In December 1999, Goodvin served Rydstroms with a notice to quit the premises on Martha Street. Exhibit 2. Goodvin moved back to the Martha Street home in February 2000.

Goodvin filed a bankruptcy petition on March 15, 2000. She claimed the property at 2800 South Martha Street exempt as her homestead. No one filed an objection. On May 12, she filed the present motion to avoid liens.

Discussion

Goodvin moves to avoid the judicial liens of Hawkeye Adjustment Service, Raptis and Palmer House pursuant to 11 U.S.C. § 522(f)(1), which provides that --

the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is ... a judicial lien....

Goodvin alleges the liens impair her exemption in her homestead. Goodvin bears the burden of proof on all lien avoidance issues. In re Indvik, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990). One of the elements of a § 522(f) motion is that the lien impairs an exemption to which the debtor would have been entitled but for the lien itself. In re Streeper, 158 B.R. 783, 786 (Bankr. N.D. Iowa 1993) (citing Owen v. Owen, 111 S.Ct. 1833 (1991)). Goodvin's Martha Street house is deemed exempt under 11 U.S.C. § 522(l), because no one objected to her claim of exemption. Nevertheless, she may not use the exempt status of the house under § 522(l) as proof by preclusion that the judicial lien may be avoided under § 522(f). In re Streeper, 158 B.R. at 786-787.

The homestead is generally exempt from execution "where there is no special declaration of statute to the contrary." Iowa Code § 561.16. One such statutory exception appears in Iowa Code § 561.21(1), which states that the "homestead may be sold to satisfy debts ... contracted prior to its acquisition." An Iowa homestead is not exempt as to pre-acquisition debt even in the absence of a judicial lien. In re Streeper, 158 B.R. at 788. Raptis and Palmer House argue that their debt predates Goodvin's acquisition of her homestead. If so, she would not be able to avoid their liens.

The court first addresses Goodvin's argument that Iowa Code § 561.21, referring to debts "contracted" prior to acquisition of the homestead, does not apply to debt of the type at issue here. The argument is not supported by the law. Iowa cases indicate that the pre-acquisition debt exception is not limited to liabilities arising from contractual transactions. The issue is when the claim became a "debt" within the meaning of the statute. In Marriage of McMorrow, 342 N.W.2d 73,75-77 (Iowa 1983), a child support obligation under a dissolution decree was "debt" preexisting the debtor's acquisition of his homestead. In Warner v. Cammack, 37 Iowa 642 (1873), the debtor made a fraudulent sale of a patent right prior to acquisition of his homestead. The purchaser reduced his claim to judgment post-

acquisition. The court held that the pre-acquisition cause of action was a debt and that the homestead was not exempt from sale. The court stated:

Wherever a party has derived a pecuniary advantage from a wrong done by him, and it is competent for the person suing thereon to waive the tort and maintain his action upon the promise implied by the law, there the obligation to pay is a debt, and this, regardless of the form of action in which that obligation is sought to be enforced.

37 Iowa at 644. The court stated that other causes of action may not become debts until they are reduced to judgment. Id.

In Jewell v. Nuhn, 173 Iowa 112, 155 N.W. 174 (1915), the court made an extensive analysis of the meaning of "debt" in various contexts. Citing Warner v. Cammack, among other cases, the court stated that "a debt means a legal obligation or liability to pay a sum certain, and it makes no difference how the liability arises, whether it be by contract, or imposed by law, without contract. ... [T]he means of coercing payment do not enter into the definition." Jewell v. Nuhn, 155 N.W. at 177. That the debt did not arise by contract is irrelevant. The issue is whether Goodvin's debt to Raphtis and Palmer House is pre-acquisition debt.

Goodvin has occupied 2800 South Martha Street as her home continuously from 1973 with the exception of two periods of time. Between December 1997 and January 29, 1999, she was absent while in prison. After her release, Goodvin lived at 2420 South Palmetto for about a year. She returned to the Martha Street property in February 2000. Raphtis and Palmer House argue that Goodvin abandoned her homestead by moving to the Palmetto address upon her release from prison, returning only when threatened with the loss of the property. They claim their debt, which existed perhaps in 1997 but certainly no later than 1998, arose prior to February 2000, the date they say Goodvin re-established her homestead at the Martha Street property. Goodvin contends that circumstances prevented her return to the property and that she never intended to abandon it as her homestead.

A person acquires a homestead by actual occupation and use of the premises as a homestead. In re Streep, 158 B.R. at 788 (citing Hale v. Heaslip, 16 Iowa 451 (1864); Elston & Green v. Robinson, 23 Iowa 208 (1867)). Actual occupancy is necessary to continue the homestead right, except that the right will continue during a temporary absence while the owner has a fixed and definite intention of returning. In re McClain's Estate, 220 Iowa 638, 262 N.W. 666, 669-70 (1935); Crail v. Jones, 206 Iowa 761, 221 N.W. 467, 469 (1928); Fardal v. Satre, 200 Iowa 1109, 206 N.W. 22, 24 (1925). Physical removal from a home and the establishment of a new home constitutes a prima facie case of abandonment, and the burden is upon the debtor to show an intention to return. In re McClain's Estate, 262 N.W. at 668; Fardal v. Satre, 206 N.W. at 24. "[T]he actual removal from a homestead, with no intention to return to it as a home, is an equivalent to a surrender of all claim of homestead to the premises, and constitutes an abandonment of such right." Crail v. Jones, 221 N.W. at 469. The length of time that the debtor is absent, though not conclusive, may tend to show the debtor's intent. Maguire v. Hanson, 105 Iowa 215, 74 N.W. 776, 777 (1898).

A temporary removal and renting out the premises to a third party is not conclusive proof of abandonment of a homestead. In re Pope, 98 F. 722, 723 (S.D. Iowa 1900) (citing cases); Maguire v. Hanson, 74 N.W. at 777 (same). Courts applying Iowa homestead law have found an intent to return to the home on seemingly meager evidence. In Repenn v. Davis, 72 Iowa 548, 34 N.W. 326 (1887), the court concluded that the owners of property had not wholly abandoned their homestead even though they had not lived there for seven years. They had rented out all but one room of the house

where they kept some household goods, and reserved half of the lot for themselves. In In re Pope, the debtor had rented her homestead to a tenant in 1896 in order to be able to pay her property taxes and mortgage interest payments. At the time of the bankruptcy referee's ruling, the original tenant continued in possession of the premises. The referee found that the debtor had not abandoned her homestead and still intended to return; the district court affirmed. In Fardal v. Satre, a husband and wife moved from the town of Stanhope to Jefferson for an indefinite time. The husband had acquired a business in Jefferson; the couple moved there "experimentally--to see how it would go." They rented their Stanhope home to a tenant from month to month and leased a house in Jefferson for 14 months. They intended to stay that long, but intended to return "eventually" to Stanhope. The Iowa Supreme Court held that the evidence was sufficient to show a "fixed and definite intention" of returning to the homestead and that the record did not support a finding of abandonment. 206 N.W. at 24.

In Goodvin's case, she first left her homestead involuntarily. After her release from prison, her absence from the home was brief, approximately one year. The circumstances existing during that time account for her failure to return directly to Martha Street. She needed to keep the mortgage current while she was in prison, so she rented out the property. A tenant was still in possession of the house at about the time Goodvin was released. Goodvin's arrangement at Palmetto Street was made out of the necessity of her release conditions. She rented the property for a short period. The evidence does not indicate an intent to establish a new homestead at Palmetto Street. When her probation conditions permitted Goodvin to live on her own, the Martha Street house was again occupied by renters. Although Goodvin could have legally evicted her last tenants sooner than she did, she had told them they could stay a year. Even if she knew the lease was from month to month, that fact would not necessarily contradict an intent to return to the homestead. She herself had a year lease at the Palmetto Street house.

Goodvin has shown by a preponderance of evidence that her absence from the Martha Street property was temporary, and not an abandonment. She intended to return there and maintain it as her homestead. Her debt to Raptis and Palmer House is not pre-acquisition debt within the meaning of Iowa Code § 561.21(1).

Goodvin maintained her homestead rights in the Martha Street property continuously from 1973 to the present. Because judgment liens do not attach to homestead property, there is no lien to avoid. In re Karrer, 183 B.R. 177, 180-81 (Bankr. N.D. Iowa 1994)(citing Lamb v. Shays), 14 Iowa 567 (1863)). Therefore, the motion to avoid liens will be denied.

ORDER

IT IS ORDERED that the motion to avoid liens is denied as moot. The judgment liens of Hawkeye Adjustment Service, Small Claim No. SCCV077132, and Sam Raptis and Palmer House Restaurant, Inc., Case No. LACV112579, both arising in the Iowa District Court for Woodbury County, did not attach to the debtor's property legally described as the North Sixty Feet (N 60') of the West One Hundred Fifty Feet (W 150') of Lot Forty-two (42) of Auditor's Plat of Hawkeye Land Company's Sub-Division of a part of the West One-Half (W ½) of the of the Southeast Quarter (SE 1/4) of Section Six (6), described as follows: Beginning at the South Quarter Corner of said Section Six (6) and running East along the South line of Section Six (6) a distance of 1290.8 feet, to the West line of St. Aubin Street; thence North along the West line of St. Aubin Street, a distance of 1885.4 feet; thence in a Westerly direction, having turned an angle of 90 43' to the left, a distance of 1297.6 feet to the North and South Quarter line of said Section Six (6), thence South along said Quarter line a

distance of 1882 feet to the point of beginning all in Township Eighty-eight (88), Range Forty-seven (47), in the County of Woodbury and State of Iowa.

SO ORDERED THIS 14th DAY OF SEPTEMBER 2000.

William L. Edmonds
U.S. Bankruptcy Judge