

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF
IOWA WESTERN DIVISION

IN RE:

CONNIE L. ORRELL Chapter 7

Debtor. Bankruptcy No. 02-02947S RICHARD BECKWITH
Plaintiff

vs. Adversary No. 02-9166S

CONNIE L. ORRELL

Defendant.

MEMORANDUM DECISION RE: DEFENDANT'S MOTION TO
DISMISS

Defendant Connie L. Orrell moves to dismiss Richard Beckwith's complaint under Fed.R.Civ.P. 12(b)(6), contending that it fails to state a claim upon which relief can be granted. Telephonic hearing on the motion was held December 20, 2002. Donald H. Molstad appeared as attorney for the defendant and movant. John D. Jordan appeared as attorney for the plaintiff, Richard Beckwith.

Orrell filed her chapter 7 petition on August 23, 2002.

The deadline for filing objections to discharge and complaints to determine the dischargeability of debt was November 22, 2002.

On November 22, Beckwith filed his complaint objecting to Orrell's discharge and asking that his claim against her be excepted from discharge. The allegations of the complaint were contained in three numbered paragraphs. Paragraph one alleged the court's jurisdiction. Paragraphs two and three were as follows:

2. Debtor listed on her Schedule A, real estate with a current fair market value of \$410,000.00, subject to a

\$202,000.00 first lien owed to Waggoner Bank of Vernon, Texas. Debtor has claimed this real estate as exempt in her Schedule C. Debtor holds title to this homestead as tenants in common with her husband. Because this Creditor's claim existed before the Debtor purchased her homestead, this homestead is not exempt to Creditor Beckwith pursuant to Iowa Code Section 561.21.

3. This debtor is not entitled to a discharge pursuant to 11 U.S.C. Sections 523 and 727.

Beckwith's prayer asked the court to order that debtor was not entitled to discharge pursuant to 11 U.S.C. §§ 523 and 727 and to order that Orrell's homestead not be exempt to him.

It is not clear from the complaint whether the discharge and dischargeability claims are tied to the factual allegations contained in paragraph two. If they are not, there are no factual allegations supporting the conclusion that Orrell's discharge should be denied or her debt to Beckwith should be excepted from discharge.

The issue of whether Orrell's homestead is exempt from Beckwith's claim was decided by the court on December 3, 2002. Beckwith had objected to Orrell's claim of homestead exemption on the ground that under Iowa law, the homestead could not be claimed exempt from his pre-acquisition claim. See Iowa Code § 561.21(1). Beckwith's argument was based on the applicability of Iowa law. The court overruled Beckwith's objection, concluding that the homestead claim was governed by Texas law, which did not contain a pre-acquisition debt exception to debtor's homestead claim.

Nonetheless, to the extent Beckwith may claim that his discharge claims are based on the factual allegations of paragraph two, I will assume that all facts alleged in the complaint are true.

Gross v. Weber, 186 F.3d 1089, 1090 (8th Cir. 1999). Further, I view all reasonable inferences arising from the complaint in the light most favorable to the plaintiff. Gordon v. Hansen, 168 F.3d 1109, 1113 (8th Cir. 1999). But I must reject conclusory allegations of law and unwarranted inferences. Silver v. H & R Block, Inc., 105 F.3d 394, 397 (8th Cir. 1997). The "court should grant the motion and dismiss the action 'only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" Handeen v. Lemaire, 112 F.3d 1339, 1347 (8th Cir. 1997) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

At the hearing, Beckwith's attorney admitted that at present, plaintiff knows of no facts which support the conclusion that discharge should be denied or that Beckwith's claim against Orrell should be excepted from discharge. Beckwith's attorney hopes to have the opportunity to examine the debtor to learn facts which would support the claim. Beckwith did not file a motion to extend the time to file a complaint objecting to discharge or to determine dischargeability. See Fed.R.Bankr.P. 4004(b) and 4007(c).

Instead, Beckwith believed that the complaint as stated would be sufficient as it is to avoid dismissal, thereby permitting discovery of facts supporting the claims and later amendment to the complaint.

I conclude that the motion to dismiss should be granted.

facts being relevant only to the exemption

I find that the facts of the complaint, accepted

o not state a claim upon which the requested relief



At best, the relief requested is based on facts relating to the debtor's homestead claim, none of which conceivably support such relief. At worst, the complaint alleges no facts whatsoever relating to discharge or dischargeability, the homestead

anted.

ORDERED that the motion to dismiss the complaint of

objection. as true, d can be gr

IT IS

eckwith against Connie L. Orrell is granted. The
is dismissed. Judgment shall enter accordingly.

RDERED THIS 3rd DAY OF JANUARY 2003.

Richard B complaint

William L. Edmonds, Bankruptcy Judge

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