

IT IS SO ORDERED.

Dated: 03:05 PM June 14 2012



**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 12-50411
)	
JENNIE L. BEDLION,)	CHAPTER 13
)	
DEBTOR(S))	JUDGE MARILYN SHEA-STONUM
)	
)	ORDER ADDRESSING TRUSTEE'S
)	OBJECTION TO EXEMPTION [DOCKET
)	#16] AND MOTION FOR TURNOVER
)	[DOCKET #21] AND SETTING FURTHER
)	HEARING

This matter is before the Court on two pleadings filed by the chapter 13 trustee: (1) an objection to the debtor's claim of a homestead exemption [docket #16] and (2) a motion requesting an order requiring debtor to turn over proceeds from the pre-petition sale of real estate [docket #21] (the "Motion for Turnover"). Debtor filed an objection [docket #23] to both of those pleadings.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on April 4, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (E) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334(b).

BACKGROUND

On December 30, 2011, Ms. Bedlion entered into a contract to sell residential real property located at 5276 Arlington Road in North Canton, Ohio (the “Real Property”) to Antonio Fanizzi. Pursuant to the contract for sale, Ms. Bedlion was entitled to remain living in the Real Property for thirty days after closing. The sale closed on January 27, 2012 and Ms. Bedlion received in excess of \$20,000 in net proceeds from the sale (the “Sale Proceeds”).

Ms. Bedlion, through counsel, filed a chapter 13 bankruptcy petition on February 10, 2012. At the time of filing, debtor still resided in Real Property. Debtor ultimately vacated the Real Property on or about February 25, 2012. On Schedule A - Real Property, debtor lists an “equitable interest” in the Real Property and on Schedule C - Property Claimed as Exempt, debtors claims a \$21,625.00 exemption in the Real Property pursuant to Ohio Revised Code (“ORC”) § 2329.66(A)(1). Debtor’s chapter 13 plan proposes to pay creditors holding unsecured claims a dividend of 3%.

On March 14, 2012, the chapter 13 trustee filed the objection to debtor’s claim of a homestead exemption because, at the time the case was filed, debtor no longer held legal title to the Real Property. On March 28, 2012, the chapter 13 trustee filed the Motion for Turnover seeking an order requiring debtor to remit to him the balance of the Sale Proceeds that were in debtor’s checking account at the time of filing. Debtor objected to both of these pleadings contending that, despite the pre-petition sale of the Real Property, she is still entitled to claim a homestead exemption and that such exemption should extend to the Sale Proceeds.

DISCUSSION

Under Bankruptcy Rule 4002(c), the objecting party has the burden of establishing that the debtor is not entitled to a claimed exemption. Fed. R. Bankr. P. 4003(c). In order to further bankruptcy's goal of providing debtors with a fresh start, exemptions are to be liberally construed in favor of the debtor. *In re Bunnell*, 322 B.R. 331, 334 (Bankr. N.D. Ohio 2005).

Debtor claims a homestead exemption pursuant to ORC § 2326.66(A)(1)(b) which provides that a person may exempt “[t]he person’s interest, not to exceed twenty-one thousand six hundred twenty five dollars, in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence.” That statute imposes two related requirements that must be met before a debtor can successfully claim such exemption. First, a debtor must demonstrate that she holds an interest in a parcel or item of real or personal property and second, that such property is used as a residence. *In re Kimble*, 344 B.R. 546, 552-52 (Bankr. S.D. Ohio 2006). Entitlement to an exemption is determined as of the date that a bankruptcy petition is filed. *Owen v. Owen*, 500 U.S. 305, 314 n.6 (1991); *White v Stump*, 266 U.S. 310 (1924); *In re Stitt*, 252 F.1, 6 (6th Cir. 1918).

It is undisputed that, as of the date of the filing of her bankruptcy petition, debtor still used the Real Property as her residence. Accordingly, the issue to be determined is whether debtor also held an “interest” in the Real Property to which the homestead exemption can attach. The chapter 13 trustee contends that, because debtor no longer held legal title to the Real Property when her bankruptcy petition was filed, ORC § 2329.66(A)(1)(b) does not apply. Debtor argues that her right to remain living in the Real Property after closing constitutes an adequate “interest” for purposes of Ohio’s homestead exemption statute.

As of the date of her bankruptcy filing debtor was still in possession of the Real Property and held a right to remain living there for two additional weeks. The “interest” requirement of ORC § 2329.66(A)(1)(b) is construed liberally to include rights in property other than just those conferred by a deed of ownership. *See, e.g., In re Kimble*, 344 B.R. 546 (Bankr. S.D. Ohio 2006) (remainder interest that debtors held in real property they occupied pursuant to oral lease with life tenant is “interest” for purposes of ORC § 2329.66(A)(1)(b)); *In re Miller*, 151 B.R. 800 (Bankr. N.D. Ohio 1992) (debtor-wife’s dower right in real property titled to debtor-husband is “interest” for purposes of ORC § 2329.66(A)(1)); *In re Hill*, 11 B.R. 217 (Bankr. S.D. Ohio 1981) (debtor-husband’s inchoate dower interest in real property titled to debtor-wife is “interest” for purposes of ORC § 2329.66(A)(1)). Accordingly, debtor’s limited right to remain living in the Real Property after transfer of title pursuant to the sale constitutes an “interest” pursuant to ORC § 2329.66(A)(1)(b). *Cf. Cincinnati Entertainment Assoc., Ltd. v. Hamilton Cty. Bd. of Comm.*, 753 N.E.2d 884, 890 (Ohio Ct. App. 2001) (“A leasehold estate is an interest in property that is compensable in an appropriate action.”).

Pursuant to Schedule C, debtor claims a homestead exemption in the full statutory amount of \$21,625.00. She is entitled, however, to no more than the present value (as of the date of her bankruptcy filing) of her limited right to remain living in the Real Property after closing. *In re Miller*, 151 B.R. 800, 803 (Bankr. N.D. Ohio 1992) (“The debtor[-wife] requests an exemption in the full statutory amount of \$5,000.00. She is entitled, however, to not more than the present value of her inchoate dower interest.”); *In re Hill*, 11 B.R. 217, 219 (Bankr. S.D. Ohio 1981) (“The only interest

shown by [debtor-husband] to be capable of valuation and therefore eligible to be claimed as an exemption is an inchoate dower interest in real estate as that is defined under state law.”). The parties have not presented any evidence to the Court to enable it to make a determination of such value.

In her objection, debtor relies upon the Ohio Supreme Court’s decision in *Daugherty v. Central Trust Co. of Northeastern Ohio*, 504 N.E.2d 1100 (Ohio 1986) for the proposition that “the proceeds of exempted property deposited into a personal checking account remain[] exempt from creditor attachment turnover under O.R.C. 2329.66(A).” Such reliance is misplaced given the factual differences between that case and the one at bar as well as the fact that the only “exempted property” at issue herein is debtor’s limited right to remain living in the Real Property after closing and *not* the Sale Proceeds or Real Property itself.

The *Daugherty* case dealt with a judgment creditor’s set off from debtor’s bank account. The Ohio exemption at issue in that case was one dealing with personal earnings owed to debtor for services rendered within thirty days of a process to satisfy a debt. Given the fungible nature of the exemptible property at issue (“wages”), the court concluded that the legislative intent of the exemption statute would be frustrated if such exempt funds were to lose their statutory immunity when deposited into a checking account that a depositor commonly maintains to pay his bills. *Daugherty*, 504 N.E.2d at 1103.

When Ms. Bedlion received the proceeds from the sale of the Real Property, the homestead exemption was not yet at issue. Accordingly, such funds became her personal property and, once she filed her bankruptcy petition, those funds became property of her bankruptcy estate. *In re Meadows*, 396 B.R. 485, 490 (B.A.P. 6th Cir. 2008) (“Upon the filing of a petition for relief, § 541(a) of the Bankruptcy Code creates an estate comprised of ‘all legal or equitable interests of the debtor in

property as of the commencement of the case.’ 11 U.S.C. § 541(a)(1). Thus, the Debtor’s checking account and all monies contained therein became ‘property of the estate’ once her bankruptcy case was commenced.”).

CONCLUSION

Based upon the foregoing the Court finds that debtor is entitled to claim a homestead exemption in her limited right to remain living in the Real Property after closing pursuant to ORC § 2329.66(A)(1)(b). A further hearing to permit debtor and the chapter 13 trustee to present evidence as to the present value of such interest shall be held on **July 26, 2012 at 3:30 pm.**

The Court further finds that the balance of the Sale Proceeds in debtor’s checking account on the date of her bankruptcy filing are property of debtor’s bankruptcy estate, subject to any other applicable exemptions, and must be turned over to the chapter 13 trustee pursuant to 11 U.S.C. §§ 541 and 542. Accordingly, the Motion for Turnover is hereby **GRANTED** and debtor shall remit those funds to the chapter 13 trustee upon the final determination by this Court of the non-exempt amount. Debtor is to refrain from any dissipation of these funds.

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cc (*via* electronic mail):
David Mucklow, Counsel to Debtor(s)
Keith Rucinski, Chapter 13 Trustee