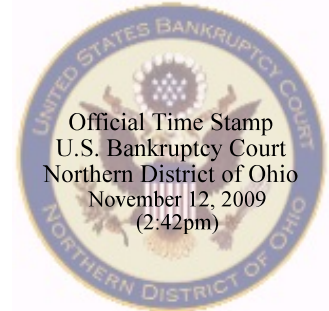


UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 09-11450
)
SHERRY R. BALLARD and) Chapter 7
JOSEPH G. BALLARD,)
) Judge Pat E. Morgenstern-Clarren
Debtors.)
) **MEMORANDUM OF OPINION**¹

The chapter 7 trustee objects to the homestead exemption claimed by Sherry Ballard, one of the debtors. For the reasons stated below, the objection is overruled.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).

FACTS²

For some years, the debtors Sherry and Joseph Ballard have shared their household with Mrs. Ballard's mother, Loretta Copley. Loretta Copley has Alzheimer's and requires care around the clock; Sherry Ballard is her mother's guardian and only caregiver. Mr. Ballard has vascular dementia and Sherry Ballard (sometimes, the debtor) is also his only caregiver. The extended family lived for some period of time in a house owned by the debtor on Allendale Drive in North Olmsted, Ohio.

¹ This written opinion is entered only to decide the issues presented in this case and is not intended for commercial publication in an official reporter, whether print or electronic.

² The parties stipulated to some facts. (Docket 53). Sherry Ballard supplemented the stipulations with her testimony at trial.

On December 22, 2008, Loretta Copley purchased a home on Mills Road in North Ridgeville, Ohio using her own funds.³ On February 1, 2009, the debtor entered into a purchase agreement to sell the Allendale Drive house. This agreement provided for a closing date of March 5, 2009. From December 22, 2008 through March 5, 2009, the debtor gradually moved her family's belongings from the Allendale house to the Mills Road house. The Ballards filed their joint bankruptcy case on February 27, 2009, at which time they resided on Allendale Drive.⁴ In the petition, Sherry Ballard claimed a homestead exemption in the Allendale house.

The Allendale Drive transaction closed as scheduled on March 5, 2009. Since that date, the family has lived at the Mills Road house.

ISSUE

The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C. § 541(a)(1). The bankruptcy code provides that a debtor is entitled to remove, or exempt, certain property from the estate so that the debtor will have some means of making a fresh start. 11 U.S.C. § 522. Ohio has opted out of the federal exemptions, which means that the exemptions in this case are determined under Ohio law.

The Ohio Revised Code provides that a debtor may exempt her interest in real property that she "uses as a residence," in an amount up to \$20,200.00. OHIO REV. CODE § 2329.66(A)(1)(b). The question, then, is whether the Allendale Drive property was the debtor's residence as of the date on which she filed her bankruptcy case.

³ The court assumes that the debtor carried out this transaction, although the testimony did not address that.

⁴ Stipulations ¶ 6.

THE POSITIONS OF THE PARTIES

The trustee concedes that the debtor resided at the Allendale Drive property as of the filing date. He argues, however, that this is not enough to establish that she is entitled to claim a homestead exemption for that property. The trustee's position is that the debtor must show either that she intended to remain in the Allendale Drive property after she filed for protection under the bankruptcy laws or that she intended to invest the proceeds from that sale in another residence. He contends that she cannot make this showing because, before she filed her petition, she had entered into a contract to sell the property, made alternative living arrangements, and started to move her possessions to a different house. In his view, the debtor's intention to abandon the property after the bankruptcy filing deprives her of the right to take a homestead exemption.

The debtor counters that she is entitled to the homestead exemption so long as she had not abandoned the residence prepetition. Defining abandonment as physical absence from the property with no intention to return, she argues that she still had the requisite presence at the Allendale Drive house as of the day she commenced her bankruptcy case. She also argues that she is financially needy, and the bankruptcy code should be interpreted to acknowledge that need.

DISCUSSION

I.

The trustee has the burden of proving, by a preponderance of the evidence, that the debtor is not entitled to this exemption. FED. R. BANKR. P. 4003(c); *see Hamo v. Wilson (In re Hamo)*, 233 B.R. 718, 723 (B.A.P. 6th Cir. 1999).

II.

The parties did not cite any Ohio Supreme Court case that is directly on point, and the court's research did not disclose any either. The court's responsibility, then, is to consider

relevant Ohio cases to determine what ruling the state court would be likely to make if presented with the facts of this case. *Corzin v. Decker, Vonau, Sybert & Lackey, Co., L.P.A. (In re Simms Constr. Servs. Co.)*, 311 B.R. 479, 484 (B.A.P. 6th Cir. 2004) (citing *Garden City Osteopathic Hosp. v. HBE Corp.*, 55 F.3d 1126, 1130 (6th Cir. 1995)).

As noted above, Ohio law provides that a debtor may claim a homestead exemption if (1) the debtor holds an interest in a parcel of real property; that (2) the debtor uses as a residence. OHIO REVISED CODE § 2329.66(A)(1)(b). The exemption is determined as of the date on which the bankruptcy petition is filed. *In re Jaber*, 406 B.R. 756, 762 (Bankr. N.D. Ohio 2009); *In re Cope*, 80 B.R. 426, 427 (Bankr. N.D. Ohio 1987).


Ohio courts interpret the state's exemption statutes, including the homestead exemption, liberally. *Meadow Wind Health Care Center, Inc. v. McInnes*, No. 1999 CA 00338, 2000 Ohio App. LEXIS 3415, at *8-9 (Ohio Ct. App. July 24, 2000). This approach is consistent with the bankruptcy code's policy to construe exemptions liberally in favor of the debtor. *Lester v. Storey (In re Lester)*, 141 B.R. 157, 163 (Bankr. S.D. Ohio 1991). Here, the debtor unquestionably owned an interest in the Allendale Drive property when she filed the bankruptcy case and the parties have stipulated that Allendale Drive was the debtor's residence at that time. This seemingly is the end of the analysis. The trustee, however, argues that the debtor intended to abandon the property, thus making it ineligible for the homestead exemption. He relies principally on bankruptcy court cases that interpret Ohio cases. The court finds that the better approach is to consider the Ohio cases directly.

The Ohio exemption statute does not define the word residence. Ohio courts have defined a homestead—a term later replaced by “residence”—as “a place that i[s] rightfully occupie[d] and use[d] as . . . a home.” *Staley v. Woolley*, 1893 WL 297, at *2. The right to a

homestead is lost only by neglect, refusal to claim it, or abandonment. *McComb v. Thompson*, 42 Ohio St. 139 at syllabus (Ohio 1884). For “homestead exemption purposes, abandonment consists of both actually leaving the premises and an intent to abandon.” *Meadow Wind*, 2000 Ohio App. LEXIS 3415, at *12-13. This definition is consistent with the common meaning of abandonment. See *Black’s Law Dictionary* (8th ed. 2004) (abandonment is the “relinquishing of a right or interest with the intention of never again claiming it”). The evidence showed that the debtor was gradually moving her family’s possessions from one house to another, rather than engaging in a more concentrated one day move. While the debtor had entered into a contract to sell the Allendale Drive property, the contract had not closed as of the petition date. The debtor did not, therefore, leave the Allendale property before she filed her bankruptcy petition. As she did not leave the property, she did not abandon it and she is entitled to claim a homestead exemption in it.

CONCLUSION

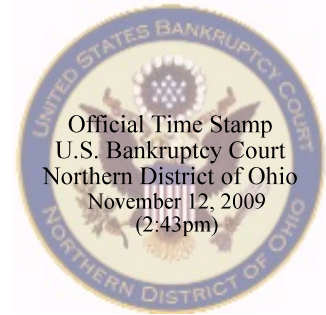
For the reasons stated, the chapter 7 trustee’s objection to the debtor’s claimed homestead exemption is overruled. A separate order will be entered reflecting this decision.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

NOT FOR COMMERCIAL PUBLICATION

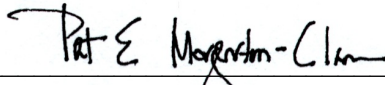
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In re:) Case No. 09-11450
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SHERRY R. BALLARD and) Chapter 7
JOSEPH G. BALLARD,)
) Judge Pat E. Morgenstern-Clarren
Debtors.)
) **ORDER**

For the reasons stated in the memorandum of opinion filed this same date, the chapter 7 trustee's objection to the debtor's claimed homestead exemption is overruled. (Docket 40).

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge