

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
 )  
ROBIN BELCHER, ) Bankruptcy Case No. 96-60525  
 )  
Debtor. )

OPINION

This matter having come before the Court on an Objection to Exemption filed by Creditor James W. Bates, II, on October 7, 1996; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The Court finds that the material facts in this matter are not in dispute and are, in pertinent part, as follows:

1. In a divorce proceeding between the Debtor, Robin G. Belcher, formerly known as Robin G. Bates, and the Objector herein, James William Bates, II, in Marion County, Illinois, in Case No. 91-D-308, an Order was entered on January 24, 1992, awarding Mr. Bates the temporary exclusive possession of the parties' marital home, located at 600 South Spruce Street, Patoka, Illinois. Thereafter, on June 26, 1992, an Order was entered awarding James Bates the exclusive possession of the marital residence until such time as the parties' daughter, Tia, graduates from high school or is otherwise emancipated.

2. Within 14 days of the Order the State Court issued on January 24, 1992, in the divorce proceeding, Debtor herein moved from the marital residence as ordered by the Court and established a

separate home in the Patoka area.

3. On August 16, 1996, Debtor filed for relief under Chapter 7 of the Bankruptcy Code, and, on September 5, 1996, the Debtor filed an Amended Schedule C claiming a homestead exemption in the real estate that was her former marital residence located at 600 South Spruce Street, Patoka, Illinois.

4. On October 7, 1996, the instant Objection to Exemption was filed by the Debtor's former husband, James W. Bates, II, and a hearing was held on this matter on December 6, 1996.

#### Conclusions of Law

Mr. Bates bases his objection to the Debtor's claimed homestead exemption on the fact that the Debtor has not resided in the subject residence for over four years and has no intent of ever residing in that residence again. The Creditor maintains that the Debtor's action constitutes an abandonment of Debtor's homestead right pursuant to 735 ILCS 5/12-901. In support of his position, the Creditor cites the case of In re Moneer, 188 B.R. 25 (Bankr. N.D. Ill. 1995).

In examining the facts in Moneer, the Court finds that they are clearly distinguishable from the facts in the case at bar. Unlike the Debtor in Moneer who voluntarily moved from his residence prior to a dissolution of marriage proceeding, the Debtor herein did not voluntarily move from the residence, but was rather ordered to do so by the State Court on January 24, 1992. In that Order, the State Court noted that Mr. Bates would be awarded temporary exclusive possession of the marital home, but the State Court did not disturb the joint ownership of the home, nor did it address the question of homestead as it had the jurisdiction to do at that time. In the State Court's final Order of June 26, 1992, as mentioned above, the marital home of the parties was awarded to Mr. Bates as his exclusive possession until:

. . . Tia graduates from high school or is otherwise emancipated, whichever occurs

sooner.

If Jim loses custody of the children or no longer resides in the residence, then it shall be as if Tia had become emancipated.

If Jim then desires to purchase the property from Robin [Debtor herein], he shall, within 14 days, submit an appraisal performed within the 30 days and offer that price as the value. Robin may reject within 14 days by submitting a recent appraisal of her own. If the parties cannot reach an agreement at this time, the appraisers shall select a third, submit the first two appraisals to him or her, and the appraisal provided by the third shall be binding as the value. The cost of the third appraisal is to be divided by the parties.

If Jim wants to purchase at this value, he shall do so within 28 days, and the proceeds shall be distributed as set out below.

Here again, the State Court did not deal with the question of disposing of the Debtor's homestead exemption. As such, this Court must assume that the issue was preserved by the State Court, and, absent some express waiver or ruling on the homestead exemption, the Court must find that, pursuant to 750 ILCS 5/701, the Debtor maintains a homestead right in the marital property. As such, she has properly claimed an exemption, pursuant to 735 ILCS 5/12-901. The issue of any abandonment of the homestead is not ripe nor timely and would not become an issue until such time as the exclusive possession ordered for Mr. Bates has run, which in this case theoretically will not occur for several years. As such, the Court finds that the Objection to Exemption must be denied given the Court's finding that an abandonment, as that term is defined in Illinois law, has not occurred in the instant proceeding as it occurred in the case of In re Moneer, cited and relied upon by the Objector herein.

ENTERED: December 12, 1996.

/s/ Gerald D. Fines  
United States Bankruptcy Judge