

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

IN RE:

In Proceedings

Under Chapter 7

FRANK CARVER,

Case No. 01 -30660

Debtor.

OPINION

The debtor and his former wife, Betty Jo Carver, each own a one-half interest in the home in which the debtor resides with his current wife, Linda Carver.<sup>1</sup> The debtor's interest in the home was set apart to him during the dissolution of his marriage to Betty Jo Carver in 1981. Linda Carver's name does not appear on the deed to the home, although the debtor argues that she has contributed value to the home. After filing a petition for relief under chapter 7 of the Bankruptcy Code, the debtor sought an order directing the trustee to abandon the real estate as having inconsequential value to the bankruptcy estate. The debtor values his share of the real estate at \$12,500.00, unencumbered by any liens. He and Linda Carver each claim a homestead exemption of \$7,500.00 in the home. The trustee has not disputed the debtor's valuation of the home.<sup>2</sup>

He opposes abandoning the property on the basis that Linda Carver's ineligibility to claim a homestead

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<sup>1</sup>The current Mrs. Carver has not sought bankruptcy relief.

<sup>2</sup>The debtor, however, estimates that were the trustee to sell the home, expenses of sale would total \$3,750.00. The trustee disputes this figure.

exemption renders the property of value to the bankruptcy estate. The sole question for the Court to decide is whether a spouse, whose name is not on the title to a home acquired by the other spouse prior to the marriage, is entitled to claim a homestead exemption in the home by virtue of her marital status alone.

The debtor's argument centers on whether the phrase "owned or rightly possessed by lease or otherwise" in the homestead exemption statute, 735 ILCS 5/12-901,<sup>3</sup> is sufficiently broad to allow a non-titled spouse to claim an exemption in the family home. The Court, after careful consideration of the authority cited by the parties and its own review, finds the reasoning of the Bankruptcy Court in the case of *In re Popa*, 218 B.R. 420 (Bankr. N.D. Ill. 1998), *aff'd*, 238 B.R. 395 (N.D. Ill. 1999), to be cogent and persuasive, and adopts that opinion as its own. The Court expressly finds that marital status does not confer upon a non-titled spouse the right to claim a homestead exemption in real property owned by the other spouse. The estate in land to which the homestead right attaches must be supported by title or some ownership interest, and possession alone is insufficient to entitle an individual to claim a homestead exemption. *Eg.*, *In re Hartman*, 211 B.R. 899, 903 (Bankr. C.D. Ill 1997) (citing *In re Owen*, 74 B.R. 697, 699-700 (Bankr. C.D. 111. 1987)); *In re Miller*, 174 B.R. 279, 282 (Bankr. N.D. Ill. 1994). The Court rejects the reasoning of *In re Reuter*, 56 B.R. 39,41 (Bankr. N.D. Ill. 1985) and *In re Miller*, 174 B.R. at 283, that either the Release of Homestead Act, 765 ILCS 5/27, or the Rights of Married Persons

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<sup>3</sup>Illinois' homestead statute provides in pertinent part:

Every individual is entitled to an estate of homestead to the extent in of \$7,500 of his or her interest in a farm or lot of land and buildings thereon, condominium, or personal property, **owned or rightly possessed by lease or otherwise** and occupied by him or her as a residence.... That homestead right in and title to that homestead is exempt from attachment, judgment, levy or judgment sale for the payment of his or her debts ....

735 ILCS 5/12-901 (emphasis added).

Act, 750 ILCS 65/16, create in a non-owner spouse "a special right to claim a homestead exemption in property . . . [in which] one does not have an interest. . . ." *Miller*, 174 B.R. at 283. Rather, the Court agrees with those courts holding that the Release of Homestead Act does not create a property right in a non-titled spouse because the Act merely limits the right of either spouse to release the **existent** homestead of the other without his or her consent. *Popa*, 218 B.R. at 423, *aff'd*, 238 B.R. at 400-401; *Hartman*, 211 B.R. at 904. Similarly, the Court agrees that the Rights of Married Persons Act does not bestow upon the non-titled spouse "an absolute right in a particular piece of property." *Hartman*, 211 B.R. at 904. A titleholder is free to convey the homestead so long as another homestead is provided. *Popa*, 218 B.R. at 423, *aff'd*, 238 B.R. at 400-401; *Hartman*, 211 B.R. at 904. In addition, contrary to the reasoning of *In re Reuter*, 56 B.R. at 41, the Court does not impute an interest in property to a non-owner spouse based on the contingency that a surviving non-owner spouse may elect an intestate share or renounce the will to enforce his or her interest in the residence of the deceased titled spouse. *Id.* During his or her lifetime, a titleholder has complete discretion to transfer real estate even when the purpose of the conveyance is to defeat his or her spouse's marital ownership interests under the Probate Act of 1975<sup>4</sup> in the property conveyed. *See, e.g., Wood v. Wood*, 672 N.E. 2d 385, 388 (Ill. App. Ct. 1996) (citing *Johnson v. La Grange State Bank*, 383 N.E. 2d 185, 192 (Ill. 1978)). There is simply no basis in Illinois law to confer an interest in property arising from marital status alone. The Court finds, therefore, that Linda Carver is not entitled to claim a homestead exemption in the real estate because she has no right or interest in the property. Absent evidence to the contrary, and the debtor has adduced none, the real estate acquired by

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<sup>4</sup>*See*, 755 ILCS 5/2-1 (a), (c) (intestate share of surviving spouse); 755 ILCS 5/2-8(a) (renunciation of will by surviving spouse).

the debtor prior to his marriage to Linda Carver and titled solely in his name, is his separate property.<sup>5</sup> Although the debtor argued that Linda Carver had contributed value to the home, he provided no evidence to support this claim. In any event, when marital funds are contributed to non-marital property, the funds are transmuted to non-marital property and the non-marital property retains its character. 750 ILCS 5/503(a)(7). *See, e.g., In re Marriage of Crook*, 778 N.E. 2d 309, 318 (Ill. App. Ct. 2002). Moreover, even if the home might be considered marital property despite being titled only in the debtor's name, in Illinois, a spouse's interest in marital property does not vest until a petition to dissolve the marriage is filed. 750 ILCS 5/503(e). *See, Wood*, 672 N.E. 2d at 388 (citing *Kujawinski v. Kujawinski*, 376 N.E. 2d 1382, 1386-87 (Ill. 1978)); *Szyszko v. Szyszko*, No. 01 C 2417, 2001 WL 766905, at \*2-3 (N.D. Ill. July 6, 2001).

It follows as well that granting Linda Carver a homestead exemption would be contrary to the statute's purpose to secure to a homesteader a shelter beyond the reach of his or her creditors. *See, e.g., In re Moneer*, 188 B.R. 25, 27 (Bankr. N.D. Ill. 1995); *People v. One Residence Located at 1403 East*

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<sup>5</sup>Illinois' Marriage and Dissolution of Marriage Act provides in pertinent part:

(a) For purposes of this Act, "marital property" means all property acquired by either spouse subsequent to the marriage, except the following, which is known as "non-marital property":

...

(6) property acquired before the marriage;

(7) the increase in value of property acquired by a method listed in paragraph [ ] ... (6) of this subsection, irrespective of whether the increase results from a contribution of marital property, non-marital property, the personal effort of a spouse, or otherwise . . .

750 ILCS 5/503(a)(6)-(7).

*Parham Street*, 621 N.E. 2d 1026, 1029 (Ill. App. Ct. 1993). The homestead exemption protects any estate in land that can be seized and sold on execution were it not occupied as a residence. *In re Morris*, 115 B.R. 626, 627 (Bankr. S.D. Ill. 1990) (citing 20 I.L.P., *Homesteads*, §30 (1956)). Because she has no estate in land that they can seize, Linda Carver's creditors are prevented from proceeding against the home belonging to her husband for the payment of her individual debts. To allow her to shield equity in the home from the reach of those creditors who do have the right to proceed against the home, *i.e.*, her husband's creditors, would effectively enable her husband to keep from his creditors equity in the home in excess of his individual entitlement of \$7,500.00.

For the reasons stated in this opinion, the Court finds that Linda Carver may not claim a homestead exemption in the home owned by her husband. As a result, the Court finds that the debtor's motion to compel abandonment should be denied.

Counsel for the debtor shall serve a copy of this Opinion by mail to all interested parties who were not served electronically.

SEE WRITTEN ORDER.

ENTERED: January 24,2003

/s/ Kenneth J. Meyers  
UNITED STATES BANKRUPTCY JUDGE