

I. Standard of Review

In a bankruptcy appeal, the bankruptcy court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses." Bankruptcy Rule 8013. See Matter of Loyd, 37 F.3d 271,274 (7th Cir. 1994). Where questions of law are concerned, however, the district court will review the bankruptcy court's ruling de novo. Matter of Voelker, 42 F.3d 1050, 1051 (7th Cir. 1994).

II. Findings of Fact

The Court does not find that the bankruptcy court's findings of fact are clearly erroneous. The bankruptcy court found that the Jordans had occupied a piece of land in Missouri as their homestead. On October 12, 1993, the Jordans conveyed the Missouri property in fee simple by general warranty deed to their son and daughter-in-law. On October 19, 1993, the son and daughter-in-law agreed by promissory note to pay the Jordans \$21,200 for the Missouri property in monthly installments of \$200 until they had paid the total purchase price or until the Jordans both died. The Jordans moved to Illinois after the sale and began renting a home in Westfield, Illinois. On October 27, 1994, the Jordans filed for Chapter 7 bankruptcy in the Southern District of Illinois. In their bankruptcy petition, they claimed a homestead exemption in the amount of \$15,000 for proceeds remaining to

of issues has been recently authoritatively decided; or
(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

be paid from the sale of the Missouri property.

II. Conclusions of Law

The first issue on appeal is whether the Illinois or Missouri homestead exemption applies. The Court agrees with the bankruptcy court that the Illinois homestead exemption applies but differs in its reasons for reaching this conclusion. The domicile of the Jordans during the 180 days prior to filing their bankruptcy petition determines which homestead exemption law applies in this case. Section 522 of the Bankruptcy Code states that a debtor may exempt from property of the estate

any property that is exempt under . . . State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180 day period than in any other place.

11 U.S.C. § 522(b)(2)(A). This provision directs the bankruptcy court to apply the exemption law of the debtor's domicile prior to filing the petition, not the choice of law principals of that state. See Matter of Smiley, 864 F.2d 562, 564 (7th Cir. 1989). See also Matter of Geise, 992 F.2d 651, 655 (7th Cir. 1993); In re Perine, 46 B.R. 695, 696 (S.D. Ala. 1983); In re Calhoun, 47 B.R. 119, 122 (Bankr. E.D. Va. 1985). Contra, In re Kaplan, 162 B.R. 684, 698 (Bankr. E.D. Pa. 1993), aff'd, 189 B.R. 882 (E.D. Pa. 1995). "[I]t makes no difference where the property [claimed to be exempt] is situated or where the petition initiating a case under title 11 is filed, so long as the property is exempt under the law of the domiciliary state." 3 Collier on

Bankruptcy ¶ 522.06 (1995). Thus, even if one state's choice of law rules point to using another state's law, it must use its own homestead exemption law if the debtor meets the domicile requirements set forth by 11 U.S.C. § 522(b)(2)(A). See e.g. Calhoun, 47 B.R. at 122.

Bankruptcy courts should use federal common law definitions of domicile to determine the debtor's domicile during the 180 days prior to the petition. In re Hodgson, 167 B.R. 945, 949 (D. Kan. 1994). Domicile is not the same as residence. Mississippi Bank of Choctaw Indians v. Holyfield, 490 U.S. 30, 48 (1989). Under federal law, a person is domiciled where he resides and has a concurrent intent to remain. Id.; Perry v. Pogemiller, 16 F.3d 138, 140 (7th Cir. 1993). A person retains a domicile until he acquires a new one. McDougald v. Jenson, 786 F.2d 1465, 1483 (11th Cir.), cert. denied, 479 U.S. 860, reh'g denied, 479 U.S. 1001 (1986).

The bankruptcy court made no explicit finding of fact regarding the Jordans' domicile. However, in a hearing held on February 3, 1995, the Jordans' attorney indicated that the Trustee and the Jordans agreed that the debtors were domiciled in Illinois for the greater part of the 180 days before they filed the bankruptcy petition. Report of Proceedings of Continued Hearing, February 3, 1995, p. 7. The Trustee did not disagree with this representation at the hearing. Thus, the Court finds that Illinois homestead exemption law applies in this bankruptcy proceeding.

IV. Illinois Law

The Court holds that the Jordans have reinvested proceeds from the sale of their former Missouri homestead in their Illinois homestead

so as to make them exempt from the bankruptcy estate under Illinois law.

Illinois law states:

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

735 ILCS 5/12-901. Illinois law also provides an exemption for proceeds from the sale of a homestead:

Proceeds of sale. When a homestead is conveyed by the owner thereof, ... the proceeds thereof, to the extent of the amount of \$7,500, shall be exempt from judgment or other process, for one year after the receipt thereof, by the person entitled to the exemption, and if reinvested in a homestead the same shall be entitled to the same exemption as the original homestead.

735 ILCS 5/12-906.

The threshold question that the Court must answer is whether proceeds from the sale of a Missouri homestead are exempt under 735 ILCS 5/12-906. The Court has not found any Illinois case law even remotely on point. A sampling of case law from other jurisdictions, as well as a survey of secondary sources, indicate that this Illinois statute does not exempt proceeds from the sale of a homestead in another state.

Secondary sources state that "[h]omestead statutes can have no extraterritorial force; they must be construed to apply solely to

homesteads within the state." 40 Am. Jur. 2d, *Homesteads* § 14 (1968). See e.g. Pinson v. Murphy, 295 S.W. 442 (Ky. 1927), later app. 21 S.W.2d 824 (Ky. 1929); Merchants Bank v. Weaver, 197 S.E. 551 (N.C. 1938); Bergman v. Bergman, 888 S.W.2d 580 (Tex. App. 1994). Furthermore, "[a] statute referring to the acquiring of one homestead with the proceeds of the sale of another refers exclusively to homesteads within the state wherein the statute was enacted." 40 Am. Jur. 2d, Homesteads § 14 (1968).

These principles have been applied in other jurisdictions. For example, in Wm Cameron & Co. v. Abbott, 258 S.W. 562, 564 (Tex. Civ. App. 1924), debtors attempted to exempt under the Texas exemption statute² the proceeds from their former homestead in Oklahoma. The Texas Court of Civil Appeals noted:

When the [Texas] Legislature provided that the proceeds of the voluntary sale of "the homestead" should be exempt, we think it, by necessary implication, referred to "the homestead" as otherwise defined [by the statute]. This definition of "the homestead" we think also by necessary implication refers to a homestead in Texas. Exemption laws are local and "pertain to the remedy having no extraterritorial effect." The framers of the Constitution and the lawmakers in defining a homestead were evidently not attempting to say what should be the homestead in some other state. When they added the provisions for exemption of the proceeds of the sale they were, in our opinion, also evidently referring to "the homestead" provided by other parts of the law and not to a homestead in some other state.

²The Texas statute at issue in this case reads: "The proceeds of the voluntary sale of the homestead, shall not be subject to garnishment or forced sale within six months after such sale." See Abbott, 258 S.W. at 563-64.

Id. The court continued, quoting the Iowa Supreme Court when it addressed a similar question involving the proceeds from the sale of an Iowa homestead that had been brought to Missouri:

"What, then, was the character impressed upon the proceeds of the Iowa homestead when taken to Missouri for reinvestment?... It was not the proceeds of the sale of a homestead under the laws of Missouri, for these laws can apply only to a homestead held under the laws of that state."

Id. (quoting Rogers v. Raiser, 14 N.W. 317 (Iowa 1882)). The Abbott court then concluded that the Texas exemption law did not apply to proceeds from the sale of a homestead in another state. Thus, the debtors could not exempt the proceeds from the sale of their former homestead in Oklahoma. Id. See also State Bank of Eagle Grove v. Dougherty, 66 S.W. 932 (Mo. 1902).

More recently, the Bankruptcy Court for the Western District of Texas confirmed the continuing viability of Abbott in In re Peters, 91 B.R. 401, 404 (Bankr. W.D. Tex. 1988). The Peters court emphasized that to allow a debtor to exempt proceeds from the sale of homestead in a different state would encourage forum-shopping. Id. For example, a debtor could sell his homestead, take the proceeds to a state with a larger, or even an unlimited, homestead exemption, file a bankruptcy petition and claim that the proceeds were exempt under the second state's law. Id. Thus, the debtor could reduce the value of creditors' claims to the original homestead property. Id.

At least one court has rejected this reasoning and relied on the purpose of the homestead exemption to justify permitting a state's

exemption law to apply to proceeds from the sale of an out-of-state homestead. In In re Bloedon, 137 B.R. 824 (Bankr. D. Col. 1992), the debtors sold their Oregon homestead and attempted to exempt the proceeds under the Colorado homestead exemption statute. Id. at 824. The court allowed the exemption in spite of explicit language in the Colorado statute that the exemption applied to proceeds from the sale of a "homestead in the state of Colorado." Id. at 825. The court noted that the purpose of the homestead exemption was "protecting the citizen householder and his family from the dangers and miseries of destitution consequent upon business reverses or upon calamities from other causes; and cultivating the local interest, pride and affection of the individual." Id. The court found that strict interpretation of the statute would not serve the statute's purpose. Id. Consequently, the court applied the Colorado exemption to the proceeds from the sale of the Oregon homestead. Id.

This Court notes that the purpose of the Illinois homestead exemption is "to protect the homesteader in the enjoyment of a home and to secure to him a shelter beyond the reach of his improvidence or financial misfortune." People v. One Residence Located at 1403 East Parham St., 621 N.E.2d 1026, 1029 (Ill. Ct. App. 1993) (citing Holterman v. Poynter, 198 N.E. 723, 727 (Ill. 1935)). After considering the aforementioned cases in light of the purpose of the Illinois homestead exemption, the Court holds that 735 ILCS 5/12-906 applies to proceeds from the sale of an out-of-state homestead.

Applying this statute, the Court finds that the Jordans may exempt from the bankruptcy estate their right to future installment payments.

Installment contract payments due to the debtor on the purchase of the debtor's former homestead are exempt under statutes, like the Illinois statute, that exempt proceeds from the sale of a homestead for "one year after the receipt" of such proceeds. See In re Pierce, 50 B.R. 718, 719-20 (Bankr. D.S.D. 1985). Cf. In re Ehrich, 110 B.R. 424, 429 (Bankr. D. Minn. 1990).

In In re Pierce, the bankruptcy court confronted a situation similar to the one at bar. In that case, a South Dakota debtor had sold his former homestead under a contract for deed. In re Pierce, 50 B.R. at 719. He filed for bankruptcy while amounts remained to be paid under the contract for deed. Id. at 719. The South Dakota statute exempting the proceeds from the sale of a homestead stated, in pertinent part, that "proceeds of such sale, not exceeding the sum of thirty thousand dollars, is absolutely exempt for a period of one year after the receipt of such proceeds by the owner." Id. (quoting S.D. Codified Laws § 43-45-3). The court emphasized the fresh start philosophy of the Bankruptcy Code, the purpose of the homestead exemption -- to secure a debtor's home during his financial troubles -- and the fact that the legislature chose to exempt proceeds for one year after "the receipt" of the proceeds, not after "the sale" of the homestead. Id. at 720. In the end, the court concluded that future payments due under the contract for deed were exempt, up to the amount of \$30,000, from the bankruptcy estate.

The court in In re Ehrich came to the opposite conclusion in a similar situation. That case involved a Minnesota debtor who had rights to future payments under a contract for deed. In re Ehrich, 110

B.R. at 425. The Minnesota statute, however, exempted proceeds from the sale of a homestead for one year from the date of "sale." Minn. Stat. § 510.07. The court determined that the sale had occurred upon the execution of the contract for deed. In re Ehrich, 110 B.R. at 429. As of that date, the court held, the debtor possessed only a contractual right to future payments. The court concluded that the Minnesota statute, by its terms, exempted proceed payments that the debtor received within one year after the "sale" but not the contract right to future payments. Id. Thus, payments made more than a year after the sale became part of the bankruptcy estate. Id.

The Court finds In re Pierce more analogous to the case at bar. First of all, the South Dakota statute more closely resembles the Illinois statute than the Minnesota statute does because it exempts proceeds for one year after the date of "the receipt" of the proceeds. Secondly, like the court in In re Pierce, this Court places great emphasis on the purpose behind the homestead exemption and the consequences to the debtor if the homestead exemption is not applied. Were the Court to declare that the Jordans' future payments are a part of the bankruptcy estate, the Jordans could lose the security of their home during their financial misfortunes. Consequently, the Court agrees with the bankruptcy court's determination that future payments that the Jordans receive and invest in their leased home are exempt under 735 ILCS 5/12-906.

The Court disagrees, however, with the bankruptcy court's assessment of the amount of the payments that is exempt. The evidence shows that the Jordans receive \$200 per month under the promissory note

but only expend \$150 per month to rent their Westfield, Illinois, residence. The Court finds that the Jordans are only reinvesting \$150 per month of the proceeds from the sale of their homestead. Presumably, the Jordans will reinvest the excess \$50 per month in the following month's rent. Thus, it will take several years before the Jordans will have possessed proceeds for one year without having reinvested them in their homestead. Nevertheless, these uninvested sums are not exempt from the bankruptcy estate.

For the foregoing reasons, the Court AFFIRMS in part and REVERSES in part the decision of the bankruptcy court and REMANDS for further proceedings in accordance with this order. The Jordans may exempt under 735 ILCS 5/12-906 any sums that they received as proceeds from the sale of their Missouri homestead that they reinvest in a homestead within one year of receiving the sums.

IT IS SO ORDERED.

DATED: March 6, 1996

/s/ J. PHIL GILBERT
DISTRICT JUDGE