

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	
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TUNYA E. FOSTER NICHOLSON,)	No. 05-31485
)	
Debtor.)	

OPINION

The facts in this matter are not in dispute. When the Debtor, Tunya E. Foster Nicholson (“Debtor”), filed her Chapter 7 case in Bankruptcy, she held title to real estate where she and her spouse lived. The spouse had no ownership interest in the real estate. On the schedule of exemptions, the Debtor claimed a homestead interest for both herself and her spouse and the Trustee objected. The Trustee contends that the spouse cannot claim a homestead exemption as he has no ownership interest.

The issue before this Court is whether a debtor’s spouse must have an ownership interest in residential real estate in order to claim a homestead exemption under the Illinois homestead law. 735 ILCS 5/12-901. In *In re Hartman*, 211 B.R. 899 (Bankr.C.D.Ill. 1997), this Court addressed this issue while sitting in the Central District of Illinois. Acknowledging that there was a split in the decisions on this issue, this Court went on to hold that an ownership interest was required to claim a homestead exemption. Subsequently, Bankruptcy Judge Meyers, in this district, the Southern District of Illinois, in *In re Carver*, 2003 WL 23211627 (Bankr.S.D.Ill.), came to a similar conclusion.

For the reasons set forth in *Hartman* and *Carver*, this Court holds, in this case, that the Debtor’s spouse cannot claim a homestead exemption as he has no ownership interest. Therefore, the Trustee’s objection should be allowed.

This Opinion constitutes this Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate Order will be entered.

ENTERED: August 31, 2005

/s/ William V. Altenberger
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

TUNYA E. FOSTER NICHOLSON,

Debtor.

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No. 05-31485

ORDER

For the reasons set forth in an Opinion entered this day, IT IS HEREBY ORDERED that the Trustee's objection to homestead exemption is allowed.

ENTERED: August 31, 2005

/s/ William V. Altenberger

UNITED STATES BANKRUPTCY JUDGE