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JUDGE: M. A. Mahoney

PARTIES: Larry McCall, Susan Bible McCall, Kittrell Acoustics, Regions Bank

CHAPTER: 13

ATTORNEYS: C. M. Smith, B. F. Stokes, III, R. S. Terry

DATE: 10/22/01

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

LARRY MCALL
SUSAN BIBLE MCALL,

Case No. 97-14379

Debtors.

ORDER CONFIRMING PLAN AND DENYING OBJECTION TO EXEMPTIONS

C. Michael Smith, Mobile, Alabama, Attorney for Debtor
Benjamin F. Stokes, III, Mobile, Alabama, Attorney for Kittrell Acoustics
Russell S. Terry, Mobile, Alabama, Attorney for Regions Bank

This matter is before the Court on the objection of Kittrell Acoustics to debtor's exemptions and on the confirmation hearing on debtors' plan. Kittrell and Regions Bank had objected to confirmation.. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the Court is overruling the objection of Kittrell Acoustics to debtors' exemptions and confirming debtors' plan.

FACTS

Larry McAll and Susan Bible McAll filed for relief pursuant to chapter 13 of the Bankruptcy Code on June 25, 2001. The McAll's schedule C included the following properties which debtors claim as exempt:

	<u>Value of Claimed Exemption</u>	<u>Market Value</u>
126 North Courtaulds Ave. Saraland, AL	\$1.00	\$60,000
302 1/2 3rd Ave Satsuma, AL 36571	\$1.00	\$27,500

5307 Old Highway 43 Satsuma, AL 36572	\$1.00	\$47,500
65 Elizabeth Ave. Chickasaw, AL	\$1.00	\$40,000
562 Whidden Drive Satsuma, AL	\$10,000	\$75,000
Interest in Bible-McAll Real Estate	\$1.00	\$1.00
1995 Ford Explorer	\$1.00	\$5,000
1996 Chevrolet Lumina	\$3,500	\$3,500
Office Furniture and Computer	\$425	\$425
Household Furniture	\$1,205	\$1,205
Clothes	\$150	\$150
Misc. Jewelry	\$100	\$100
Patio Furniture, Lawn Mower and Equipment	\$600	\$600
Cash in 3 Bank Accounts	\$600	\$600
Misc. Pictures, Wall Decorations and assorted Books	\$80	\$80
Family Dog	\$10	\$10

Kittrell Acoustics asserts that the value of the property listed above is understated and that the total values when accurately listed are in excess of the McAll's allowed exemptions. Kittrell Acoustics offered for impeachment purposes a personal financial statement of Susan Bible McAll dated December 3, 1998. The financial statement valued the North Courtaulds property at \$75,000; the 3rd Ave. property at \$30,000; the Old Highway 43 property at \$56,000; and the Elizabeth Dr. property at \$52,000. It also listed the value of the Chevy Lumina at \$12,000 and

the value of her personal property and jewelry at \$60,000. Ms. McAll testified that she did not fill out the financial statement; it was filled out by South Alabama Bank. There was also testimony that the value of real property in the area where the real estate was located had decreased considerably.

Ms. McAll was not sure why the value of her personal property and jewelry listed on the statement was so high. In part, it was because in 1998 she owned a 2 kt. diamond ring that was worth about \$15,000, but she lost the ring over a year ago. Mrs. McAll received insurance proceeds for the loss of the ring and spent the proceeds on living expenses. She also had some jewelry she inherited from her grandmother, some of which she gave to her sisters after 1998.

The McAlls have a mortgage on the Whidden Drive property, which is their homeplace, in the amount of \$68,000. The Old Highway 43 property was a gift from Ms. McAll's mother who retained a life-estate in the property and still lives in the property. South Alabama Bank has a blanket real estate mortgage on all of the real property except the McAll's homeplace in the amount of \$174,700. The North Cortaulds Avenue property and the 3rd Avenue property have tenants and the Elizabeth Avenue property usually has a tenant, but the rent received from all three properties does not exceed the mortgage payment. The IRS has three recorded tax liens on the McAll's property in the amounts of \$6,691.30, \$22,927.81 and \$5,130.67.¹ The McAll's 1995 Ford Explorer is security for a loan in the amount of \$5,000.

The McAlls were questioned about Mr. McAll's gambling habits, but both Mr. and Mrs. McAll say he does not and has not ever had a gambling problem. Mr. Kittrell testified that he

¹The McAll's schedules show a tax lien on their property in the amount of \$13,431.00. The McAll's schedules also list a priority tax claim in the amount of \$11,337.12 and a total IRS claim in the amount of \$57,817.42. There was no reconciliation of these numbers.

believed Mr. McAll had a gambling problem, but had no real knowledge of Mr. McAll's gambling habits other than the fact that Mr. McAll had accompanied him to a casino once during the last year and borrowed \$700 while there.

LAW

Kittrell Acoustics objects to the McAll's exemptions on the basis that the properties exempted are not accurately valued. Regions Bank "piggybacked" on the objection but offered no additional argument or evidence. Under Fed. R. Bankr. P 4003(c) Kittrell Acoustics, as the objecting party, has the burden of proving that the exemptions are not properly claimed. The only testimony at the hearing as to the value of the properties was that of Mr. and Mrs. McAll who testified that the values listed in their schedules were accurate. The financial statement was offered solely for impeachment purposes and was not strong enough to impeach Mrs. McAll. Mrs. McAll explained that she did not fill out the financial statement and that the value of her property has decreased since the time of the financial statement. The Court finds a decline to be very credible. The homes are in the vicinity of the closed International Paper Mill and other troubled or closed businesses. There was no evidence to support a different value for any of the properties listed on the McAll's schedules and there was no evidence offered to dispute the amount of the liens and mortgages listed on the McAll's schedules and testified to at the hearing. This Court finds that based on the evidence presented, the value of the claimed exemptions are accurate.

The lost ring situation is also credible. Mrs. McAll was paid for the ring by her insurance company. The loss would not have been compensated if there were something amiss.

Kittrell Acoustics offered evidence of Mr. McAll's gambling habits to support the contention that the McAll's plan was not proposed in good faith as required by § 1325(a)(3).

Although a gambling problem may be evidence of bad faith, the evidence presented as to whether or not Mr. McAll has or had a gambling problem was insufficient for this Court to so find. Even if Mr. McAll had a gambling problem, he can still cure his gambling debts in bankruptcy. Bankruptcy relief is not just for “good” people. Bankruptcy relief is needed for those who have financial problems and want to change.

Under the McAll’s plan the creditors will get at least as much as they would receive in a chapter 7 case since the value of the McAll’s property has decreased and, according to the chapter 13 trustee’s calculations, the McAll’s plan would pay 13% pro rata to unsecured creditors.

THEREFORE, IT IS ORDERED AND ADJUDGED that the objections of Kittrell Acoustics and Regions Bank to the exemptions of Larry and Susan Bible McAll and to confirmation are OVERRULED and the plan is CONFIRMED.

Dated: October 22, 2001

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE