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JUDGE: M. A. Mahoney

PARTIES: Darrell Dwayne Ladnier, Roslyn Annette Ladnier

CHAPTER: 7

ATTORNEYS: H. D. Padgett, C. Kern, S. Watson

DATE: 2/3/98

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

DARRELL DWAYNE LADNIER
ROSLYN ANNETTE LADNIER

Case No. 97-13668

Debtors.

ORDER

Herman D. Padgett, Mobile, Alabama, Attorney for Darrell Ladnier and Roslyn Ladnier
Christopher Kern, Mobile, Alabama, Trustee
Slade Watson, Mobile, Alabama, Attorney for Michelle Ryan (child support claimant)

This matter came before the Court on the trustee's objection to exemptions claimed by Darrell Ladnier and Roslyn Ladnier. 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)(2). For the reasons indicated below, the trustee's objection is due to be sustained.

FACTS

Darrell Ladnier and Roslyn Ladnier (the debtors) filed a Chapter 7 bankruptcy petition on October 13, 1997. On December 2, 1997, the trustee filed an objection to certain exemptions listed by the debtors. A hearing was held on December 16, 1997.

The debtors valued Mrs. Ladnier's equity in a house from a divorce settlement at \$1 and claimed a \$1 exemption. Mrs. Ladnier testified that she was awarded a \$15,000 judgment when she divorced her former husband, David DeGuerre. The \$15,000 award represented Mrs. Ladnier's interest in their marital real estate. Mrs. Ladnier has never received any of the \$15,000, nor has she deeded the real estate to her former husband. Mr. DeGuerre still owns the house and land. Mrs. Ladnier testified that she could not afford to pay an attorney to collect the \$15,000. The trustee

alleges that either 1) Mrs. Ladnier is not entitled to claim a homestead exemption as to the former marital real estate, because Mrs. Ladnier does not reside in the property, or 2) if Mrs. Ladnier claims a personal property exemption, the value of the exemption exceeds the maximum allowed.

At the time of filing, the debtors resided in a 1990 Fleetwood mobile home. The debtors valued the mobile home at \$7,500 and claimed a \$10,000 homestead exemption. There are no liens on the mobile home. Title to the mobile home is in Mr. Ladnier's name. The debtor's allege that they jointly own the mobile home; therefore, they are each entitled to claim separately the homestead exemption of \$5,000. Mr. Ladnier testified that he and Mrs. Ladnier purchased the mobile home together, prior to their marriage. Mr. Ladnier also testified about the value of the mobile home. The debtors paid \$9,000 for the mobile home two years ago. Mr. Ladnier indicated that it would require repair work costing \$1,500 to \$1,000 in order to sell the mobile home for \$7,000 to \$6,000. The trustee alleges that Mrs. Ladnier is not entitled to a separate homestead exemption because the mobile home is owned solely by her husband.

The debtors valued a 1992 Ford Ranger pickup truck at \$5,825 and claimed a \$4,825 personal property exemption. Title to the truck is in Mr. Ladnier's name. At the time of filing, AmSouth Bank was listed as a lienholder on the truck's title. On November 17, 1997, Mr. Ladnier reaffirmed the debt he owed to AmSouth Bank. Mr. Ladnier agreed to pay the balance owing on the truck, \$337.52, plus the bank's legal expenses and attorneys fees. The trustee alleges that Mrs. Ladnier does not have an ownership interest in the truck; therefore, the maximum exemption to be claimed by Mr. Ladnier is \$3,000.

The debtors valued their household goods at \$580 and claimed a \$580 personal property exemption. On cross-examination, Mrs. Ladnier testified that she is the owner of one-half of the

household goods.

In their bankruptcy schedules, the debtors listed Mr. Ladnier's child support arrears in the amount of \$7,450. It appears that the child support debt is not dischargeable. The trustee alleges that pursuant to 11 U.S.C. § 522(c)(1), Mr. Ladnier's exemptions are not available against his child support debt. The debtors' attorney argues that the child support claimant, and not the trustee, may take advantage of § 522(c)(1).

LAW

In order to claim a homestead exemption, there must be "occupancy in fact and a clearly defined intention of present residence and occupancy." *Gowens v. Gross*, 561 So.2d 519 (Ala. 1990). Mrs. Ladnier may not claim a homestead exemption as to her former marital real estate. Mrs. Ladnier is entitled to a personal property exemption not to exceed \$3,000.

Ownership is an essential element of any exemption claim. There is no possibility of liability without some degree of ownership. *Central Bank v. Gillespie*, 404 So.2d 35 (Ala. 1981). The titles to the 1990 Fleetwood mobile home and the 1992 Ford Ranger pickup truck are in Mr. Ladnier's name. Mrs. Ladnier does not have a current ownership interest in either the mobile home or the pickup truck; therefore, she is not entitled to exempt the property. Mr. Ladnier is entitled to a \$5,000 homestead exemption. He is also entitled to a \$3,000 personal property exemption plus any amount paid to AmSouth Bank after the bankruptcy filing.

Alabama case law provides that a homestead exemption or a personal property exemption is not available against a liability for alimony or child support. *Kendrick v. Kendrick*, 271 Ala. 372, 124 So. 78 (Ala. 1960). The Bankruptcy Code also permits alimony and child support debts to overcome exemption rights. 11 U.S.C. §§ 522(c) and 522(f). The Court can find no case holding

that a trustee may liquidate a debtor's exempt property on behalf of an alimony or child support claimant.

Courts have allowed trustees to liquidate secured property for the benefit of creditors, even if there is no equity in the property. The trustee is able to obtain a better price than might be obtained in a foreclosure or repossession; therefore, reducing deficiency claims against an estate which in turn raises recoveries of the remaining creditors. Allowing a trustee to sell exempt property in order to lower claims against nonexempt property would accomplish the same goal. However, the Court concludes it is not appropriate. Liquidating exempt assets is different than liquidating non exempt assets. Exempt assets, once exempted, are not property of the debtor's estate. The court and trustee have no jurisdiction over the property. *Wesche v. I.R.S.*, 178 B.R. 542 (Bankr. M.D. Fla. 1995). The creditor who claims a lien in exempt property should pursue collection individually, not under the auspices of the bankruptcy court. *See Davis v. Davis*, 105 F.3d 1017 (5th Cir. 1997) (former spouse can levy on homestead property for unpaid support). Therefore, the child support claimant, Michelle Ryan, may take whatever actions she deems appropriate in this Court or in state court.

The trustee's objection to exemptions is due to be sustained and all items or the value of such items in excess of the maximum exemption amounts allowed by Alabama law are to be turned over to the trustee for liquidation on behalf of creditors.

Dated: February 3, 1998

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE