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JUDGE: M. A. Mahoney
PARTIES: Michael Preston McGraw
CHAPTER: 7
ATTORNEYS:
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In re

MICHAEL PRESTON McGRAW,

Debtor.

Case No. 98-12352-MAM-7

**ORDER SUSTAINING TRUSTEE'S OBJECTION TO DEBTOR'S
CLAIM OF HOMESTEAD EXEMPTION IN HOUSE AND PROPERTY
LOCATED AT 8171 PINEWEST CT. E., MOBILE, ALABAMA**

This matter is before the court on trustee's objection to debtor's claim of exemption.

This court has jurisdiction to hear this matter pursuant to 28 U.S.C. § § 1334 and 157 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, trustee's objection to debtor's claim of exemption is sustained.

FACTS

This Order incorporates the facts as set forth in the Stipulation filed September 15, 1998.

LAW

When an individual debtor files for federal bankruptcy protection in Alabama, the provisions of the Bankruptcy Code that define what property the debtor may claim exempt are pre-empted by the Code of Alabama. *See*, Ala.Code § 6-10-11 (1997) and 11 U.S.C. § 522(b)(1). The Code of Alabama 1975 § 6-10-2 provides Alabama residents with a \$5,000 homestead exemption in bankruptcy. Property qualifies as a homestead only if, on the date of filing the petition for bankruptcy, the debtor occupies the property in fact and clearly intends to reside in and occupy the property. *In re Brasington*, 10 B.R. 76, 78 (Bankr. M.D.Ala. 1981).

Michael Preston McGraw (debtor) filed his petition for bankruptcy on July 6, 1998. Since January 12, 1998 debtor has resided at 1066 Louise Ave., Mobile, Alabama, and not at

8171 Pinewest Ct. E., Mobile, Alabama. These facts show that on the date of filing his petition for bankruptcy debtor neither occupied in fact nor intended to occupy 8171 Pinewest, but instead occupied 1066 Louise Ave. Consequently, debtor cannot claim 8171 Pinewest as his homestead. *Id.* (when evidence shows debtor occupies premises in manner contemplated by homestead statute, he may not claim another residence as his homestead).

THEREFORE IT IS ORDERED that trustee's objection to debtor's claim of homestead exemption in the house and property located at 8171 Pinewest Ct. E., Mobile, Alabama be sustained and debtor's claim of exemption is denied.

Dated: September 30, 1998

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE