

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

DAVID NETTLES,
CHARLOTTE A. NETTLES,

CASE NO. 00-10966-WSS

Debtors.

Chapter 7

ORDER SUSTAINING TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTION

This matter came on for hearing on the Trustee's objection to the Debtors' claim of exemption and the Debtors' objection to the Trustee's objection to exemptions. A. Richard Maples, Jr. appeared for the Trustee, and C. Michael Smith appeared for the Debtors. 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 matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

The Debtors filed the present Chapter 7 petition on March 10, 2000. They did not claim a homestead exemption under Alabama Code § 6-10-2 (1975) on schedule C for property claimed as exempt. On March 30, 2000, the Debtors filed an amended schedule C which claimed as exempt proceeds from the sale of their homeplace in the amount of \$8,850.66. As part of the same amendment, the Debtors filed an amended schedule B for personal property to include the \$8,850.66. The Debtors sold their homeplace in April 1999, approximately one year before filing their petition. The proceeds are identifiable and separate as the Debtors are still holding two checks totaling \$8,850.66, and have not negotiated the checks. The Trustee objected to the amendment, stating that the Debtors should not be allowed to claim the proceeds from the sale of their homeplace as a homestead exemption, and that the Debtors' personal

property exemptions should be limited to the amounts set forth in the Code of Alabama.

Section 522(b) of the Bankruptcy Code allows states to “opt out” of the exemptions established by §522(d). Alabama chose to opt out and use its own state law exemptions in bankruptcy proceedings. Alabama Code § 6-10-11 (1975). The Debtors maintain that they are allowed to exempt the \$8,850.66 as proceeds from the sale of their home under Alabama’s homestead exemption, Alabama Code §6-10-2 (1975). The Debtors cited case law in support of their position; however, the cases did not state that the homestead exemption attaches to proceeds from the sale of a homeplace.

In In re Rester, 46 B.R. 194, 195 (S.D. Ala. 1984), the district court affirmed the bankruptcy court’s decision to deny a homestead exemption to a debtor on grounds that the debtor was not occupying the home, had contracted to sell the home, and had therefore abandoned any interest in the home. The court noted that “Alabama’s exemption, protecting the interest of a person in his residence, applies because of the use to which the land is put, not because of the fixtures on it or the quality of the debtor’s interest.” Rester, 46 B.R. at 196 (citations omitted). The court reasoned that Alabama law allowed a person to claim property as exempt from the moment of the contract to purchase. If an individual possesses the entire interest in property, and conveys that entire interest, he or she also conveys the right to claim a homestead exemption in the property. Rester, 46 B.R. 196. This Court in In re Lindsey, 94 B.R. 723, 724 (Bankr. S.D. Ala. 1988) held that the proper date for determining bankruptcy exemptions is the date of filing. The court held: “An essential element of the right of homestead is actual occupancy at the time the property is claimed as exempt. At the date of the bankruptcy there must be occupancy in fact and clearly defined intention of present residence and

occupancy. Blum v. Carter, 63 Ala. 235 (1879).” Lindsey, 94 B.R. at 724 (quoting In re Brasington, 10 B.R. 76,78 (Bankr. M.D. Ala. 1981)).

In the present case, the Debtors sold their home almost a year before filing their Chapter 7 petition. They were one step further than the debtor in Rester, who had no homestead exemption because he had signed a contract to sell the property. Under the holdings in Rester and Lindsey, the Debtors lost their right to claim a homestead exemption when they sold their property. As of March 10, 2000, the Debtors had no homeplace upon which to claim an exemption. Therefore, the Court finds that the Trustee’s objection to the Debtors’ claim of exemption is due be sustained. The Debtors cannot claim a homestead exemption in the \$8,850.66 proceeds, and the Debtors should be limited to the personal property amounts set forth in the Code of Alabama. It is hereby

ORDERED that the Trustee’s objection to the Debtors’ claim of exemption is **SUSTAINED**; and it is further

ORDERED that the Debtors shall not be allowed to claim a homestead exemption in the \$8,850.66 proceeds; and it is further

ORDERED that the Debtors shall be limited to the personal property amounts set forth in the Code of Alabama.

DATED: July ___, 2000

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE