

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In re:)
)
Shireka Deshay McCall,) Case No. 24-11589
)
Debtor(s).)

ORDER SUSTAINING OBJECTION (DOC. 14) TO DEBTOR'S CLAIM OF EXEMPTIONS

This chapter 13 case is before the court on the trustee's objection to the debtor's claim of exemption. The trustee states that "The Debtor is exempting items using Ala Code 6-10-6, 6-10-12 that are not allowed. Specifically, One Third interest in Estate of Sharon McCall (Consists of House at 908 McGee Circle)." According to her schedules and counsel for the debtor, the debtor inherited a one-third interest in the house from her grandmother Sharon McCall. She valued the interest at \$3,300. Counsel represented that no probate estate has been opened for Ms. McCall and that the estate did not have any other assets. The court has no information about whether Ms. McCall had a will. According to her schedules, the debtor lives in the house but has not claimed it exempt as homestead.

At a hearing held on August 28, 2024, the debtor's counsel argued that the debtor's interest in the house is really an interest in a probate estate that is personal property covered by the exemption for personal property under Alabama Code § 6-10-6.¹ He also argued that the property may be exempt under Alabama Code § 43-8-111, which is a probate exemption.

"'Personal property,' within the meaning of [Alabama's] exemption laws, includes everything that is subject to ownership other than realty or an interest in realty." *See In re*

¹ Alabama Code § 6-10-12, cited by the trustee, deals with adjustments to exemption values, not the exemption itself.

Bradley, 212 B.R. 998, 998 n.4 (Bankr. M.D. Ala. 1997) (citation and quotation marks omitted).

Under Alabama Code § 43-2-830(a), title to the grandmother's house passed to her heirs upon the grandmother's death. The debtor's interest in the house is thus realty, not personal property subject to the exemption in Alabama Code § 6-10-6. And Alabama Code § 43-8-111 does not apply because that exemption relates to claims against the decedent (or her estate), not an heir like the debtor.

For these reasons, the court sustains the trustee's objection to the debtor's claim that her interest in the McGee Circle house is exempt as personal property. The court orders the debtor to amend her Schedule A/B to list her interest in the house as realty. The court is not ruling on any potential claim that the debtor's interest in the house is exempt as homestead.

Dated: September 6, 2024


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE