

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

IN RE:)
) CHAPTER 7
) CASE NO. 03-51446-JDW
ARLON R. HIERS,)
)
)
DEBTOR.)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtor: Robert H. Baer
Post Office Box 1792
Brunswick, Georgia 31521

For Trustee: Mary Jane Cardwell
Post Office Box 756
Waycross, Georgia 31502-0756

MEMORANDUM OPINION

This matter comes before the Court on Debtor's motion to retain sale proceeds as exempt property. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(B). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

Debtor Arlon Hiers and his ex-wife jointly owned approximately 60 acres of real property. Mrs. Hiers initiated a divorce action on or about November 28, 2001. While the divorce action was pending, Debtor filed a Chapter 11 case on August 25, 2003. The case was converted to Chapter 7 on May 3, 2004.

The final decree in the divorce proceeding was entered on July 6, 2004. It incorporated a separation agreement that provided that most of the 60 acres of land would be sold, certain indebtedness paid, and one-half of the remaining proceeds would go to Mrs. Hiers. Of the remaining property, Debtor's interest in 13 acres and a house was to go to Mrs. Hiers, and Mrs. Hiers interest in one acre and a mobile home was to go to Debtor.

On an amended Schedule C, filed July 21, 2004, Debtor claimed a homestead exemption of \$20,000. The Chapter 7 Trustee filed an objection to exemptions on July 22, 2004.

Debtor filed a motion to sell the property. After a hearing, the Court ordered that the property be sold, liens properly of record be paid, and one-half of the proceeds of sale be

paid to Mrs. Hiers. The remainder of the money, \$35,433.18, went to Debtor's bankruptcy estate pending further order of the Court. Thereafter, Debtor filed a motion to retain the exempt proceeds of the sale in the amount of \$20,000. The Trustee opposed the motion, citing her previous unresolved objection to exemption. The Court held a hearing on the issue on August 25, 2005, and now concludes that Debtor is entitled to a homestead exemption of \$10,000.

Conclusions of Law

Georgia provides a homestead exemption as follows:

[A]ny debtor who is a natural person may exempt, pursuant to this article, for purposes of bankruptcy, the following property:

(1) The debtor's aggregate interest, not to exceed \$10,000.00 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor. *In the event title to property used for the exemption provided under this paragraph is in one of two spouses who is a debtor, the amount of the exemption hereunder shall be \$20,000.00[.]*

O.C.G.A. § 44-13-100(a)(1) (2002) (emphasis added).

Debtor seeks to take advantage of the \$20,000 exemption allowed by the last sentence of the provision. A debtor's exemptions are determined as of the date the petition is filed. Canfield v. Orso (In re Orso), 283 F.3d 686, 691 (5th Cir. 2002). In this case, on the date of the filing—and on the date of conversion—Debtor jointly owned the homestead property with his former wife.

As this Court has previously explained, the \$20,000 enhanced exemption for married debtors applies only in limited circumstances: “[I]n the case of spouses, *if the residence is*

titled in only one spouse and that spouse is a bankruptcy debtor, he is entitled to a \$20,000 exemption.” In re Burnett, 303 B.R. 684, 686 (Bankr. M.D. Ga. 2003) (Walker, J.) (emphasis added); see also In re Green, 319 B.R. 913, 915-16 (Bankr. M.D. Ga. 2004) (Walker, J.). Because the property in this case was jointly owned on the date of the bankruptcy filing, rather than being titled solely in Debtor, the enhanced exemption does not apply. Thus, Debtor is entitled to a homestead exemption not to exceed \$10,000.

An Order in accordance with this Opinion will be entered on this date.

Dated this 26th day of September, 2005.

James D. Walker, Jr.
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

Robert H. Baer
Post Office Box 1792
Brunswick, Georgia 31521

Mary Jane Cardwell
Post Office Box 756
Waycross, Georgia 31502-0756

This 26th day of September, 2005.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court

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ORDER

In accordance with the Memorandum Opinion entered on this date, the Court hereby SUSTAINS the Chapter 7 Trustee's objection to Debtor Arlon Hiers' homestead exemption to the extent the exemption exceeds \$10,000. The Court further hereby GRANTS the motion of Debtor to retain sales proceeds in an amount not to exceed \$10,000.

So ORDERED, this 26th day of September, 2005.

James D. Walker, Jr.
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

Robert H. Baer
Post Office Box 1792
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