

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

In re:)	
)	
James C. Johnson and)	Case No. 11-50326
Grace H. Kirch-Johnson,)	
)	
Debtors.)	

**ORDER SUSTAINING TRUSTEE’S OBJECTION TO
MALE DEBTOR’S CLAIM FOR PROPERTY EXEMPTIONS**

THIS MATTER came on for hearing before the undersigned bankruptcy judge on the Trustee’s Objection to the Male Debtor’s Claim for Property Exemptions. Appearing at the hearing was Kathryn L. Bringle, Chapter 13 Trustee, and Brian Hayes, counsel for the Debtors. Having considered the Objection, evidence, and other matters of record, the Court makes the following findings of fact and conclusions of law:

The Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code on March 1, 2011. On Schedule A, the Debtors listed real property including: (1) jointly owned real property with a value \$81,000.00 identified as the Debtors’ “Residence” and located at 207 Jandale Court in China Grove, North Carolina and (2) a 1.27 acre lot with a value of \$27,000.00 owned by the male Debtor only and located adjacent to 207 Jandale Court (the "Adjacent Lot"). On Schedule D, the Debtors indicated that the Residence was encumbered by two mortgages: a first mortgage with a balance of \$45,629.45 and a second mortgage with a balance of \$10,587.48. The Adjacent Lot is unencumbered.

On Local Form 91C, the female Debtor claimed the net value of the Residence in the amount of \$12,396.04 as exempt pursuant to N.C.Gen.Stat. § 1C-1601(a)(1). The male Debtor also claimed the net value of the Residence in the amount of \$12,396.04 as exempt pursuant to N.C.Gen.Stat. § 1C-1601(a)(1), along with the net value of the Adjacent Lot in the amount of \$27,000.00, for a total of \$40,896.04, exceeding the allowable amount of \$35,000.00.

The Debtors acquired the Residence in 1994 when it was gifted to them by the male Debtor's mother. At the time of the gift, the male Debtor's mother also owned the Adjacent Lot, and she intended to build a home there. For a period of approximately 10 years, the Debtors maintained the Adjacent Lot for the male Debtor's mother and used it as part of their yard with the expectation that the male Debtor's mother would eventually build a home there and move next door. Eventually, the male Debtor's mother decided she would not build a home on the Adjacent Lot, and instead, gifted the Adjacent Lot to the male Debtor. Having experienced a divorce, the male Debtor's mother gifted the Adjacent Lot to Mr. Johnson alone because, in the words of the female Debtor, "she wanted to make sure that my husband always had it." Since then, the Debtors have maintained the Adjacent Lot as part of their yard, using it for recreational purposes, gardening, and to maintain chickens and bees. The Debtors do not use the Adjacent Lot for commercial purposes nor do they consider it investment property. The Adjacent Lot contains no portion of the home or driveway, nor any easements. The Adjacent Lot has a separate tax bill from the Residence by Rowan County taxing authority.

The Trustee has objected to the male Debtor's claim for a residential property exemption in the Adjacent Lot and requests that it be disallowed.

Pursuant to N.C.Gen.Stat. § 1C-1601(a)(1), a resident of North Carolina who is a debtor is entitled to exempt his or her aggregate interest, not to exceed \$35,000.00 in value, in real or personal property that the debtor or a dependent of the debtor uses as a residence. As a general rule, exemption laws should be liberally construed in favor of the exemption. *Elmwood v. Elmwood*, 295 N.C. 168, 185 (1978).

In support of the male Debtor's claim for exemption in the Adjacent Lot as a residence, the Debtors rely on *In re Kincade*, No. 10-02462-8-RDD, 2010 WL 3745901 (Bankr. E.D.N.C. 2010). In that case, the debtor had originally purchased one 10 acre parcel of land. *Id.* *1. This purchase was evidenced by one deed. *Id.* Several years later, the debtor financed the purchase of a mobile home by executing a deed of trust encumbering the mobile home as well as 1.5 acres of the 10 acre tract. *Id.* The survey carving out the 1.5 acres from the larger parcel was commissioned by the bank. *Id.* The property was taxed as one tract of land by the county. *Id.* *2. Upon filing bankruptcy, the debtor released the 1.5 acres with the mobile home and moved to the remaining 8.5 acres by renovating a portion of a hog barn that was on the property. *Id.* *1. The hog barn had previously served as a storage facility for the debtor's tractor, tools, and firewood. *Id.* *2. The court found that an 8.5 acre tract could be claimed exempt as the debtor's residence. *Id.*

"Although the interpretation of 'residence' must be construed liberally, this does not include all land that the debtors own and use adjacent to their own." *Lanier v. Beaman*, 394 B.R. 382, 384 (E.D.N.C. 2008) (finding that an adjacent lot purchased separately from the residence and used to raise rescued horses as part of the debtors' ministry was not part of their residence). Unlike *Kincade*, in this case the Adjacent Lot

was acquired years after the Debtors' Residence was acquired. It is titled separately from the Debtors' Residence, it is titled only in the male Debtor's name, and it is taxed as a separate piece of property. On Schedule A, the Adjacent Lot is listed as a separate piece of real property and not identified as their residence. There is no garage, driveway, parking area, or storage facility on the Adjacent Lot. The Debtors maintained the property for years with the expectation that it would be the male Debtor's mother's residence, and it was intentionally transferred to the male Debtor only, unlike the Residence which is in both Debtors' names. Moreover, it was transferred to the male Debtor over eight years ago and has remained titled in the male Debtor's name only.

Based upon the foregoing, the Court finds that the Adjacent Lot is not the male Debtor's residence for the purposes of N.C. Gen. Stat. § 1C-1601(a)(1), and the Trustee's objection must be sustained.

IT IS SO ORDERED.

SERVICE LIST

James C. Johnson
Grace H. Kirch-Johnson
Debtors

Brian Hayes
Attorney for Debtors

Kathryn L. Bringle
Trustee