

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED

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U.S. BANKRUPTCY COURT
NC - MEL

IN RE:)
)
Edward L. Parrish,) Case No. 02-10613C-7G
)
Debtor.)

ORDER

This case came before the court on October 8, 2002, for hearing upon the Trustee's objection to Debtor's amended claim for property exemptions. Joshua N. Levy appeared on behalf of the Trustee and J. Gordon Boyett appeared on behalf of the Debtor. Having considered the Stipulation of Facts filed by the parties and the other matters of record, and having considered the arguments of counsel, the court finds and concludes as follows:

JURISDICTION

The court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 151, 157, and 1334, and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B) which this court may hear and determine.

FACTS

When this Chapter 7 case was filed on February 28, 2002, the Debtor was residing in a single-family residence located at 1236 Winstead Place, Greensboro, North Carolina, which was owned by his mother, Ruth Heath Parrish. On March 12, 2002, Ruth Heath

Parrish died testate. Under the will of Ruth Heath Parrish, the Debtor inherited a one-third undivided interest in the residence located at 1236 Winstead Place. On June 17, 2002, the Debtor filed an amended Schedule B which reflected his inheritance of a one-third interest in the 1236 Winstead Place residence¹ and an amended claim for property exemptions in which he claimed a \$10,000.00 homestead exemption with respect to his interest in the residence, which he valued at \$26,666.00.² On July 15, 2002, the Trustee objected to 'the amended claim for property exemption, asserting that the Debtor did not have the right to an exemption in the property "due to the lack of continuity ownership in the property and the fact that the Debtor did not own said property as of the date of his bankruptcy filing."

DISCUSSION

Under 5 541(a)(5)(A) of the Bankruptcy Code, the property of a bankruptcy estate includes "[a]ny interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition,

¹Bankruptcy Rule 1007(h) requires that a debtor who acquires or becomes entitled to acquire any interest in property as provided in § 541(a)(5) "shall within 10 days after the information comes to the debtor's attention or within such further time the court may allow, file a supplemental schedule. . . ."

'Bankruptcy Rule 1007(h) also provides that "[i]f any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule."

and that the debtor acquires or becomes entitled to acquire within 180 days after such date . . . by bequest, devise, or inheritance" The parties agree that this provision is applicable in the present case and that Debtor's one-third interest in the residence at 1236 Winstead Place therefore is property of the estate in this case. Hence, the estate includes an interest in property that was not owned by the Debtor on the petition date. The Trustee argues that because such property interest was not owned on the petition date, the Debtor is precluded from claiming an exemption with respect to such property interest. The court disagrees.

The right to claim property as exempt in a bankruptcy case is granted in § 522(b) of the Bankruptcy Code, which grants an individual debtor the right to exempt or remove property "from property of the estate". The property that may be exempted by a debtor is controlled by § 522(d) unless the state in which the debtor's domicile is located has opted out of § 522(d), in which event, the property that may be claimed as exempt is controlled by the state law that "is applicable on the date of the filing of the petition. . . ." See § 522(b) (2). North Carolina, in N.C.G.S. § 1C-1601(f), has opted out of § 522(d). Hence, the property that may be claimed as exempt by the Debtor in the present case is controlled by North Carolina law. See In re Nguyen, 211 F.3d 471 (4th Cir. 1982); Dominion Bank v. Nuckolls, 780 F.2d 408 (4th Cir.

1985).

The statutory provision creating the current homestead exemption in North Carolina is N.C.G.S. § 1C-1601(a)(1). Under N.C.G.S. § 1C-1601(a)(1), a debtor "is entitled to retain free of enforcement of the claims of creditors . . . [t]he debtor's aggregate interest, not to exceed ten thousand dollars (\$10,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence. . . ." There are two requirements in order for property to be exempted under this statute. First, the property must be property in which the debtor owns an interest. Secondly, the property must be property that the debtor or a dependent uses as a residence. There is no issue as to the Debtor satisfying the second of these requirements, since it is undisputed that the Debtor was using the property as his residence when this case was filed and has continued to do so. It likewise is undisputed that the Debtor owned the one-third interest in the property when the amended claim for property exemptions claim was filed on June 17, 2002. The court does not find in N.C.G.S. § 1C-1601(a)(1) any requirement that the Debtor must have owned the one-third interest prior to claiming the exemption. Nor does the court believe that such a requirement should be read into the statute. The North Carolina Supreme Court has adopted the general rule that the exemption laws should be liberally construed in favor of the exemption. For example, in Elmwood v. Elmwood, 295 N.C. 168, 185,

244 S.E.2d 668 (1978), the North Carolina Court reiterated an earlier ruling that exemptions are remedial in nature and "should always receive a liberal construction. . . ." It is also a rule in North Carolina that provisions which restrict a debtor's access to his or her exemptions should be construed narrowly and debtors should be allowed a great deal of flexibility in claiming and maintaining their exemptions. See Household Finance Corp. v. Ellis, 107 N.C. App. 262, 266, 419 S.E.2d 592 (1992), citing Commissioner of Banks v. Yelverton, 204 N.C. 441, 168 S.E. 505 (1933) . Considering the rules of construction that have been adopted by the Supreme Court of North Carolina in dealing with exemptions and the wording of N.C.G.S. § 1C-1601(a)(1), the court does not believe that the North Carolina Supreme Court would adopt the narrow reading of N.C.G.S. § 1C-1601(a)(1) advanced by the Trustee, and this court declines to do so.

The Trustee's argument that a debtor is precluded from claiming an exemption in a post-petition inheritance likewise finds no support in the Bankruptcy Code or Rules. In In re Wilson, 694 F.2d 236 (8th Cir. 1982), the issue was whether a debtor could exempt funds that the debtor's attorney was required to refund subsequent to the filing date. In holding that such funds became property of the estate pursuant to § 541(a)(7)³ and therefore could

³Under § 541(a)(7) property of the estate includes "[a]ny interest in property that the estate acquires after the commencement of the case."

be exempted by the debtor pursuant to § 522(b), the court stated:

The property of the estate, including property added to the estate after commencement of the proceeding under subsections 541(a)(3) through (a)(7) is "property of the estate" and can be claimed by the debtor as exempt under section 522(b). Section 522(b) enables the debtor to claim exemptions from "property of the estate," and section 522(b) itself includes no time limitation which would bar the debtor from claiming as exempt any property which became property of the estate after commencement of the suit.

694 F.2d at 238. The same result was reached in In re Magness, 160 B.R. 294 (Bankr. N.D. Tex. 1993), where additional property came into the bankruptcy estate pursuant to § 541(a)(5)(A) when the debtor received a post-petition inheritance. In rejecting the argument that the property could not be exempted because not owned on the petition date, the court held: "Under § 522(b), a debtor may select exempt property from 'property of the estate.' Under 541, 'property of the estate' includes property inherited within 180 days after the petition is filed. The Trustee's objection must be denied." Id. at 298. In accord In re Notargiacomo, 253 B-R.112 (Bankr. S.D. Fla. 2000) (debtor allowed to exempt inherited property that came into the estate post-petition pursuant to § 541(a)(5)(A)). Debtor's amended claim for property exemptions thus is consistent with § 522 of the Bankruptcy Code, as well as Bankruptcy Rule 1007(h) which incorporates a procedure for claiming an exemption in property that comes into the estate pursuant to § 541(a)(5) .

Since the Debtor resided at 1236 Winstead Place, the Debtor became entitled to claim a homestead exemption with respect to his interest in that property once such interest became property of the bankruptcy estate pursuant to § 522(a)(5)(A). The Debtor properly claimed such exemption by filing an amended claim for property exemptions pursuant to Rule 1007(h) of the Federal Rules of Bankruptcy Procedure. Accordingly the Trustee's objection to Debtor's amended claim for property exemptions will be overruled and Debtor's amended claim allowed as filed.

IT IS SO ORDERED.

This 30th day of October, 2002.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge