

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

CASE NO.: 05-14453-JAF  
CHAPTER 7

KATHERINE NELL SIEHLER,

Debtor.

---

**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

This case came before the Court upon the Trustee's Objection to Debtor's Claim of Exemptions ("Objection") and Debtor's, Katherine Nell Siehler ("Debtor"), Response to Trustee's Objection ("Response"). The Court conducted a hearing on February 22, 2006 (the "Hearing"). The Trustee and Debtor presented evidence in the form of Debtor's testimony at the Hearing. The Court then took the matter under advisement and directed the parties to submit memoranda in support of their respective positions. The Trustee and Debtor both submitted briefs supporting their arguments ("Trustee's Brief" and "Debtor's Brief"). Upon the evidence presented and the arguments of the parties, the Court makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

Debtor and Debtor's parents purchased real property known as 651 Georgetown-Denver Road, Crescent City, FL 32212 on January 21, 2003 (the "Parents' Home"). As a result, Debtor has a one-third interest in her Parents' Home, in which her parents have resided since it was acquired. Debtor has been living with her husband at 430 Sisco Road, Pomona Park, FL 32181 (the "Husband's Home") continuously since 1982, when she and her husband were married. Debtor's husband acquired the property prior to the marriage, and Debtor has no ownership interest in her Husband's Home.

On October 1, 2005, Debtor moved out of her Husband's Home and into her Parents' Home due to marital difficulties. Debtor filed for relief under Chapter 7 of the Bankruptcy Code on October 15, 2005. Debtor listed her Parents' Home as her street address on her voluntary petition, but also listed her Husband's Home as her mailing address. As of the date of the Hearing, Debtor's driver's license, voter's

registration and federal income tax returns listed her Husband's Home as her address.

The Trustee objected to Debtor's claim of a homestead exemption for her Parents' Home. In support of the Objection, the Trustee stated that Debtor did not reside in her Parents' Home, and that her "petition, tax returns, and bank statements all show a different address." (Objection at ¶ 2.) In her affidavit accompanying her Response, Debtor stated that she had moved into her Parents' Home "following months of moving between the homestead and marital home." (Aff. at ¶ 4.) She also explained that she had not changed her permanent address "to reflect [her] actual and current living situation because [she] still hope[d] to reconcile with [her] husband at some point in the future." (Id. at ¶ 5.) Moreover, Debtor testified at the Hearing that should she and her husband reconcile, it was her intention to move back into her Husband's Home.

Upon filing a petition in bankruptcy, all of the debtor's property becomes property of the estate. 11 U.S.C. § 541 (2005). There are certain exemptions that the debtor is permitted to take pursuant to § 522 of the Code, which allows the debtor to retain assets that are exempt from the bankruptcy estate. 11 U.S.C. § 522 (2005). Florida has opted out of the federal exemption scheme, pursuant to § 522(b), and has chosen to allow its citizens only those exemptions authorized by state law. The Florida Constitution permits the exemption of qualified homestead property, as described in Article X, § 4.

The homestead exemption is remedial in nature and should be liberally construed. See Englander v. Mills (In re Englander), 95 F.3d 1028, 1031 (11th Cir. 1996); In re McClain, 281 B.R. 769, 773 (Bankr. M.D. Fla. 2002); Teasdale v. Frederick (In re Frederick), 183 B.R. 968, 970 (Bankr. M.D. Fla. 1995). "Exceptions to the homestead exemption should be strictly construed in favor of claimants and against challengers." McClain, 281 B.R. at 773 (citing In re Ehnle, 124 B.R. 361, 363 (Bankr. M.D. Fla. 1991)(additional citation omitted)). Thus, the Trustee bears the burden of proving to the Court by a preponderance of the evidence that Debtor is not entitled to her claimed exemption. Id. (citing Fed. R. Bankr. P. 4003 (c) and Ehnle, 124 B.R. at 363).

"Homestead status is established by the actual intention to live permanently in a place coupled with actual use and occupancy." In re Brown, 165 B.R. 512, 514 (Bankr. M.D. Fla. 1994). At issue in this case is whether it was Debtor's

intention to make her Parents' Home her permanent homestead. The Florida Supreme Court has recognized the difficulty in ascertaining intent, and stated that intent "can only reliably be shown by circumstances and acts in support of expressions of intention." Semple v. Semple, 89 So. 638, 639 (Fla. 1921). To elucidate this point, the Florida Supreme Court stated:

Where it is clearly the manifest intention of the owner to occupy the premises immediately as a home, and this intention is evidenced by specific acts and doings that are not compatible with a different intention, and there is nothing done by the claimant showing a different intention, or that is inconsistent with the asserted intention to make the place his homestead, the homestead character will attach.

Id. at 639. Thus, "[t]wo positive intentions of a contradictory character cannot exist at the same time." Id.

The Court finds that it is not Debtor's intent to make her Parent's Home her permanent homestead. While Debtor is actually currently living in her Parent's Home, she has stated that she intends to return to her Husband's Home upon reconciliation. These "two positive intentions of a contradictory nature" are antagonistic to the purpose of the homestead exemption. Id.

In fact, Debtor's counsel, in Debtor's Brief, even goes so far as to state that "the intention of the Debtor to possibly move out of the homestead at some point in the future should not be sufficient to qualify as abandonment given the expansive nature of the homestead exemption." (Debtor's Br. at 2.) Unfortunately, this statement is wholly inconsistent with the weight of authority on this issue. See Semple, 89 So. at 639; McClain, 281 B.R. at 773; In re Lee, 223 B.R. 594, 598-99 (Bankr. M.D. Fla. 1998)("The intention of a person can only be reliably shown by circumstances and acts in support of expressions of intention.")(citing Semple, 89 So. at 639); In re Kirby, 223 B.R. 825, 828 (Bankr. M.D. Fla. 1998)("[T]he actual characterization of homestead 'depends upon the intention of the [person] to make the property his family's permanent residence.")(citing Cooke v. Uransky, 412 So. 2d 340 (Fla. 1982)); Teasdale, 183 B.R. at 970-71; Brown, 165 B.R. at 514; Ehnle, 124 B.R. at 363-64 (stating that "[t]he intention of the claimant is a crucial factor" and that there must be no intention to

"permanently abandon the previously occupied premises"); Edward Leasing Corp. v. Uhlig, 652 F. Supp. 1409, 1412 (S.D. Fla. 1987)(stating that intention is a "key qualification[] for homestead status" and emphasizing the intention of the debtor to make that property the permanent home of the family); see also In re McCarthy, 13 B.R. 389, 390 (Bankr. M.D. Fla. 1981)("The character of property as homestead depends upon an actual intention to reside thereon as a permanent place of residence, coupled with the fact of residence.")(citation omitted), and 13 B.R. at 391 ("The homestead exemption protects the roof over the debtor's head, not personal property or assets which may have once been connected to a homestead. The exemption is for the benefit of the family as a place of actual residence not as a refuge from the law's exactions.")(citation omitted).

The Court agrees with the declaration that "the homestead exemption law is intended to be a shield, not a sword, and should not be applied as to make it an instrument of fraud or as an imposition upon creditors." Englander, 95 F.3d at 1031. The purpose of the exemption is to protect the family in the event of an economic hardship. Ehnle, 124 B.R. at 363. In this case, the Court believes it is the intention of the Debtor to protect her interest in her Parent's Home, not to protect her legitimate homestead.

As such, this is not a matter of abandonment, as Debtor contends. The Court finds that Debtor never established her Parent's Home as her homestead. Despite her ownership interest in the property, Debtor has not lived there except in times of marital distress, which have been quite infrequent. In addition, Debtor even admits that she plans to return to her Husband's Home upon reconciliation. This admission of intent contradicts Debtor's claim that her Parent's Home is her homestead. It simply proves that she does not have the requisite intent to permanently reside in her Parent's Home as is required to establish homestead.

Accordingly, the Court finds that Trustee proved by a preponderance of the evidence that Debtor is not entitled to claim a homestead exemption in her Parent's Home. The Court finds that Debtor, by her own admission, stated it was not her intent to make her Parent's Home her permanent residence. Having found that Debtor is not entitled to her claim of homestead exemption, the Court finds that Trustee's Objection must be sustained.

**CONCLUSION**

Based upon the foregoing, the Court finds Trustee proved by a preponderance of the evidence that Debtor is not entitled to claim a homestead exemption in her Parent's Home. Therefore, Trustee's Objection will be sustained. The Court will enter a separate order in accordance with these Findings of Fact and Conclusions of Law.

**DATED** this 27 day of April, 2006 in Jacksonville, Florida.

*/s/Jerry A. Funk*

**JERRY A. FUNK**

United States Bankruptcy Judge

**Copies furnished to:**

Aaron R. Cohen, Attorney for Trustee

Jerrett M. McConnell, Attorney for Debtor