


ORDERED.

Dated: August 02, 2016



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
ROBERT LESLIE BRADLEY and)	Case No. 6:15-bk-10567-KSJ
KATHY ANNE BRADLEY,)	Chapter 7
)	
Debtors.)	
)	

ORDER OVERRULING TRUSTEE’S OBJECTION TO EXEMPTIONS

The issue is whether the Debtor/Wife, Kathy Bradley, may exempt just over \$3,000 in personal property under Fla. Stat. § 222.25 (the “Wildcard Exemption”). Debtors (husband and wife) live together in a home owned only by Debtor/Husband, Robert Bradley.¹ Mr. Bradley claims his home exempt homestead under the Florida Constitution. Mrs. Bradley, however, claims no such homestead exemption and, instead, seeks to exempt her personal property up to \$4,000 from creditor claims under the Florida Wildcard Exemption. The Trustee objects² arguing that, even though Mrs. Bradley has no ownership interest in her husband’s home, she is receiving the benefits of Mr. Bradley’s claimed constitutional homestead exemption and, therefore, is not entitled to claim the Wildcard Exemption. The Court overrules the Trustee’s objection.

¹ The home is titled solely in the husband’s name. Doc. No. 34, Exh. A. Mr. Bradley is referred to as a “married man” on the deed but Mrs. Bradley’s name does not appear on the deed. Doc. No. 34, Exh. A. The parties agree that Mrs. Bradley’s name appears on the mortgage documents. Doc. No. 34, Exh. B.

The Florida Constitution allows a debtor to exempt from forced sale a homestead within a municipality “to the extent of one-half acre of contiguous land.”³ The Wildcard Exemption also allows a debtor to exempt personal property up to \$4,000 if the debtor “does not claim or receive the benefits of a homestead exemption” under the Florida Constitution.⁴ Both exemptions should be construed liberally.⁵

Mrs. Bradley is not affirmatively claiming the homestead exemption. The contested issue then is whether she is *receiving the benefits of a homestead exemption* because she lives in the home owned by her husband. The phrase “receive the benefits of a homestead exemption” is not defined by statute. The Florida Supreme Court, in *Osborne v. Dumoulin*, noted that the restrictive phrase in the Wildcard Exemption statute should be read narrowly.⁶ *Dumoulin* also stands for the proposition that the Wildcard Exemption is written in the present tense—meaning it is irrelevant if a debtor may receive the benefits of the homestead exemption or previously received the benefits.⁷ Courts look at the facts of each case to decide whether a debtor currently is receiving the homestead exemption’s legal benefits.⁸ Several bankruptcy courts, both pre- and post-*Dumoulin*, have addressed how someone may receive the benefits of a homestead exemption without affirmatively claiming that exemption.⁹ But, as Judge Williamson pointed out,

² Doc. No. 23. Debtors filed a response opposing the Trustee’s Objection. Doc. No. 26. The parties agree no factual disputes exist and filed a Joint Stipulation of Facts. Doc. No. 34.

³ Fla. Const. art. X, § 4.

⁴ Fla. Stat. § 222.25.

⁵ *In re Walton*, 503 B.R. 159, 160 (Bankr. S.D. Fla. 2013) (citing *Havoco of America, Ltd. v. Hill*, 790 So. 2d 1018, 1021 (Fla. 2001) (citing *Milton v. Milton*, 58 So. 718, 719 (1912))).

⁶ “To give full effect to the statute, we read the personal property exemption liberally and thus read narrowly the phrase restricting the availability of the statutory exemption to those who do not receive the benefits of the homestead exemption.” 55 So. 3d 577, 586 (Fla. 2011).

⁷ *Dumoulin*, 55 So. 3d at 588–89; *In re Walton*, 503 B.R. 159, 162 (Bankr. S.D. Fla. 2013).

⁸ *Dumoulin*, 55 So. 3d at 589.

⁹ *See, e.g., In re Castillo*, No. 13-27877-BKC-LMI, 2014 WL 843606, at *2 (Bankr. S.D. Fla. Mar. 3, 2014) (“The Debtor lives in a home with his wife, which home is his family homestead. However, the Debtor does not have an ownership interest in the homestead,” so was entitled to claim the Wildcard Exemption); *In re Fitzpatrick*, 521 B.R. 698 (Bankr. M.D. Fla. 2014) (“If the debtor owns no interest in homestead property, courts uniformly overrule any objection to a debtor’s claim of the wildcard exemption.”); *In re Hernandez*, No. 07-16379-BKC-RAM, 2008 WL 1711528, at *5 (Bankr. S.D. Fla. Apr. 10, 2008) (“[T]he Court concludes that because the Debtor’s non-debtor spouse retains her right to claim homestead, the Debtor is receiving the benefits of homestead and therefore may not utilize the Statutory Personal Property Exemption.”).

“[w]hether a debtor has equity in the property, lives in the home, or enjoys any other types of tax benefits has no relevance to the question of whether a debtor receives the benefits of the Florida Homestead Exemption.”¹⁰

Mrs. Bradley currently is receiving no benefits of the homestead exemption because she has no present ownership interest in her husband’s home. It is crucial that the deed is titled in Mr. Bradley’s name only. The home is not held as tenancy by the entireties property.¹¹

Judge Ray from the Bankruptcy Court for the Southern District of Florida addressed a similar situation where a married couple filed a joint case and one spouse claimed the homestead exemption while the other spouse claimed the Wildcard Exemption.¹² There, the home was titled in the wife’s name.¹³ She acquired the home before the couple married.¹⁴ Judge Ray noted that the husband had no present interest in the property even if he could receive the indirect benefit of continuing to live in the home because his wife claimed the homestead exemption. Judge Ray continued, “[t]he Court focuses on the rights of the creditors who existed as of the Petition Date, and determine[s] whether [the husband] is receiving the benefit of protecting the Real Property from forced sale by those creditors. He is not receiving such a benefit.”¹⁵

Like the Debtors in *Walton*, Mrs. Bradley is receiving no current benefit from the Florida constitutional homestead exemption. She therefore may use the Wildcard Exemption.

¹⁰ *In re Bennett*, 395 B.R. 781, 788 (Bankr. M.D. Fla. 2008).

¹¹ “Property held as a tenancy by the entireties possesses six characteristics: (1) unity of possession (joint ownership and control); (2) unity of interest (the interests in the account must be identical); (3) unity of title (the interests must have originated in the same instrument); (4) unity of time (the interests must have commenced simultaneously); (5) survivorship; and (6) unity of marriage (the parties must be married at the time the property became titled in their joint names).” *Beal Bank, SSB v. Almand & Associates*, 780 So. 2d 45, 52 (Fla. 2001). The real property must be titled in the name of both spouses to be tenancy by the entireties property. *Id.* at 54. The fact that the deed refers to Mr. Bradley as a married man is not enough to satisfy the unity of title.

¹² *In re Walton*, 503 B.R. 159 (Bankr. S.D. Fla. 2013).

¹³ *Id.* at 160.

¹⁴ *Id.* at 160.

¹⁵ *Id.* at 162.

Accordingly, it is **ORDERED** the Trustee's Objection¹⁶ is **OVERRULED**.

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Attorney, Richard Webber, is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

¹⁶ Doc. No. 23.