

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:08-1113
Chapter 7

GERALD LEE SWEATT and
MICHELLE M. SWEATT

Debtors.

**ORDER OVERRULING TRUSTEE'S
OBJECTION TO EXEMPTIONS**

This Case is before the Court upon the Chapter 7 Trustee's Objection to Debtors' Claim of Exemptions as to personal property under Florida Statute § 222.25(4). At the hearing held on July 9, 2008, the Court advised the parties that it would take the matter under advisement and issue an order in due course.

On August 8, 2008, the Court entered Findings of Fact and Conclusions of Law in regards to the eligibility of a debtor to receive the enhanced personal property exemption pursuant to § 222.25(4). In re Ellis, Ch. 13 Case No. 07-4706, (M.D. Fla. Aug. 1, 2008). Accordingly, the Court will apply the factors set forth in Ellis to the instant case. In Ellis, the Court stated that it would consider whether a debtor (1) claimed the real property as exempt, (2) receives the benefit of the homestead exemption or (3) timely and properly showed a clear and unambiguous intent to abandon the property. In the instant case, Debtors never claimed the real property as exempt and filed a statement of intentions that stated their intent to surrender the property. Although Debtors did file amendments to their exemptions, the evidence before the Court does not show that they received the benefit of the homestead exemption. Further, although the Debtors did reside in the house for approximately 2 months after the filing of the petition, they have since moved from the home and the Court does not find the time period they resided in the home to be unreasonable. Based upon these facts, the Court finds that the Debtors are entitled to claim the enhanced personal property exemption of § 222.25(4). It is,

ORDERED:

1. The Trustee's Objection to Exemptions is Overruled.
2. Debtors are entitled to the enhanced personal property exemption under

Florida Statute § 222.25(4) and shall designate \$4,000.00 of exempt personal property.

Dated this 20th day of August, 2008 in
Jacksonville, Florida.

/s/Jerry A. Funk

Jerry A. Funk

United States Bankruptcy Judge

Copies to:

Debtor

Robert Altman

Robert Wilcox

United States Trustee