IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

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IN RE:	§	
	§	
DAVID CARDELL COMTE	§	Case No. 01-60963
and PATRICIA ANNE COMTE	§	
	§	
Debtors	§	Chapter 7

MEMORANDUM OF DECISION[1]

This matter is before the Court upon hearing of the "Trustee's Objection to Debtors' Claims of Exemptions" filed by Jason R. Searcy, Chapter 7 Trustee (the "Trustee"), in the above-referenced case. The Objection seeks to invalidate the Debtors' homestead exemption claim as to 35.61 acres located in Tyler County, Texas, which was claimed by the Debtors through the filing of an amended claim of exemptions. Although the Court provided a two-week period for the submission of applicable legal authorities upon the conclusion of the evidentiary hearing on this matter, neither side submitted any briefing to the Court regarding the legal issues presented. Upon due consideration of the evidence and upon research and review of the applicable legal authorities, the Court concludes that the Trustee's Objection should be sustained.[2]

Factual and Procedural Background

The relevant facts of this case have either been stipulated by the parties or are established by judicial notice. The Debtors, David Cardell Comte and Patricia Anne Comte (the "Debtors"),

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[1]This Memorandum of Decision is not designated for publication and shall not be considered as precedent, except under the respective doctrines of claim preclusion, issue preclusion, the law of the case or as to other evidentiary doctrines applicable to the specific parties in this proceeding.

[2] This Court has jurisdiction to consider the objection pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157(a). The Court has the authority to enter a final order in this contested matter since it constitutes a core proceeding as contemplated by 28 U.S.C. §157(b)(2)(A), (B), and (O).

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filed a petition for relief under Chapter 7 on April 20, 2001. On February 1, 2002, the Debtors filed an amended claim of exemptions wherein, in addition to their initial homestead claim as to 46.10 acres located near Henderson in Rusk County and upon which they reside, the Debtors claimed an additional homestead exemption as to a 35.61-acre tract located in Tyler County, Texas (the "Tyler County property"), in which Mr. Comte owns an undivided ½ interest which he inherited from his mother. The property is landlocked with no written access easement in place. The Tyler County property is located in excess of 100 miles away from the Debtors' homestead in Rusk County. As far as the Debtors' activities upon the Tyler County property, the parties have stipulated that $70,000 worth of timber was cut from the property in 1993 and, following the subsequent replanting of trees, it is anticipated that another cutting of timber could occur ten years from now.

Discussion

The commencement of a bankruptcy case creates an estate encompassing all legal and equitable interests in property of the debtor as of the petition date, including any property that might potentially be exempt. 11 U.S.C. §541(a). The debtor may then exempt certain property from the bankruptcy estate by claiming either the federal exemptions provided by §522(d), or any other exemptions provided by applicable federal, state, or local law. 11 U.S.C. §522(b). In assessing a debtor's claimed exemptions, the court must look to state law to interpret the state exemption rights. *Bradley v. Pacific Southwest Bank (In re Bradley)*, 121 B.R. 306, 312 (Bankr. N.D. Tex. 1990), rev'd on other grounds, *In re Bradley*, 960 F.2d 502 (5th Cir. 1992), cert. denied sub. nom., *Commonwealth Land Title Ins. Co. v. Bradley*, 507 U.S. 971, 113 S.Ct. 1412, 122 L.Ed.2d 783 (1993); *see also In re Moody,* 77 B.R. 580, 590 (S.D. Tex. 1987) ["Bankruptcy

courts must resort to state law for an interpretation of state exemption rights in homesteads."], aff'd by *Matter of Moody*, 862 F.2d 1194 (5th Cir.), cert. denied, *Moody v. Smith*, 503 U.S. 960, 112 S.Ct. 1562, 118 L.Ed.2d 209 (1992). The facts and law existing as of the date of the petition govern a debtor's claimed exemptions. *Zibman v. Tow*, 268 F.3d 298, 302 (5th Cir. 2001) ["This focus on the status as of the date of filing is commonly referred to as the 'snapshot' approach to determining the extent of the bankruptcy estate and the scope of the exemptions."] (*citing White v. Stump*, 266 U.S. 310, 312, 45 S.Ct. 103, 69 L.Ed. 301 (1924) ["(The Bankruptcy Code) makes the state laws existing when the petition is filed the measure of the right to exemptions."]); *Hrncirik v. Farmers Nat'l Bank (In re Hrncirik),* 138 B.R. 835, 839 (Bankr. N.D. Tex. 1992) [stating that exemptions are determined as of the date of the filing of the bankruptcy petition].

Because the Debtors in this case selected the Texas state law exemptions, the Court must look to Texas law existing as of the April 20, 2001 petition date. The Texas Constitution, both now and on the petition date, states that:

> The homestead, not in a town or city, shall consist of not more than 200 acres of land, which may be in one or more parcels, with the improvements thereon . . . provided, that the same shall be used for the purposes of a home. . . ."[3]

Similarly, TEX. PROP. CODE ANN. §41.002 (Vernon 2000) states as follows:

> (b) If used for the purposes of a rural home, the homestead shall consist of:
>
> (1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or
>
> (2) for a single, adult person, not otherwise entitled to a homestead,

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[3] *See* TEX. CONST. art. XVI, §51; *see also England v. FDIC*, 975 F.2d 1168, 1172 (5th Cir. 1992) ["From the beginning of Texas' statehood in 1845, its constitutions have provided homestead protection to its residents. . . ."].

> not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

This exemption protects a debtor's homestead from seizure for the claims of creditors, except for encumbrances which are "properly fixed" on the homestead property.[4] Section 41.001(b) then proceeds to describe those encumbrances which may be "properly fixed on homestead property." *See* TEX. PROP. CODE ANN. §41.001(b).

The homestead exemption under Texas law has a long and distinguished history. In fact, one commentator has stated that "[t]he homestead protection is a Texas creation . . . [that was] [b]orn out of the United States Panic of 1837, in which numerous Texas families lost their homes and farms through foreclosure." Charles C. Boettcher, *Taking Texas Home Equity For A Walk, But Keeping It On A Short Leash!*, 30 TEX. TECH. L. REV. 197, 203-04 (1999) [recognizing that "the homestead protection was first codified in 1839 by the Republic of Texas"]. Several rationales have historically been cited to support the necessity of the Texas homestead exemption, including the public policy of assisting debtors in becoming "useful members of society instead of charges or burdens thereon," as well as an historical anti-creditor sentiment that remains prevalent in Texas today. *Id.* at 204. Likewise, in *1018-3rd Street v. State*, a Texas appellate court listed the following purposes of the availability of the homestead exemption in Texas: (1) maintaining the unity of the family and encouraging homesteading; (2) providing a home and a means of support for both the debtor and the family; and (3) establishing in the individual a sense of freedom and independence which was determined necessary to the

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[4] TEX. PROP. CODE ANN. §41.001(a) states that "[a] homestead . . . [is] exempt from seizure for the claims of creditors except for encumbrances properly fixed on homestead property."

continued existence of democratic institutions. 331 S.W.2d 450, 453 (Tex. Civ. App. — Amarillo 1959, no writ); *see also England v. FDIC (In re England)*, 975 F.2d 1168, 1174 (5th Cir. 1992) ["Texas cases have consistently held that the fundamental purpose of the Texas homestead laws is to secure a place of residence against financial disaster."] (*citing Cocke v. Conquest*, 120 Tex. 43, 35 S.W.2d 673, 678 (1931)). In order to advance the above-stated purposes, Texas courts have always liberally construed any claimed homestead exemption. *Woods v. Alvarado State Bank*, 19 S.W.2d 35 (Tex. 1929) ["The rule that homestead laws are to be liberally construed to effectuate their beneficent purpose is one of general acceptation."] (*citing Trawick v. Harris*, 8 Tex. 312 (Tex. 1852)); *In re Mitchell*, 132 B.R. 553, 557 (Bankr. W.D. Tex. 1991).

The Court now turns to the particular homestead exemption claimed by the Debtors in this case. Although the Trustee has the ultimate burden of persuasion (or the risk of non-persuasion) as the party objecting to the Debtors' claim of exemption, see FED. R. BANKR. P. 4003(c), the Debtors must sustain an initial burden of production or going forward with the evidence to establish that the referenced property qualifies for the exemption claimed before the Trustee, as the objecting party, is obligated to go forward with his proof. This is consistent with Texas law in this area which requires any homestead claimant to prove that the property claimed as homestead actually qualifies for the homestead exemption. *See, e.g., Bradley,* 960 F.2d at 507; and *Vaughn v. Vaughn*, 279 S.W.2d 427, 436 (Tex. Civ. App. — Texarkana 1955, writ ref'd n.r.e.) and cases cited therein.

From the inception of their bankruptcy case in April, 2001, the Debtors have claimed a rural homestead exemption as to their 46.10 acres in Rusk County upon which they make their residence. Following the correction of some procedural irregularities, it was not until February

2002 that the Debtors further sought to protect the Tyler County property under their homestead exemption. The Trustee asserts that the Tyler County property is not eligible for protection under the Texas homestead exemption since the Debtors have already claimed, and continue to claim, their Rusk County property as their homestead. The Debtors assert their right to protect both tracts from the claims of creditors based upon the generally recognized principle that two tracts of real property do not necessarily have to be contiguous in order to be eligible for the homestead exemption and cite the Court to the cutting of timber from the Tyler County property as evidence that the Debtors utilize such property for homestead purposes. Upon due consideration, the Court concludes that the Trustee's objection to the homestead exemption claim for the Tyler County property must be sustained.

As recognized in *NCNB Texas Nat'l Bank v. Carpenter*, 849 S.W.2d 875, 879 (Tex. App. — Fort Worth 1993, no writ), "[t]o establish a homestead claim in rural property, the claimant must: (1) reside on part of the property; and (2) use the property for purposes of a home." That standard has undoubtedly been met by the Debtors as to their Rusk County property. However, "where the rural homestead consists of separate tracts of land, the mere establishment of a home on one tract may be insufficient to impress homestead character on the detached properties." *Painewebber Inc. v. Murray (In re Murray),* 260 B.R. 815, 830 (E.D. Tex. 2001). As Judge Schell noted in that opinion:

> For years, courts have drawn a distinction between those tracts that are contiguous and noncontiguous with the tract occupied by a residence. With a contiguous tract, one can logically extend the establishment of a home and the activities pertaining to the home to the outer boundaries of that tract. Only an imaginary line separates the residence tract from the contiguous property. Hence, there is a presumption

> that such a tract is used for the purposes of a home. With a noncontiguous tract, more than an artificial boundary separates it from the home. Unless the noncontiguous tract somehow supports the home, it has no nexus with the residence tract and is nothing more than another piece of property. Thus, a claimant must demonstrate distinct evidence that the noncontiguous piece of property is associated with the residence tract and that it is more than a separate plot of land.

Id.

Similarly in *Brooks v. Chatham*, 57 Tex. 31, 1882 WL 9451 (1882), the Supreme Court of Texas rejected a homestead claim on a noncontiguous tract of land ten miles away from the defendant's original homestead and made the following observations:

> But in the case under consideration, the lands being separate, the [noncontiguous] property could not become a part of the homestead . . . by any fact less than would be necessary to designate the homestead originally. . . . The constitution expressly provides that the rural homestead may consist of one or more parcels, and the fact that they may be distant several miles, the one from the other, is immaterial; . . . but when the lands are separated there must be such use as will amount to a designation of homestead of the subsequently acquired parcel, as fully as the same would be required in the original designation of homestead.
>
> It would be impracticable to lay down a general rule as to what shall constitute a designation to homestead use, in all cases, sufficient to throw around two or more separate parcels of land the protection given by the constitution to the rural homestead; but there must be something more than mere ownership, coupled with an intention at some time to use in connection with the parcel upon which the home stands, to protect other and detached parcels of land. Such designation must consist in the use of the detached parcel, or parcels, in connection with the home place, or in such preparation so to use as will clearly evidence the intention so to use; but this must vary according to the character of the detached parcel or land,

and the purpose to which it is adapted and for which it is intended.

> The fact that the head of the family has a parcel of land upon which the family lives, and which thereby becomes entitled to protection as a homestead, cannot attach such character to a detached parcel of land not used for the purposes for which the homestead exemption is given; otherwise the exemption could be extended to something which is not homestead in fact; this was never intended by the constitution.

Id. at *2-*3.

The only evidence presented by the Debtors to support their homestead claim as to the Tyler County property is that Mr. Comte on a singular occasion received proceeds from the sale of timber from the land, that trees were subsequently replanted on the property, and that the Debtor expects additional income from another sale of timber in another decade or so. However, the mere receipt of income from such property, particularly on such a sporadic basis, does not create any link, much less a sufficient link, to the Debtors' recognized homestead and will not support an expansion of the Debtors' homestead exemption claim.

In order to qualify for the homestead exemption, the land must be used "for the purposes of a home." *Autry v. Reasor*, 102 Tex. 123, 113 S.W. 748 (1908). While "support of the family" has at times in the past been cited as one of the purposes of a home, *Brooks*, 1882 WL 9451 at p. *2; *Clark v. Salinas*, 626 S.W.2d 118, 120 (Tex. App. — Corpus Christi 1981, writ ref'd n.r.e.); and *Mays v. Mays*, 43 S.W.2d 148, 151 (Tex. Civ. App. — Beaumont 1931, writ ref'd n.r.e), the meaning of that phrase has never been conclusively defined, *Murray,* 260 B.R. at 828, and the means by which "support" is derived from the noncontiguous tract (as well as the utility of some of the older homestead decisions) must be carefully evaluated in light of the substantial changes in the means by which Texas citizens in the modern era support themselves and their dependents.

As recently recognized by the United States Bankruptcy Court for the Western District of Texas:

> The historical context of these older cases must be considered; however, they involve a time and a place where "support" of the rural lifestyle necessarily meant that you provided many of your own essentials such as vegetables, meat, fuel, etc. . . . Care must be taken to determine the applicability of these early decisions to modern day country lifestyles and today's claim of a rural homestead.

In re Webb, 263 B.R. 788, 792 (Bankr. W.D. Tex. 2001).

In the present context, that means that the Debtors are under an evidentiary burden to establish a degree of reliance upon the property far more substantial than that engendered by the mere realization of sporadic income from the property, even if that income, when realized, is spent for family purposes. Actually, this principle finds its roots in decisions issued by the Supreme Court of Texas over one hundred years ago:

> It is not intended by our present constitution, any more than was it by those which preceded it, that the use which might be made of lots, though conducing to the advantage of the family and its support--as for farm, fruit, or vegetable products--constitute such lots a part of the homestead; but, in order to constitute them a part of the homestead, the cultivation and use made of the lots which furnish such products as are above suggested, must be in such mode and manner as is consistent with the premises in question being appurtenant to,--a part of the home establishment, even though disconnected therefrom by streets, squares and blocks.

Keith v. Hyndman, 57 Tex. 425, 1882 WL 9528 (1882); *see also Webb*, 263 B.R. at 795 [recognizing that "it has always been the rule that the mere use of rental proceeds as income, or 'support,' without any other use of the property 'for the purposes of a home,' is insufficient to qualify it as a rural homestead"] and cases cited therein, including *Autry*, 113 S.W. at 748 [finding that no homestead claim could be claimed to protect a noncontiguous tract, although

homestead claimant received crops in kind for tenant's use of the property and such proceeds were utilized for the support of the family]; *Haswell v. Forbes*, 8 Tex. Civ. App. 82, 27 S.W. 566 (Tex. Civ. App. 1894, no writ) [finding that "[w]hen a lot or tract of land is separate from the lot or tract on which the residence of the family is situated, to invest it with homestead character, it is not enough that it be used as 'a means of support and maintenance for the family,' but it must be used in connection with the residence and appurtenant thereto"]; and *Baldeschweiler v. Ship*, 21 Tex. Civ. App. 80, 50 S.W. 644, 645 (Tex. Civ. App. 1899, no writ) [concluding that "[t]he mere fact that means realized from the use of the property, separated from that upon which residence is situated, are used in supporting the family, is not claimed, of itself, to work the exemption in all cases"]. All of these cases assess the validity of a claimed homestead exemption in the light of what the exemption is designed to accomplish — the protection of the family.

However, the evidence presented by the Debtors in this case wholly fails to place the Tyler County property into that sphere of assets which the homestead exemption was designed to protect. The Debtors have failed to present any evidence to demonstrate any connection between the Tyler County property and the use of their recognized homestead in Rusk County. Nor have they demonstrated that the Tyler County property is used "for the purpose of a home." These lapses in proof are comprehensible and, in fact, predictable, given the fact that the property sought to be protected is over 100 miles away from the Debtors' recognized homestead in Rusk County.

The exemption structure which the Debtors are actually advocating would create a limitless rule as to the creation of rural homesteads across the breadth of Texas — restricted only

by the requirement that the aggregate amount of acreage claimed falls within the family's 200-acre maximum allotment. However, such a liberal rule has never been the law in Texas. "The framers of our organic law had no thought of exempting 200 acres of land in the country as a home for each family, upon which its members might reside, when they thought proper, but this exemption is only in the event such lands are used for the purpose of a home." *Cocke*, 120 Tex. at 52, 35 S.W.2d at 678. "To declare as [a] matter of law that each tract of land occupied by the family or used for its support and maintenance, when all together do not exceed 200 acres, is part of the homestead, regardless of its remoteness from the family residence and the length of time that it has been rented out and not occupied or used by the family, is stating the law too broadly in favor of the homestead exemption." *Roberts v. Cawthon*, 26 Tex. Civ. App. 477, 483, 63 S.W. 332, 335 (Tex. Civ. App. 1901, no writ).

The concept of a homestead is, on the other hand, in the recent words of Judge Larry Kelly, "a different proposition," *Webb*, 263 B.R. at 795, and a denial of the Debtors' right to assert a homestead exemption as to the Tyler County property, in addition to the Rusk County property, does not frustrate or impair the policies supporting the availability of a homestead exemption under Texas law. The Debtors' homestead claim as to the Rusk County property has never been abandoned nor has it been challenged by the Trustee. *See In re England*, 975 F.2d at 1174 ["Texas cases have consistently held that the fundamental purpose of the Texas homestead laws is to secure a place of residence against financial disaster."] (*citing Cocke,* 120 Tex. at 53, 35 S.W.2d at 678). The loss of the Tyler County property will not deprive the Debtors of a residence "where the independence and security of a home may be enjoyed, without danger of its loss, or harassment and disturbance by reason of the improvidence or misfortune of the head or

any other member of the family." *Id.* Nor will it cause the Debtor to become a burden or a charge upon society. Instead, the true "home" of the Debtors in Rusk County will remain protected, but the Tyler County property will be treated as it should — as a separate plot of land having no true nexus with the Debtors' actual homestead.

Thus, the Court concludes that the "Trustee's Objection to Debtors' Claims of Exemptions" filed by Jason R. Searcy, Chapter 7 Trustee, must be sustained and the Debtors' claim of a homestead exemption as to the Debtors' ½ undivided interest in the 35.61 acre-tract located in Tyler County, Texas is hereby denied. This memorandum of decision constitutes the Court's findings of fact and conclusions of law[5] pursuant to Fed. R. Civ. P. 52, as incorporated into contested matters in bankruptcy cases by Fed. R. Bankr. P. 7052 and 9014. A separate order will be entered which is consistent with this opinion.

SIGNED: September 20, 2002.

BILL PARKER
UNITED STATES BANKRUPTCY JUDGE

cc:	**Jason R. Searcy, Chapter 7 Trustee**	**Fax:**	**903-757-9559**
	Donald Ross Patterson, Atty for Debtors	**Fax:**	**592-2597**

[5] To the extent that any finding of fact is construed to be a conclusion of law, it is hereby adopted as such. To the extent any conclusion of law is construed to be a finding of fact, it is hereby adopted as such. The Court reserves the right to make additional findings and conclusions as necessary or as may be requested by any party.

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