

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

IN RE: §
§
VERNA KAY HERMAN § Case No. 02-64085
§
Debtor § Chapter 13

EOD

MEMORANDUM OF DECISION¹

02/19/2004

This matter is before the Court upon the “Second Amended Objections to Debtor’s Exemptions” filed by the Jackson Law Office, P.C., Gary Dean Jackson, and Gloria Ann Jackson (the “Jacksons”). Based upon the evidence and legal argument presented at the hearing on this matter, the Court concludes that the Jacksons’ objections should be sustained in part and denied in part.²

Factual and Procedural Background

The facts relevant to this contested matter are not in serious dispute. The Debtor, Verna Kay Herman (the “Debtor”), filed a petition for relief under Chapter 13 on December 3, 2002. Following the filing of an “Amended Schedule C - Property Claimed as Exempt” by the Debtor on July 1, 2003, the Jacksons timely filed an objection to the

¹This 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) and (B).

Debtor's amended exemption claims.³ As of the time of the hearing, the Jacksons' objections had been limited to challenges of whether the following items of personal property claimed as exempt actually fall within the specified category of property protected as exempt under state law:⁴

(1) "Household Goods and Furnishings":

Exercise Equipment	Fax machine	Misc. household tools
Entertainment Center	Two (2) computers	Misc. office supplies
Six (6) televisions	Three (3) printers	Misc. DVD movies
Two (2) DVD players	Two (2) scanners	Misc. VCR movies
Two (2) VCRs	Two (2) metal file cabinets	Two (2) swing sets
Camcorder	Combination safe	Trampoline

(2) "Thrift Savings/Retirement Acct with US Postal Service"

The Court subsequently conducted an evidentiary hearing on the Jacksons' objections, with the burden of proof resting upon the Jacksons as the objecting party. FED. R. BANKR. P. 4003(c).

³ Thus, the Debtor's request for the dismissal of the Jacksons' First Amended Objections to Debtor's Exemptions as untimely was rendered moot by the Debtor's filing of her amended exemption claims on July 1, 2003.

⁴ The Jacksons have acknowledged that the Debtor's homestead claim is valid but asserts that such a homestead claim cannot defeat the rights which the Jacksons possess arising from a resulting trust and/or an equitable lien which was allegedly placed upon the Debtor's homestead by a divorce decree entered in 1994 — the legitimacy of which are being challenged by the Debtor in an adversary proceeding currently before the Court. There is no real dispute for the Court to decide regarding the validity of the Debtor's homestead claim. If the resulting trust is found to be valid, a separate property interest exists which cannot be defeated by the Debtor's homestead claim. Similarly, if the alleged equitable lien is found to be valid, the Debtor's homestead claim will not defeat the attachment of such a lien under the stated circumstances. If neither is valid, then the Debtor's homestead claim stands unchallenged.

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 that bankruptcy estate by claiming either the federal exemptions provided by 11 U.S.C. §522(d), or any other exemptions provided by applicable federal, state, or local law. 11 U.S.C. §522(b).⁵

The Debtor in this case elected exemptions under §522(b)(2). That subsection provides, in relevant part, that:

Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate . . .

any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place

There is no dispute that the Debtor is entitled to claim exemptions under Texas law. Thus, in assessing the Debtor's exemptions, the court must understandably look to Texas law to interpret those exemption rights. *Bradley v. Pacific Southwest Bank (In re*

⁵ The facts and law existing as of the date of the petition govern a debtor's claimed exemptions. *See 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)).

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).

Addressing the first broad category of contested exemption claims, the Debtor claimed certain “household goods and furnishings” as exempt under TEX. PROP. CODE §42.001(a)(1) which states that “[p]ersonal property, as described in Section 42.002, is exempt from garnishment, attachment, execution, or other seizure if . . . the property is provided for a family and has an aggregate fair market value of not more than \$60,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property. . . .” Section 42.002 thereafter specifies, in relevant part, that “[t]he following personal property is exempt under Section 42.001(a) . . . (1) home furnishings, including family heirlooms.”

There is no definition of “home furnishings” provided in the statute and there is little jurisprudence which construes the breadth of the statute. However, earlier decisions do generally agree that a broad interpretation is generally accorded to Texas exemption claims. In protecting a piano from forced sale by construing the language of a former exemption statute category of “all household and kitchen furniture,” the Supreme Court

of Texas stated that:

The general definition of ‘household,’ when used as a qualifying word, is pertaining or belonging to the house or family, and it is so evidently used in the statute under consideration, the purpose of which is to exempt articles belonging to a family. And in such a connection, the word ‘furniture’ is one of very broad signification, and, according to lexicographers, *embraces a supply of necessary, convenient, or ornamental articles with which a residence is equipped*. The statute declares that ‘the ordinary signification shall be applied to words Looking to the entire article giving the exemption, it is evident that the legislature did not intend to limit the exemptions to such things as are necessities to a family.

Alsup v. Jordan, 69 Tex. 300, 304-05, 6 S.W. 831, 833 (1887)(citations omitted and emphasis added).

A subsequent decision described the same exemption statute as given “to secure the necessities, comforts, and conveniences of the family in the home.” *Mueller v.*

Richardson, 82 Tex. 361, 364, 18 S.W. 693, 694 (1891).

If this general approach to the determination of the breadth of articles protected can be said to have changed over the years, it has only been broadened. The descriptive adjectives “household” and “kitchen” have given way to “home,” “furniture” has been supplanted by the broader term “furnishings,”⁶ and the legislature has avoided the application of any test of reasonable necessity upon the scope of the protection. Thus, citizens of this State have historically exercised some degree of discretion in the selection

⁶ A “furnishing” is commonly defined as “a piece of equipment necessary or useful for comfort or convenience.” See THE AMERICAN HERITAGE DICTIONARY 540 (1982).

of items that can be protected from seizure from their homes, subject to the statutory monetary limits imposed upon their exemption claims, and certainly it must be recognized that the list of items which may be protected will change over time. However, the consistent “purpose of the exemption is to pick up the sorts of items one might furnish one’s house with.” *In re Leva*, 96 B.R. 723, 738 (Bankr. W.D. Tex. 1989).

Utilizing such a standard, the Court concludes that the Jacksons’ objections shall be sustained as to the following groups of items claimed under the “home furnishings” category: (1) camcorder, misc. DVD movies, misc. VCR movies;⁷ and (2) the fax machine and misc. office supplies.⁸ All of the other items challenged by the Jacksons’ objections qualify for exemption under this category. The Court rejects the Jacksons’ restrictive reading of the exemption as limited to furniture. Certainly the electronic equipment claimed as exempt are instrumentalities which provide comfort and convenience to the modern home. Courts addressing this issue over ten years ago held that electronic equipment may even rise to the level of a necessity. *See, e.g., In re Biancavilla*, 173 B.R. 930, 932 (Bankr. D. Id. 1994) [“VCRs, televisions and stereos are now so prevalent in local households that they are reasonably necessary.”]; *In re McKaskle*, 117 B.R. 671, 676 (Bankr. N.D. Okla. 1990) [creditor conceding that because

⁷ The characteristics of these items are analogous to those of the “bag phone” and hand-held recorder found to be outside the scope of the exemption in *Leva*, 96 B.R. at 738, because the “very portability [of the item] suggests it was designed to accompany the debtor, not the house in which the debtor lives.”

⁸ These items could qualify for exemption under §42.002(a)(4) if used in a trade or profession, but no such evidence was presented in this instance.

“the television has become such an integral part of American households,” it is reasonably necessary for maintaining the home]. Certainly today such equipment, which the Court believes would encompass computers and equipment peripheral thereto, is even more prevalent. *See, e.g., In re Larson*, 203 B.R. 176, 181 (Bankr. W.D. Okla. 1996) [denying exemption as to home computer in 1996 under “reasonably necessary” standard, but acknowledging that as a television has been transformed “from a relatively expensive curiosity to a virtual necessity . . ., [s]uch may well be the course taken by the home computer in future years”].⁹ Particularly when considered in light of the fact that a Texas debtor is relieved from any showing of necessity for any particular item under this category, and because a debtor’s discretion in the protection of such items is limited by the aggregate value ceiling, the scope of this exemption should be construed liberally to encompass these enumerated items for the Debtor’s “necessity, comfort or convenience.”

The Jacksons also objected to the exemption claimed by the Debtor under TEX. PROP. CODE §42.0021 for the funds contained in her account in the federal Thrift Savings Plan.¹⁰ Section 42.0021 of the TEX. PROP. CODE provides that:

⁹ Though the Court believes that the same (a)(1) analysis applies to the exercise equipment so frequently found in today’s homes, such equipment could also be protected as “athletic and sporting equipment, including bicycles” under §42.002(a)(8). The referenced pieces of exercise equipment constitute “small items for individual use” as referenced by *In re Gibson*, 69 B.R. 534, 535 (Bankr. N.D. Tex. 1987); they contribute to the overall health and welfare of the Debtor, as would the statutorily-specified example of a bicycle; and again, contrary to the version of the statute construed in *Gibson*, a debtor no longer has the burden of showing that such equipment is “reasonably necessary.”

¹⁰ As one court correctly described it,

The Thrift Savings Plan is a tax-deferred retirement savings plan for Federal civilian employees established under the Federal Employees' Retirement System Act of 1986, 5

In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not, under any stock bonus, pension, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, and under any annuity or similar contract purchased with assets distributed from that type of plan, and under any retirement annuity or account described by Section 403(b) or 408A of the Internal Revenue Code of 1986, and under any individual retirement account or any individual retirement annuity, including a simplified employee pension plan, is exempt from attachment, execution, and seizure for the satisfaction of debts unless the plan, contract or account does not qualify under the applicable provisions of the Internal Revenue Code of 1986. A person's right to the assets held in or to receive payments, whether vested or not, under a government or church plan or contract is also exempt unless the plan or contract does not qualify under the definition of a government or church plan under the applicable provisions of the federal Employee Retirement Income Security Act of 1974.

The language of §42.0021 is obviously cumbersome but does reflect a general intent to protect the retirement savings of Texas citizens. The little evidence offered by the Debtor on this point establishes that "[t]he purpose of the TSP is to provide retirement income"¹¹ and thus, in a generic sense, the plan is a type of asset which §42.0021 intends

U.S.C. §§ 8401 *et seq.* The specific provisions governing the Thrift Savings Plan are set forth at 5 U.S.C. §§ 8432-8440. As an information pamphlet for Federal employees explains, the Thrift Savings Plan "offers Federal civilian employees the same type of savings and tax benefits that many private corporations offer their employees under so-called '401(k)' plans." Summary of the Thrift Savings Plan for Federal Employees at 2 (1992).

In re Hasse, 246 B.R. 247, 252 (Bankr. E.D. Va. 2000).

¹¹ See Exhibit D.

to protect. Yet the Court has found no jurisprudence which discusses specifically whether assets held in the federal Thrift Savings Plan meet the literal protection criteria of §42.0021 and the Court cannot preclude the possibility that sufficient evidence could be adduced from which it might be determined that the particular attributes of the Thrift Savings Plan exclude it from the scope of protection offered by §42.0021. However, as the party with the burden of persuasion regarding the validity of the exemption claim,¹² the Jacksons offered no proof nor authority of any kind on this issue. Accordingly, the Jacksons' objection to the Debtor's claim of exemption as to her Thrift Savings Plan account is denied.¹³

Thus, the Court concludes that the Second Amended Objections to Debtor's Exemptions filed by the Jacksons should be sustained in part and denied in part and that the Debtor's claims of exemption under TEX. PROP. CODE §42.002(a)(1) are hereby denied as to the following items: camcorder, misc. DVD movies, misc. VCR movies, fax machine and the misc. office supplies. All other relief requested in the "Second Amended Objections to Debtor's Exemptions" filed by the Jacksons is denied.

¹² See FED. R. BANKR. P. 4003(c).

¹³ In fact, regardless of whether the Thrift Savings Plan falls within the scope of §42.0021, it is protected from seizure in any event under federal law. 5 U.S.C. §8437(e)(2) provides that, except for child support and alimony obligations and for obligations arising from the enforcement of a judgment for physically, sexually, or emotionally abusing a child, "such sums may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process." Though not expressed in the Schedule C before the Court, this federal exemption claim is available to the Debtor in this case due to her election of exemptions under 11 U.S.C. §522(b)(2)(A) which authorizes a debtor to supplement state exemption claims with other non-bankruptcy federal exemption claims. See *In re Enfield*, 133 B.R. 515, 523 (Bankr. W.D. Mo. 1991) and 4 COLLIER ON BANKRUPTCY ¶ 522.02 [3] at p.522-15 (15th ed. rev. 2003).

This memorandum of decision constitutes the Court's findings of fact and conclusions of law¹⁴ 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 on 2/19/2004

A handwritten signature in cursive script, appearing to read "Bill Parker", written in dark ink.

BILL PARKER
CHIEF UNITED STATES BANKRUPTCY JUDGE

¹⁴ 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.