UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In re:	)	Bankr. No. 00-30078
	)	
STEVEN D. HANSON,	)	Chapter 13
Soc. Sec. No. 503-78-4483	)	
	)	
and	)	
	)	DECISION RE: DEBTORS'
BONNIE M. HANSON,	)	CLAIMED HOMESTEAD EXEMPTION
f/k/a Bonnie Nickerson	)	
Soc. Sec. No. 503-76-7871	)	
	)	
Debtors.	)	

The matter before the Court is Debtors' claimed homestead exemption and Trustee Dale A. Wein's objection thereto. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Decision and subsequent order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, the Court concludes that the Trustee's objection shall be sustained.

I.

Steven D. and Bonnie M. Hanson ("Debtors") filed a Chapter 13 petition and their schedule of assets and liabilities on August 31, 2000. On their schedule of real property, Debtors listed a house in Pierre, South Dakota, valued at $58,671 with a secured claim of $56,000 against it. On their schedule of personal property, Debtors listed "Property Settlement - Hanson v. Hanson, 6th Circuit, Stanley [County], SD" valued at $5,000. Debtors claimed exempt as their homestead the house in Pierre, as well as the property settlement from *Hanson v. Hanson*. The state law exemption statutes cited by Debtors for both assets were S.D.C.L. §§ 43-31-1 through -4 and § 43-45-3.

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Debtors filed their proposed debt payment plan dated August 31, 2000. On the attached liquidation analysis, Debtors again included both the Pierre house and the *Hanson v. Hanson* property settlement (now identified as a "Divorce Settlement"). They stated the exempt value of the home was $2,671. Though they listed the value of the divorce settlement at $5,000, they did not value the portion of the settlement they declared exempt. Debtors stated, again on the liquidation analysis, that the total value of their exempt property was $5,279 and that they did not have any equity in their real or personal property that had to be recognized in their plan through payments to their unsecured creditors under 11 U.S.C. § 1325(a)(4).

Chapter 13 Trustee Dale A. Wein filed an objection to Debtors' claimed exempt property on November 9, 2000. He argued that Debtors could not claim both the Pierre house and the divorce property settlement exempt as homestead interests. Trustee Wein also objected to Debtors' proposed plan.[1]

A confirmation hearing on Debtors' plan dated August 31, 2000 was held November 16, 2000. Confirmation was denied. Debtors agreed to file a modified plan and notice it for confirmation.

Debtors filed a modified plan dated December 13, 2000. Trustee Wein objected on the same grounds stated in his previous objection. He also objected on the grounds that Debtors were not

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[1] Other objections to Debtors' first plan were filed, but they are not material to the resolution of the Trustee's objection to claimed exemptions.

paying unsecured creditors as much as these creditors would receive under a Chapter 7 liquidation, a product of Debtors' liquidation analysis and their claimed exempt property. Berkley Administrators joined in the Trustee's objections. Wells Fargo Mortgage, Inc., also objected to Debtors' modified plan. It argued that Debtors' plan did not comply with Code requirements for treating secured claims and that the amount of the arrearage owed on the mortgage on Debtors' Pierre house was understated.

A confirmation hearing on Debtors' modified plan and on Trustee Wein's objection to Debtors' claimed exempt property was held February 1, 2001. Confirmation was continued pending resolution of the Trustee's objection to claimed exemptions, which will impact Debtors' liquidation analysis under § 1325(a)(4). Trustee Wein and Debtors agreed to submit the matter to the Court on stipulated facts, stipulated issues, and briefs regarding the objection to exemptions. By letter dated February 8, 2001, Trustee Wein advised the Court that the parties were unable to stipulate to facts. Accordingly, an evidentiary hearing was held March 14, 2001.

One joint exhibit was offered and received at the hearing: a copy of an amended divorce judgment between Debtor Steven Hanson and his former wife Darlis D. Hanson. The amended judgment, which had been entered by the state court on January 21, 1997, stated:

> It is hereby ORDERED, ADJUDGED and DECREED that the Court awards a monetary lien in the amount of $5,259.50 in favor of [Steven D. Hanson], with interest at the rate of 7% per annum, against the Plaintiff's residence, to

> become due and payable when the parties' youngest child graduates from high school, to equalize the marital estate, based upon the net marital assets in Exhibit 10.
>
> It is further ORDERED, ADJUDGED and DECREED that the marital assets are to be divided as set forth in attached EXHIBIT 10.

The amended judgment concluded with a directive that the remaining terms and conditions of the original judgment entered October 21, 1996 remained in full force and effect. Attached to the amended judgment was Exhibit 10, which listed various items of personalty and debts divided between Steven Hanson and his former wife.

At the Court's request subsequent to the hearing, the parties also jointly submitted two additional exhibits: the original Judgment and Decree of Divorce dated October 21, 1996[2] and the Quit Claim Deed dated July 14, 1998 whereby Steven Hanson transferred his interest in his former marital home to his former wife. Under the terms of the original divorce judgment, the marital home was awarded to Debtor Steven Hanson's former wife exclusively; he did not receive any lien against it.

The quit claim deed was dated July 14, 1998 and was recorded with the county on August 18, 1998. The deed provided that the Grantor, Debtor Steven Hanson, "agrees that the ... property is no longer his homestead."

The only witness at the hearing was Debtor Steven Hanson. He testified that he did indeed receive a lien for $5,259.50 plus

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[2] The copy submitted to the Court did not have the attachment referred to in the text.

interest on his former marital home that he can enforce once his youngest child graduates high school. He also stated that the home had an appraised value of $80,000 at the time of the divorce. Debtor Steven Hanson acknowledged that he is now in arrears on the mortgage on his present home. He plans to apply the $5,259.50 plus interest that he will eventually receive from his former wife against debt, including the mortgage on his present home.

In closings, Trustee Wein relied on *In re Gebur*, Bankr. No. 98-40153, slip op. (Bankr. D.S.D. March 13, 1999), where the Court, under nearly identical facts, disallowed a debtor's claimed homestead exemption in a lien on a former marital home following a divorce. Trustee Wein argued that Debtor Steve Hanson's interest is not an interest in real property that can be declared exempt as a homestead. Further, under *Yellowhair v. Pratt*, 182 N.W. 702 (S.D. 1921), and *Warner v. Hopkins*, 176 N.W. 746 (S.D. 1920), Trustee Wein argued that a debtor cannot claim a homestead interest in two separate properties at one time. He also argued that Debtor Steven Hanson abandoned his former homestead because he left it with no intention of returning, he no longer had an ownership interest in that house, and he had not reinvested the value of the lien into a new homestead within the one year allowed by S.D.C.L. § 43-45-3(2).

Debtors argued that Debtor Steven Hanson's quit claim deed to his former wife was essentially a voluntary sale of his homestead interest in that house and that he could declare the lien exempt as

part of the total $30,000 in homestead proceeds that a debtor may declare exempt under § 43-45-3(2). They also argued that the one-year limitation for reinvesting homestead proceeds imposed by § 43-45-3(2) had not yet begun to run because Debtor Steven Hanson had not yet -- could not yet -- receive the money under the terms of the amended divorce judgment. Debtors relied on *Christiansen v. United National Bank of Vermillion*, 176 N.W.2d 65 (S.D. 1970), where the South Dakota Supreme Court concluded that proceeds from the sale of a homestead were exempt for one year though the debtors had, of course, abandoned the property in the course of the sale.

II.

The issue presented in this case is whether Debtors may claim a lien exempt as proceeds of a homestead where the lien was created by a divorce court and placed on Debtor Steven Hanson's former marital home. Just as the Court recently concluded in *Gebur*, the Court finds no statutory basis for that exemption claim.[3]

As discussed in *Gebur*, slip op. at 4, S.D.C.L. § 43-45-3(2) allows a debtor to exempt homestead proceeds that are the result of

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[3] Having concluded that Debtor Steven Hanson may not claim his lien interest in a former marital home exempt as homestead proceeds, the Court does not reach the issue of whether he had exceeded the one-year limitation imposed by § 43-45-3(2) on the exemption of homestead proceeds. The third issue of whether Debtor may claim exempt under South Dakota laws both his present homestead and the lien on his former marital home also was not reached. A similar issue was addressed in *In re Pierce*, 50 B.R. 718 (Bankr. D.S.D. 1985)(J., Ecker), where the debtors claimed exempt a homestead interest in their present house in addition to contract for deed payments from their prior homestead.

a voluntary sale or a forced sale under S.D.C.L. ch. 21-19. Just as was the circumstance in *Gebur*, however, the court-ordered sale of Debtor Steven Hanson's former marital home in this case will not be voluntary or under ch. 21-19. Rather, the sale will be a product of S.D.C.L. § 25-4-44, which authorized the divorce court to divide the couple's property. The lien he holds on his former marital home is a product of S.D.C.L. § 25-4-42, which authorized the divorce court to establish security to protect the payments required under the amended divorce judgment. *Hanson v. Hanson*, 318 N.W.2d 355, 357 (S.D. 1982); *see Gunn v. Gunn*, 505 N.W.2d 772, 775 (S.D. 1993). Accordingly, Debtor Steven Hanson's lien does not qualify as exemptible homestead proceeds and the Trustee's objection must be sustained.

The Court has no quarrel with the principal conclusion reached in *Christiansen*, 126 N.W.2d 65, which was cited by Debtors. The South Dakota Supreme Court protected the proceeds from the debtors' voluntary sale of their homestead and declared that the sale did not constitute an abandonment of the homestead. In contrast here, we do not have a voluntary sale.

The Court notes that Debtor Steven Hanson may have lost his homestead interest in his former marital home before the divorce decree was entered or before the quit claim deed was recorded. Once he permanently removed himself from the family home, it was no longer his homestead, although he still had an ownership interest. S.D.C.L. § 25-4-33 (there is no presumption of common domicile

after separation; *United States v. Nelson*, 969 F.2d 626, 631 (8th Cir. 1992)("Homestead rights under South Dakota law accrue only to owners who use the property as a home...."). That fact was seemingly recognized by the language in the quit claim deed he gave his former spouse. Debtor Steven Hanson also may have abandoned his homestead interest in the former marital home when he established a new homestead. *See Warner v. Hopkins*, 176 N.W. at 748. However, since there was no evidence of when he left the marital home without a present intent to return or when he established his new homestead, the Court does not rely on either his departure or the creation of a new homestead as the cutoff point for his homestead interest in his former marital home.

An order sustaining the Trustee's objection will be entered.

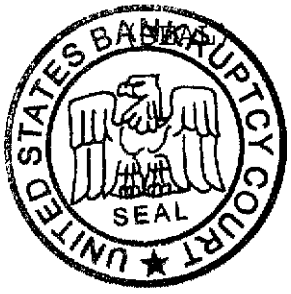
Dated this 9th day of April, 2001.

BY THE COURT:

Irvin N. Hoyt
Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk

By: Shan Stroup
Deputy Clerk



NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

APR 09 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

APR 09 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By

Case: 00-30078 Form id: 122 Ntc Date: 04/09/2001 Off: 3 Page : 1
Total notices mailed: 8

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Trustee	Wein, Dale A. Bankruptcy Trustee, PO Box 1329, Aberdeen, SD 57402-1329
Aty	Engel, Timothy M. PO Box 160, Pierre, SD 57501
Aty	Entwistle, Rick M. PO Box 5027, Sioux Falls, SD 57117-5027
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Aty	Nadolski, David PO Box 1920, Sioux Falls, SD 57101-3020