

FILED
MAR 24 1992
W. H. F. [Signature]

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

WILMOT STATE BANK,)	
)	CIV. 92-1005
Appellant,)	
)	
vs.)	ORDER
)	
ORVILLE E. HABECK and)	
and LOUISE M. HABECK,)	
)	
Appellees.)	

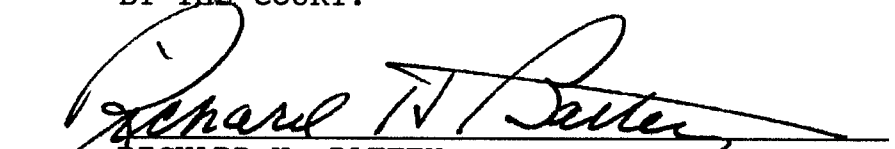
This appeal arises from the bankruptcy court's exemption of appellees' homestead from the bankruptcy estate. Appellant objects to the grant of a homestead exemption to the subject property on the grounds that no good faith statutory basis exists for the claimed exemption. In re Peterson, 920 F.2d 1389 (8th Cir. 1990). Under Peterson "the debtors must show only a good faith statutory basis for their claimed exemptions when a [creditor] files an untimely objection, [the Court] need not decide whether the debtors' claimed exemption is valid, only whether it was made in good faith." Upon review of the record, the Court finds that an adequate statutory basis for the claimed exemption exists in South Dakota law. See S.D. Const., art. XXI, § 4; S.D.C.L. § 43-31-1 et seq.; In re Corbly, 61 B.R. 843 (Bankr. D.S.D. 1986) (homestead laws are liberally construed for the creation and protection of the family home); In re Johnson, 61 B.R. 858 (Bankr. D.S.D. 1986). Moreover, the Court is not of the opinion that the possible existence of a waiver invalidates the statutory basis for the claimed exemption; the waiver may have application in other

proceedings, but it does not otherwise rescue an untimely objection. In re Brayshaw, 912 F.2d 1255, 1256-57 (10th Cir. 1990) (strict construction applies to thirty-day objection period provided in bankruptcy rules). The Court finds no error in the bankruptcy court's grant of the homestead exemption. Accordingly, it is:

ORDERED that the decision of the bankruptcy court is AFFIRMED.

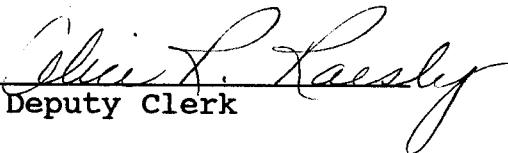
Dated this 24th day of March, 1992.

BY THE COURT:


RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE

ATTEST:

WILLIAM F. CLAYTON, CLERK

By: 
Deputy Clerk

(SEAL)