

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 22-50056
	)	Chapter 7
URSULA ANN WARD)	
aka Ursula Ann Umberger	)	DECISION RE: TRUSTEE'S
aka Ursula Ann Kehn	)	OBJECTION TO DEBTOR'S
SSN/ITIN xxx-xx-6734	)	CLAIMED EXEMPTIONS
	)	AND MOTION FOR TURNOVER
Debtor.)	

The matters before the Court are Trustee Lee Ann Pierce's objection to Debtor's claimed homestead exemption and her motion for turnover. These are core proceedings under 28 U.S.C. § 157(b)(2). The Court enters these findings and conclusions pursuant to Fed.Rs.Bankr.P. 7052 and 9014(c). For the reasons discussed below, the Court will overrule the trustee's objection and deny her motion for turnover.

I.

Before she filed a chapter 7 bankruptcy, Debtor Ursula Ward was living in a house owned by her former husband Jeffrey Jon Ward. The couple divorced on October 30, 2020, while Debtor was still living in the house. In its Findings of Fact, the divorce court found, *inter alia*:

5. The Court further incorporates the Letter Decision referenced above [dated October 8, 2020].

...

15. Ursula has remained in the marital home at 2306 Hillside Drive, in Sturgis, during this divorce.

...

18. In light of the property distribution ordered below, Ursula will be required

to establish a new domicile.

. . .

27. The parties have accrued a substantial amount of debt, due to mutual fault and lack of collaboration during this marriage and divorce.

. . .

33. The parties' total debt cannot be ascertained by the Court on the available evidence presented. To summarize, it is close to or exceeds the equity available in the marital home.

34. No documentation or evidence was presented to establish any premarital assets of Ursula, other than her self-serving testimony that despite having filed bankruptcy not long before the marriage, she accumulated substantial funds to contribute to purchase and improvement of the marital home.

35. The evidence presented by the parties did not afford the [divorce court] a meaningful opportunity to place individual values on their assets or liabilities, so no itemized listing is provided herein. Each party should keep what they have (except those items to be sold).

36. The parties shall have fourteen (14) days after entry of the Divorce Decree to post the house and other items discussed below for sale. They should thereafter do everything necessary to sell the home and other items for the best net price that can be obtained, apply the proceeds immediately to any tax liability, then next to any other debt incurred during the marriage, then split the remaining proceeds (if any) equally. If the total debt exceeds total sale proceeds, the obligations should be split equally.

37. The parties shall cooperate fully with each other and any authority to file and pay all outstanding taxes, personal and business, immediately. Again, all obligations should be split evenly.

The divorce court's Letter Decision referenced in the October 30, 2020 Findings of

Fact provided, *inter alia*:

The joint property exhibit (Exhibit 2) purports to contain a listing – maybe partial, maybe not – of the parties' debts and assets. Each party is awarded the personal possessions currently in their possession

and vehicle they currently drive, along with encumbrances. The remaining assets with value should be liquidated. Sale of the marital home will go far towards reducing the parties' debts. There was no showing that Ursula, particularly given the new custody arrangement, has need for the level of accommodation afforded by the marital home. (Although there was testimony that Ursula has an older daughter, that child's age and residence status are not part of the record.) The hot tub may have more value remaining with the home; but if not, it should be sold separately. In addition to the home, the parties must sell any remaining "toy" type items, such as boats and trailers, ATV, campers (if any remain) and the lawnmower. All net proceeds from the sale of these items shall be applied first toward any outstanding IRS obligations, then to remaining debts incurred by the parties and/or their businesses. Any excess proceeds (or indebtedness) shall be shared equally.

In its Conclusions of Law entered October 30, 2020, the divorce court concluded,

inter alia:

7. The most equitable method of dividing the parties' remaining assets and debts is to liquidate the marital residence and any remaining items that are not essential to basic living needs (including but not limited to any ATV or other recreational items, and the riding mower purchased by the parties), and apply the proceeds to tax obligations and other debts incurred in either or both parties' name and/or the names of any businesses for which they are responsible. This includes any remaining motorized vehicles and trailers, firearms, and other items of value, except for the single personal vehicle (and debt) being used by each party individually, which are awarded to that party.

In its Judgment of Divorce entered October 30, 2020, the divorce court decreed, *inter*

alia:

2. Property distribution is to be accomplished as outlined above. All property and debts acquired or incurred after October 7, 2020 shall be separate and distinct. In the event one party files bankruptcy post-divorce, but prior to completion of the property distribution above, the Court reserves the right to re-allocate the division of property and debt based on the changed circumstances.

3. If the parties agree to a modification of the distribution ordered herein, such as a joint bankruptcy filing, it may be submitted to the Court for consideration.

Eleven months after the divorce judgment was entered, Debtor and Jeffrey Ward entered into a Stipulated Motion to Modify Decree of Divorce and Findings of Fact and Conclusions of Law ("stipulated motion to modify"), which provided (emphasis added):

1. This Court's Decree of Divorce, Findings of Fact and Conclusions of Law and Letter Decision all require that the marital residence be sold with the sale proceeds being applied towards the parties' federal tax liabilities and other debts. The Marital Residence is described legally as:

Lot Fifteen (15) in Block One (1) of the Hillside Terrace Subdivision of the city of Sturgis, Meade county, South Dakota, as shown by plat filed in plat book 22, on pages 45-46, the office of the Register of Deeds of said County, a/k/a 2306 Hillside Drive Sturgis, SD 57785 (the "Marital Residence")

Given the federal tax lien and the judgment liens against the Marital Residence, the parties may not be able to convey marketable title to a potential buyer(s) unless and until Jeff files a bankruptcy case and avoids the judgment liens against the Marital Residence in said bankruptcy case. The Marital Residence is currently titled just in Jeff's name. Jeff has Eight (8) judgments that [have] been rendered against him, with one case pending, in the approximate amount of One Hundred Eleven Thousand Eight Hundred Sixteen Dollars (\$111,816.00), exclusive of post-judgment interest, which are judgment liens against the Marital Residence. Ursula will also file a bankruptcy case.

2. The parties request further that this Court modify its Decree of Divorce, Findings of Fact and Conclusions of Law and Letter Decision to require sale of the Marital Residence only after each party has filed a bankruptcy case and the judgment liens against the Marital Residence

have been avoided.¹ The parties request that the net sale proceeds be apportion[ed] between them, after the federal tax lien has been paid and after any judgment liens or other encumbrances against the Marital Residence that cannot be avoided or discharged in bankruptcy are satisfied, as follows: forty percent (40%) to Jeff and sixty percent (60%) to Ursula to give Ursula credit for reducing the principle [sic] balance of the mortgage(s) against the marital residence during the time period from when the parties separated to when the marital residence is sold. The parties requests [sic] further that the Marital Residence be determined to be a marital asset and that Ursula has a marital interest in it. The parties agree further that Ursula will maintain possession [of] the Marital Residence upon the condition that she continues to make all monthly mortgage payments as said payments become due.

3. The parties request that [the divorce court] enter an Order in the form and substance denoted below.

The divorce court approved the stipulated motion to modify by order entered September 17, 2021² ("modified divorce judgment"), stating therein:

This Court having reviewed the stipulated motion of the parties hereto and being otherwise fully informed on matters pertinent hereto, NOW ORDERS:

The stipulated motion is reasonable and necessary under the circumstances. This Court[']s Decree of Divorce, Findings of Fact and Conclusions of Law and Letter Decision are modified as requested by the parties herein. Defendant will maintain possession [of] the Marital Residence upon the condition that she continues to make all monthly

¹ Not all the terms of the stipulated motion to modify were compatible or consistent with the provisions of chapters 5 and 7 of the bankruptcy code.

² In paragraph 2 of the Judgment of Divorce, the divorce court included a clause reserving the right to "re-allocate" property and debt, perhaps intending to avoid irrevocably fixing Debtor's and Jeffrey Ward's property rights at that time. *See, e.g., Leonard v. Leonard*, 529 N.W.2d 208, 211 (S.D. 1995). Paragraph 3 of the Judgment of Divorce also acknowledged a possible subsequent modification. When the divorce court entered the modified divorce judgment on September 17, 2021, the terms of the reservation clause in paragraph 2 of the Judgment of Divorce had not been met since neither Debtor nor Jeffrey Ward had filed bankruptcy by that date. Regardless, Trustee Pierce has not contended this Court, for that or any other reason, should not recognize the terms of the modified divorce judgment.

mortgage payments as said payments become due. All other provisions of this Court's Decree of Divorce, Findings of Fact and Conclusions of Law and Letter Decision shall remain in full force and effect, except as modified herein.

Both Debtor and Jeffrey Ward subsequently filed bankruptcy.³ Debtor claimed a \$60,000.00 homestead exemption in the marital home under S.D.C.L. §§ 43-31-1, 43-31-4, and 43-45-3(1). Both Debtor and Jeffrey Ward have received a discharge of debts.

Through some adversary proceedings in Jeffrey Ward's bankruptcy case initiated by the case trustee, liens claimed or held by Sturgis Branding Co., Inc., Gary Louis Morris, and Armour Roofing & Construction, Inc. on the marital residence were avoided. After appropriate notice, the marital residence was sold by the trustees in Debtor's and Jeffrey Ward's bankruptcy cases with this Court's approval. After payment of the sale expenses and valid encumbrances, Debtor's bankruptcy estate will receive 60% of the net proceeds. Lee Ann Pierce, the trustee in Debtor's case, will hold Debtor's share of the proceeds pending resolution of the instant matter.

Trustee Pierce has objected to Debtor's claimed homestead exemption in the marital home, which is now in the form of proceeds from the home's sale, contending Debtor may not claim a homestead exemption in the marital home because Debtor was not entitled to reside there in the future. In response, Debtor argued she (Debtor) should receive the full \$60,000.00 homestead exemption since the Court had already

³ Jeffrey Ward's chapter 7 case is Bankr. No. 21-30028 (D.S.D.). He filed his petition on December 30, 2021. Debtor filed her petition on July 13, 2022.

determined Jeffrey Ward could not claim a homestead exemption in it.⁴

A hearing on the trustee's objection and motion was held. The parties determined they could submit the matter on briefs, with Debtor's response to the trustee's objection serving "as the framework for the parties' stipulated facts." The parties also jointly submitted some of the divorce-related documents.

Trustee Pierce, in her initial brief, argued the divorce court gave Debtor a marital interest in the home but that marital interest did not equate to Debtor's retaining a homestead interest in the home once Debtor and Jeffrey Ward divorced. She cited *Johnson v. Sellers*, 798 N.W.2d 690 (S.D. 2011), and *Brady v. Kreuger*, 8 S.D. 464, 66 N.W. 1083 (S.D. 1896). Debtor, in her initial brief, argued "South Dakota law restricts substantially the circumstances under which a homestead exemption claim can be waived" and contended the divorce court would not have apportioned the sale proceeds if Debtor and Jeffrey Ward "had waived the right to a homestead exemption claim by agreeing that it should be sold." Debtor cited *Beck v. Lapsley*, 593 N.W.2d 410 (S.D. 1999), for the proposition that a homestead exemption is not lost when a sale of the property is intended.

In her reply brief, Trustee Pierce argued none of the cases cited by Debtor involved a homestead exemption claimed by a debtor in real property owned by a

⁴ The Court determined Jeffrey Ward was not entitled to claim a homestead exemption in the marital home because he did not live there on the petition date and did not intend to return to it. Further, the divorce court had not given Jeffrey Ward a lien on the marital home that could be protected as a homestead under S.D.C.L. § 43-45-3(2). *In re Jeffrey Jon Ward*, Bankr. No. 21-30028, slip op. (Bankr. D.S.D. Apr. 28, 2022).

former spouse. She cited *Dunham v. Sabers*, ___ N.W.2d ___, 2022 WL 15102474 (S.D. Oct. 26, 2022), for the proposition that a divorce court's classification of property as marital property has no bearing on whether that property may be claimed exempt as a homestead. Debtor, in her reply brief, distinguished the facts of the *Johnson* and *Brady* opinions cited by Trustee Pierce and argued the divorce court did not need to specifically declare Debtor retained a homestead interest because a homestead "is not a property right." She further argued the house did not need to be titled in Debtor's name since the divorce court treated it as marital property.

II.

When a person files a chapter 7 petition, all his or her property interests, as defined by 11 U.S.C. § 541(a), become property of the bankruptcy estate. A debtor may then exempt certain property "from property of the estate[.]" 11 U.S.C. § 522(b); *Owen v. Owen*, 500 U.S. 305, 308 (1991). For most debtors who file bankruptcy in the District of South Dakota, the property the debtor may claim exempt is defined primarily by state law. 11 U.S.C. § 522(b)(2) and S.D.C.L. §§ 43-31-30 and 43-45-13. Once exempt, that property generally is no longer liable for pre-petition claims or administrative claims. 11 U.S.C. § 522(c).

To exempt a house as a homestead, the debtor must be the owner of the house and embrace it as a home. S.D.C.L. §§ 43-31-2 and 43-45-3; *United States v. Nelson*, 969 F.2d 626, 631 (8th Cir. 1992) (homestead must be owned to be declared exempt). An exemption may also be declared in \$60,000.00 of proceeds from the sale of a homestead. S.D.C.L. § 43-45-3(2).

A debtor's entitlement to an exemption is determined on the day he or she files the bankruptcy petition. 11 U.S.C. § 522(b)(3)(A); *Mueller v. Buckley (In re Mueller)*, 215 B.R. 1018, 1022 (8th Cir. B.A.P. 1998) (cites therein); *Harris v. Herman (In re Herman)*, 120 B.R. 127, 130 (9th Cir. B.A.P. 1990). Exemptions are construed liberally in favor of the debtor. *Wallerstedt v. Sosne (In re Wallerstedt)*, 930 F.2d 630, 631-32 (8th Cir. 1991). Homestead laws, in particular, are liberally construed "for the creation and protection of the family home." *In re Corbly*, 61 B.R. 843, 850 (Bankr. D.S.D. 1986) (citing *Ramsey v. Lake County*, 14 N.W.2d 125, 126 (S.D. 1944)). "The underlying purpose is to 'provide the security of a home to a family against the claims of creditors.'" *Corbly*, 61 B.R. at 850 (quoting *Speck v. Anderson*, 318 N.W.2d 339, 343 (S.D. 1982)). Offering a homestead for sale, without more, does not constitute an abandonment of the homestead. S.D.C.L. § 43-31-1; *Yellowhair v. Pratt*, 182 N.W. 702, 704-05 (S.D. 1921); *In re Hansen*, 17 B.R. 239, 241-42 (Bankr. D.S.D. 1982).

III.

On the petition date, Debtor had actual possession of the marital home and an intent to remain there until the house was sold. On the petition date, she also held, pursuant to the modified divorce judgment, a "marital interest[,]" the privilege to remain in possession until the house was sold, and an entitlement to 60% of any sale proceeds that remained after certain identified debts were paid pursuant to the modified divorce judgment. As discussed below, Debtor's actual possession, the right to remain there until the home was sold, and a defined interest in the sale proceeds,

under the circumstances presented, qualify as an ownership interest in the marital home and thus permit Debtor to claim a homestead interest in it.

Under S.D.C.L. § 43-2-1, "[t]he ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others." Construing this code provision, as well as S.D.C.L. §§ 43-31-2 and 43-45-3, liberally in Debtor's favor, as the Court is required to do, *Wallerstedt*, 930 F.2d at 631-32, the Court is satisfied Debtor may properly claim exempt as a homestead her interest in the marital home and now her share of the proceeds from that home up to \$60,000.00. On the petition date, Debtor met the requirements of S.D.C.L. § 43-31-2 to claim a homestead exemption because Debtor used the house as her home and she was an owner of the house, under the definition of "ownership" provided by S.D.C.L. § 43-2-1, because her use was exclusive.

Most assuredly, Debtor's ownership interest arising from the modified divorce judgment and the definition provided by S.D.C.L. § 43-2-1 is not the same as an estate in fee. However, the definition of "ownership" provided by S.D.C.L. § 43-2-1 is clear and not limited to S.D.C.L. chapter 43-2. Moreover, the word "owner" "may depend for its significance upon the connection in which it is used, and at times may include one not holding legal title." *Loving Saviour Church v. United States*, 556 F.Supp. 688, 690 (D.S.D. 1983), *aff'd*, 728 F.2d 1085, 1086 (8th Cir. 1984) (citing *Lien v. Rowe*, 92 N.W.2d 922[, 924-25] (S.D. 1958)), *cited in Pokela v. Red Owl Stores, Inc. (In re Dakota Country Store Foods, Inc.)*, 107 B.R. 977, 987 (Bankr. D.S.D. 1989). Further, while the divorce court did not specifically declare Debtor was

to hold a homestead interest in the marital home, the modified divorce judgment did not create a mere tenancy for Debtor, *see* S.D.C.L. § 43-8-5, and no other circumstances indicate the divorce court did not intend for Debtor to hold an interest for which a homestead exemption could be claimed. Accordingly, under the circumstances presented and in light of the clear language of S.D.C.L. § 43-2-1, the Court finds Debtor held an ownership interest in the marital home on the petition date that she may claim exempt as a homestead.

This finding is consistent with *Johnson*, 798 N.W.2d at 692 n.2, because Debtor's exemptible interest does not arise from S.D.C.L. § 43-31-17. This finding is also consistent with *Brady*, 66 N.W. at 1085, because the modified divorce judgment allowed Debtor to retain possession of the marital home and conferred upon her "other privileges in, or interests in or to" the marital home, including a right to some of the home's sale proceeds.

Finally, the Court notes a different result may have been reached under the original Judgment of Divorce, where the divorce court stated in its incorporated Letter Decision "[t]here was no showing that [Debtor], particularly given the new custody arrangement, has need for the level of accommodation afforded by the marital home[,]" where it found in its Findings of Fact that "[i]n light of the property distribution ordered below, [Debtor] will be required to establish a new domicile[,]" and where it directed most of Debtor's and Jeffrey Ward's assets, including the marital home, to be sold to pay a broader range of debts, not just liens and other encumbrances on the marital home, before any remaining sale proceeds from the

marital home were divided.⁵ As noted earlier, however,⁶ the enforceability or binding effect of the modified divorce judgment has not been questioned.

An order overruling Trustee Pierce's objection to Debtor's claimed homestead exemption and denying her motion for turnover will be entered.

Dated: November 29, 2022.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Charles L. Nail, Jr.", is written over a horizontal line.

Charles L. Nail, Jr.
Bankruptcy Judge

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

This order/judgment was entered
on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota

⁵ The divorce court referenced this broader payment of debts, in various iterations, in its Letter Decision, Findings of Fact, Conclusions of Law, and Judgment of Divorce.

⁶ *See supra* note 2.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 22-50056
	)	Chapter 7
URSULA ANN WARD)	
aka Ursula Ann Umberger	)	ORDER OVERRULING TRUSTEE'S
aka Ursula Ann Kehn	)	OBJECTION TO DEBTOR'S
SSN/ITIN xxx-xx-6734	)	CLAIMED EXEMPTIONS
	)	AND DENYING TRUSTEE'S
Debtor.	)	MOTION FOR TURNOVER

In recognition of and compliance with the decision entered this day; and for cause shown; now, therefore,

IT IS HEREBY ORDERED Trustee Lee Ann Pierce's Objection to Claimed Exemptions (doc. 17) is overruled.

IT IS FURTHER ORDERED Trustee Pierce's Motion for Turnover (doc. 17) is denied.

So ordered: November 29, 2022.

BY THE COURT:



Charles L. Nail, Jr.
Bankruptcy Judge

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

This order/judgment was entered
on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota