

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

No. 97-16468
Chapter 7

MARY CLARISE RAYBURN

Debtor

MEMORANDUM AND ORDER

Mary Clarise Rayburn, the Debtor, amended her exemption schedule to claim a homestead exemption in real property. The trustee in bankruptcy has objected to the claim of a homestead exemption. The trustee objects on three grounds.

First, the trustee contends the property does not qualify under the Tennessee exemption statute because it is not used by the debtor, her spouse or a dependent as a principal place of residence. Tenn. Code Ann. § 26-2-301 (homestead exemption); 11 U.S.C. § 522(b)(1) (opt-out statute); Tenn. Code Ann. § 26-2-112 (bankruptcy exemptions).

Second, the trustee contends the Debtor should not be allowed the exemption because she failed to list the property in the schedules filed in her bankruptcy case. See, e.g., *In re Yonikus*, 996 F.2d 866 (7th Cir. 1993); *In re Markmueller*, 165 B.R. 897 (Bankr. E. D. Mo. 1994); *BK Medical Systems, Inc. v. Roberts (In re Roberts)*, 81 B.R. 354 (Bankr. W. D. Pa. 1987).

Third, the trustee contends the exemption exceeds the amount allowable under Tennessee law.

The property in question is a house and lot that belonged to the Debtor and her ex-husband as tenants by the entirety. When they were divorced, the divorce decree ordered the property to be sold and the net proceeds (the equity) split between the Debtor and her ex-husband. Since a tenancy by the entirety can exist only between husband and wife, a divorce necessarily destroys the tenancy by the entirety; it leaves the ex-wife and ex-husband as tenants in common, unless the divorce decree or a contract between them makes some other arrangement. *Hopson v. Fowlkes*, 92 Tenn. 697, 23 S.W. 55 (1893); *Clouse v. Clouse*, 185 Tenn. 666, 207 S.W.2d 576 (1948).

This court has previously applied the doctrine of equitable conversion to this situation. *In re Bumpass*, 196 B.R. 780 (Bankr. E. D. Tenn. 1996) (Judge Stinnett). In *Bumpass* the divorce decree adopted a settlement agreement between the parties. It required the ex-husband to sell the property and pay the debtor one-half the net proceeds. The ex-husband continued to live in the property. In that case the court held that the debtor was the owner of personal property – the right to receive one-half of the net proceeds. Furthermore, the debtor could exempt this right as personal property but not as real property.

In *Bumpass* the parties had an agreement requiring the sale of the house and the division of the proceeds. There is no such agreement in this case. But the result should be the same. The court's opinion in *Bumpass* leaves no doubt that a divorce decree by itself can cause equitable conversion.

This case does involve one other fact that must be considered. After the divorce, the Debtor executed a quitclaim deed to her ex-husband. It has not been recorded. The quitclaim deed is irrelevant to the question of whether the debtor can claim a homestead

exemption in the property. She can not because her interest in the property has been equitably converted to personal property.

The trustee objected to the homestead exemption on the ground that the Debtor's schedules failed to reveal her interest in the real property. The court's reasoning renders this objection irrelevant. Equitable conversion prevents the Debtor from claiming a homestead exemption in the real property. Likewise, the argument over the amount of the exemption is irrelevant.

The Debtor has not attempted to claim an exemption in her right to one-half the net proceeds, but she may be able to amend her claim of exemptions to do so. Unless and until the Debtor makes such an amendment, the court need not be concerned with whether she can exempt her claim to one-half the net proceeds from the sale of the property. Accordingly,

It is ORDERED that the trustee's Objection to Debtor's Claim of Exempt Property is SUSTAINED and that the Debtor's Amendment to Schedule filed January 22, 1998, is STRICKEN.

This Memorandum constitutes findings of fact and conclusions of law as required by Fed. R. Bankr. P. 7052.

ENTER:

BY THE COURT

entered April 27, 1998

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE