



SO ORDERED.

SIGNED this 06 day of February, 2006.

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**

**John C. Cook
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT FOR
THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION**

IN RE)	
)	No. 05-17262
STEPHANIE ARNITA BOVARD,)	
)	Chapter 7
Debtor)	

MEMORANDUM

This matter is before the court on the trustee's objection to the debtor's claim of exemptions. Specifically, the trustee objects to the debtor's claim of a homestead exemption on a one-acre lot because the debtor did not reside on the property at the time she commenced this case. After reviewing the objection and the debtor's response thereto and hearing the debtor's testimony and the arguments of counsel, the court will sustain the trustee's objection.

A number of years ago, the debtor's father gave the debtor a one-acre parcel of land located on Hudgins Mill Road in Madisonville, Tennessee. At the time, the debtor was living on the property in a single-wide mobile home with her daughter from a previous marriage. Later, the debtor remarried. She continued residing on the property with her new husband, and she had the property titled in both her and her new husband's name. The debtor and her husband thereafter replaced the single-wide mobile home with a double-wide mobile home. In April 2005, the mobile home was repossessed, and the debtor moved in with a male friend in Tellico Plains, Tennessee. In July 2005, the debtor and her husband were divorced, and she was awarded the real property in question (although the former spouse's name remains on the title). Currently, the debtor is still residing with her male friend in Tellico Plains, and the debtor's 19-year old daughter is residing with her father and attending Athens Community College. The debtor testified that she wants to eventually place a residence on the Madisonville property and live there with her daughter, but the debtor cannot afford to do that for the foreseeable future.

On October 14, 2005, the debtor filed the petition commencing this case, listing the Tellico Plains address as her residence. Her schedules disclose her ownership of the Madisonville property, valued at \$5,000. The schedules also claim the property exempt pursuant to Tenn. Code Ann. § 26-2-301. That statute provides, in pertinent part:

An individual, whether a head of family or not, shall be entitled to a homestead exemption upon real property which is owned by the individual and used by the individual or the individual's spouse or dependent, as a principal place of residence. The aggregate value of such homestead exemption shall not exceed five thousand dollars (\$5,000) The homestead exemption shall not be subject to execution, attachment, or sale under legal proceedings during the life of the individual. . . .

Tenn. Code. Ann. § 26-2-301(a). The debtor may exempt property in a bankruptcy case by utilizing Tennessee state law exemptions. *See* 11 U.S.C. § 522(b)(1), (2)(A) (as in effect when case was commenced), and Tenn. Code Ann. § 26-2-112 (making Tennessee exemptions applicable in bankruptcy cases).

As can be seen from a reading of Tenn. Code Ann. § 26-2-301(a), before the debtor can establish entitlement to a homestead exemption in the Madisonville property, the debtor must show that at the time her bankruptcy petition was filed (1) the real property was owned by the debtor, and (2) the real property was used as a principal place of residence by the debtor, or the debtor's spouse, or the debtor's dependent. These two conditions, ownership and residency, are required to be present at the time of the bankruptcy filing because a debtor's exemptions are determined as of the filing date. *In re Young*, 42 B.R. 892, 897 (Bankr. E.D. Tenn. 1984) (citing *White v. Stump*, 266 U.S. 310 (1924)); *In re Hall*, 31 B.R. 42 (Bankr. E.D. Tenn. 1983)) (additional citation omitted); *accord*, *In re Sivley*, 14 B.R. 905, 910 (Bankr. E.D. Tenn. 1981).

Unfortunately for the debtor, at the time she filed her bankruptcy petition, the Madisonville property was not her principal place of residence. Indeed, there was not even a dwelling place on the property either then or now. While “an exemption statute is to be liberally construed to carry out its purpose,” *Sivley*, 14 B.R. at 908 (citations omitted); *accord*, *McLemore v. Huffines (In re Huffines)*, 57 B.R. 740, 741 (M.D. Tenn. 1985); *In re Sumerell*, 194 B.R. 818, 832 n.19 (Bankr. E.D. Tenn. 1996); *In re Hackler*, 35 B.R. 326, 328 (Bankr. E.D. Tenn. 1983), “when a statute is plain and unambiguous, its terms should be construed in accordance with their ordinary and commonly accepted meaning,” *Hackler*, 35 B.R. at 328 (citations omitted). Without a home on the property to

live in, the court cannot find that the property was being used by the debtor as her principal place of residence. Notably, this is not a case in which the debtor was temporarily away from her home at the time the bankruptcy petition was filed. *See Sivley*, 14 B.R. at 908 (a “principal place of residence is not necessarily where the debtor lives when the exemption is claimed” because the “debtor may be away from home” at the time). Here, there was no home on the real estate at the time of the bankruptcy filing, and there is no home on the real estate now. It is simply a vacant piece of land. Because the Tennessee homestead exemption statute expressly requires that the property be used as a principal place of residence, and because the property was not used as the debtor’s principal place of residence at the time the debtor filed her bankruptcy case, the debtor would not be entitled to claim a homestead exemption in the property.

The debtor relies on *Dunn v. McLeary*, 5 Tenn. Civ. App. (Higgins) 600 (1914), and *Dickison v. Mayer*, 58 Tenn. (11 Heisk.) 515 (1872), for the proposition that a homestead under Tennessee law can include a vacant lot. Reliance on those cases, however, is misplaced. Those cases were based on sections of the Tennessee Constitution and statutes that were later changed. *See Sivley*, 14 B.R. at 907-08 (discussing the changes in the law). Now, the homestead exemption is defined in Tenn. Code Ann. § 26-2-301(a), and that statute requires that the real property be used as a principal place of residence. *Id.*

For the foregoing reasons, an order will enter sustaining the trustee’s objection to the debtor’s claim of a homestead exemption in the Madisonville property.

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