

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE

<i>In re</i>	)	
	)	
DONNA MARIE NORRIS	)	Case No. 94-20714
a/k/a DONNA MARIE ARP,	)	Chapter 7
	)	
Debtor.	)	

MEMORANDUM OPINION

APPEARANCES :

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*Donna Marie Norris*

ANDERSON, FUGATE, GIVENS & COUNTS  
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*Attorneys for Margaret B. Fugate*  
*Chapter 7 Trustee*

MARCIA PHILLIPS PARSONS  
UNITED STATES BANKRUPTCY JUDGE

This matter is before the court on the objection by the chapter 7 trustee to the debtor's claim of a homestead exemption in the proceeds from improved real property owned by the debtor as a tenant in common but in which the debtor was not residing at the time this chapter 7 case was filed. For the reasons set forth below, the objection of the chapter 7 trustee to the claim of exemption should be sustained and the debtor's exemption disallowed.

I.

The facts in this case are undisputed. In 1983, the debtor, Donna Marie Arp, who at that time was 18 years old, met James Franklin Norris, a 36 year-old man. Within a few months of their meeting, the debtor and Mr. Norris began cohabitating and continued to do so for a period of ten years, holding themselves out as husband and wife,<sup>1</sup> even though they never married.<sup>2</sup> During the time they were together, all of the assets accumulated by them, with the exception of a few personal items, were titled in Mr. Norris' name solely, including the lot and house in which they lived, located at 1114 East Market Street, Johnson City, Tennessee, and which had been purchased by the debtor and Mr. Norris shortly

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<sup>1</sup>The debtor and Mr. Norris filed joint federal income tax returns as husband and wife, purchased homeowners insurance as husband and wife, had a joint checking account, borrowed money from various lending institutions as a couple and even filed a joint chapter 13 petition.

<sup>2</sup>Despite the fact that the debtor and Mr. Norris never married, the debtor legally changed her name from Donna Marie Arp to Donna Marie Norris in 1990.

after they began cohabitating. On September 10, 1992, after an argument which resulted in Mr. Norris hitting the debtor and the debtor telephoning the police, Mr. Norris ejected the debtor from the house. The debtor later returned to the house with a police escort to retrieve certain personal belongings and never resided in the house thereafter.

Upon leaving the house she shared with Mr. Norris, the debtor moved in with her parents. Mr. Norris continued residing on the property. On September 24, 1992, the debtor filed in the Chancery Court for Washington County, Tennessee a "Complaint For Distribution of Assets Accumulated by Parties During a Joint Venture" wherein the debtor asked for an equitable distribution of all the assets acquired by her and Mr. Norris during their ten-year relationship and requested that, if necessary, the court order a judicial sale of these assets. After a trial on the debtor's complaint, the chancellor held that an implied partnership existed between the debtor and Mr. Norris and that because the house located at 1114 East Market Street, Johnson City, Tennessee, had been purchased after the partnership commenced, the debtor and Mr. Norris owned the house as equal tenants in common. The court also equitably divided the personalty acquired by the parties during their cohabitation. The decision of the chancellor was subsequently affirmed by the Tennessee Court of Appeals.

The debtor commenced this individual chapter 7 case by the filing of a petition on May 16, 1994, and Margaret Fugate was appointed chapter 7 trustee. As trustee, Ms. Fugate made demand on

Mr. Norris for the debtor's one-half interest in the real property and personalty which had been awarded to the debtor by the Tennessee state court. Thereafter, Ms. Fugate reached a settlement and compromise with Mr. Norris compromising all of the claims of the debtor and the estate against Mr. Norris for the sum of \$18,000.00. This compromise and settlement was approved by the court without opposition pursuant to an order of the court entered March 31, 1995.

The debtor now asserts a \$5,000.00 homestead exemption in the proceeds of the settlement and compromise pursuant to TENN. CODE ANN. § 26-2-301, alleging that the improved real property in which she resided with Mr. Norris was her principal place of residence. The trustee asserts that the debtor is not entitled to claim the homestead exemption in the proceeds because she was not residing in the improved real property at the time this chapter 7 case was filed. A hearing was held on this matter on May 22, 1995. The debtor was the sole witness. In addition to the debtor's testimony, the parties tendered to the court for consideration the complaint for distribution of assets filed in state court, the trial court's final decree adjudicating a partnership and the opinion by the Tennessee Court of Appeals affirming the trial court. This is a core proceeding. See 28 U.S.C. § 157(b)(2)(B).

## II.

The debtor claims a homestead exemption in the settlement proceeds pursuant to TENN. CODE ANN. § 26-2-301(a) which provides in

part the following:

An individual, regardless of whether he is head of a family, shall be entitled to a homestead exemption upon real property which is owned by the individual and used by him, his spouse, or a dependent, as a principal place of residence. The aggregate value of such homestead exemption shall not exceed five thousand dollars (\$5,000)....

Pursuant to the plain language of the statute, two requirements must be met in order for an individual to claim a homestead exemption in real property: (1) the property must be owned by the individual; and (2) the property must be used by the individual, his spouse, or a dependent, as a principal place of residence. See *In re Lingerfelt*, 180 B.R. 502, 504 (Bankr. E.D. Tenn. 1995) (Under Tennessee homestead exemption, the claimant of a homestead exemption "must own the property and actually use it as a residence."); *In re Hackler*, 35 B.R. 326, 328 (Bankr. E.D. Tenn. 1983); see also *Levy v. Robinson (In re Robinson)*, 75 B.R. 985, 988 (Bankr. W.D. Mo. 1987) ("the *sine qua non* of homestead is ownership plus occupancy"). Because the general rule is that the debtor's exemptions are determined as of the date of the filing of the petition, see *In re Oberlies*, 94 B.R. 916, 918 (Bankr. E.D. Mich. 1988); *In re Young*, 42 B.R. 892, 897 (Bankr. E.D. Tenn. 1984); *In re Hall*, 31 B.R. 42, 44 (Bankr. E.D. Tenn. 1983); *In re Sivley*, 14 B.R. 905, 908 (Bankr. E.D. Tenn. 1981); this court must determine whether on May 16, 1994,<sup>3</sup> the date the debtor's petition was filed,

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<sup>3</sup>The debtor testified that even though this bankruptcy case was not filed until May 16, 1994, she had contacted her attorney in June 1993, and had paid him \$650.00 at that time to file this  
(continued...)

the debtor owned the real property in question, and whether on that date, the debtor, her spouse or a dependent of the debtor used the real property as a principal place of residence.

The trustee does not dispute that the first requirement is met in this case, that is, that the real property was owned by the debtor at the time this case was filed. The courts of the state of Tennessee adjudicated that the debtor and Mr. Norris purchased and owned the real property jointly as equal tenants in common, despite the fact that the real property was titled solely in Mr. Norris' name. Clearly, a homestead exemption is allowable in property held as a tenant in common. See *In re Young*, 42 B.R. at 897.

The trustee denies, however, that the second requirement has been met. As noted above, upon being ejected from the real property in question by Mr. Norris in September 1992, the debtor moved in with her parents. The debtor remained with her parents

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<sup>3</sup>(...continued)  
chapter 7 case. The debtor further testified that thereafter she made several calls to her attorney attempting to ascertain when her bankruptcy case would be filed and urging her attorney to file the case as soon as possible, but with no results. Although not specifically articulated, the debtor appears to be making the argument that the court should not look at the actual date this case was filed, but should instead consider when she contacted her attorney to file the case because the delay in filing was caused by her attorney's inadvertence and/or negligence. However, the critical date for this court in determining entitlement to exemptions is when the case was actually filed regardless of the date that the debtor employed an attorney to file this case. The delay in filing is a matter between the debtor and her attorney, not this court and the debtor's creditors. This court is not convinced, however, based on the evidence before it, that its findings in this case would be any different if this case had been filed in June 1993, rather than May 1994. In June 1993, it had been nine months since the debtor left the property at 1114 East Market Street and no efforts had been made by the debtor to regain possession of the property during that time.

for a few months until she moved to another town where she resided in a rented mobile home for three months. She then returned to her parents' home, living there until February 1994, when she moved in with and subsequently married her present husband on March 26, 1994. At the time this bankruptcy case was filed on May 16, 1994, the debtor was residing with her husband in a house already owned by the husband at the time of their marriage, and Mr. Norris was still living on the real property located at 1114 East Market Street, Johnson City, Tennessee. In light of these undisputed facts, the Trustee asserts that the debtor's claim of exemption in the real property must be denied because the property was not used by the debtor, her spouse or dependent as a principal place of residence at the time this bankruptcy case was commenced.

The debtor admits that technically she does not meet the second element of the homestead inquiry, but urges this court to look at the reason she was not residing in the home. The debtor notes that she did not leave the property freely and voluntarily and that if she had been given a choice, she would have stayed there. The debtor testified that she did not return to the house which she had shared with Mr. Norris because she was afraid for her life. Mr. Norris had a bad temper; he had threatened her, thrown knives at her and owned two unregistered guns. The debtor asserts that it would be unfair to disallow the homestead exemption when it was the intentional act of another that prevented her from living in the home. To support her argument, the debtor refers the court to the bankruptcy case of *In re Sivley*, 14 B.R. 905 (Bank. E.D.

Tenn. 1981), wherein the debtor was permitted a homestead exemption in real property owned by the debtor and her husband as tenants by the entirety, even though the debtor was not residing in the home at the time her bankruptcy case was filed. Similar to the present case, the debtor in *Sivley* left the marital home after a violent argument with her husband who threatened violence if she returned. The bankruptcy court in *Sivley* observed that "[a] principal place of residence is not necessarily where the debtor lives when the exemption is claimed. The debtor may be away from home. What is the debtor's principal residence depends both on the debtor's use and intent." *In re Sivley*, 14 B.R. at 908; see also *McLemore v. Huffines (In re Huffines)*, 57 B.R. 740, 741 (Bank. M.D. Tenn. 1985). Based on this language and the conclusion of the *Sivley* court that the debtor in *Sivley* was entitled to a homestead exemption, the debtor in the present case cites *Sivley* for the proposition that a debtor should not be denied a homestead exemption due to the acts of others.

As noted by the chapter 7 trustee in this case, however, the debtor has misstated the *Sivley* holding. Contrary to the debtor's assertion, the debtor in *Sivley* was allowed a homestead exemption not because she was forced from her home, but because **her husband** was still residing on the property at the time of the bankruptcy filing. This ruling was based on the plain language of TENN. CODE ANN. § 26-2-103 which provides that a homestead exemption may be claimed in real property owned by the debtor and used as a principal place of residence by the debtor **or the debtor's spouse.**

*In re Sivley*, 14 B.R. at 908. Thus, the distinction between *Sivley* and the facts in the present case is critical. In the present case, the debtor and Mr. Norris were never married, unlike the couple in *Sivley*. Therefore, even though Mr. Norris resided in the house at the time the debtor's case was filed, the debtor, unlike the debtor in *Sivley*, had no spouse or dependent who resided in the house as a principal place of residence.

The court in *Sivley* also concluded that regardless of the fact that the debtor was forced from her house against her will, the house was no longer **the debtor's** principal place of residence because the debtor no longer intended to return to the house and make it her home at the time her case was filed. *Id.* As noted by the court:

It can be argued that Mrs. Sivley should not be denied a homestead exemption because she decided not to return after being forced from the home. [cites omitted] The exemption, however, is relevant when the claims of creditors may cause a debtor to lose her home. If domestic troubles have already caused a wife to leave her home and she no longer desires to live there, that is a concern for the divorce court. In a suit by creditors it makes no difference why she decided to abandon her home. The house is no longer her principal place of residence.

*In re Sivley*, 14 B.R. at 908.

The *Sivley* reasoning is instructive in the present case. Even though the debtor did not leave the house located at 1114 East Market Street freely and voluntarily, it is clear that at the time this bankruptcy case was filed on May 16, 1994, the debtor no longer intended for this house to be her home. The debtor had

already married at that time and was living with her new husband in his home. In fact, the debtor testified that after her marriage, she and her husband jointly applied for a loan to remodel her husband's house. Thus, by the time this bankruptcy case was filed, the debtor had long abandoned any desire to return to the house at 1114 East Market Street as a principal place of residence.

The facts in the present case should be contrasted with the facts in *In re Kasden*, \_\_\_ B.R. \_\_\_, 1995 WL 106523 (Bankr. D. Minn. 1995), wherein the court allowed the debtor a homestead exemption in certain real property even though the debtor was not residing on the property at the time his bankruptcy case was filed due to a fire eight months previously which had caused extensive damage to the home and made it unfit for habitation. The court in *Kasden* found that despite the debtor's lack of residency on the premises, the debtor had continued to maintain his intent to return to the house as his home as soon as possible. The debtor began rebuilding the house immediately after the fire; he continued to store his personal belongings in the garage located on the property; he spent his leisure time at the property; friends visited him at the property on occasion; and he maintained his community connections in the area, continuing to vote in the area and not changing his homestead address. *Id.* In the case *sub judice*, however, the debtor made no efforts to regain possession of the real property after being ejected from the property by Mr. Norris. The complaint filed by debtor in state court within a month after the ejection asked only for a distribution of the

assets and if necessary, sale of the assets and distribution of their proceeds to the parties; repossession of the home was not requested. As shown by her marriage and efforts to make a new life with her husband, the debtor had long abandoned the property at 1114 East Market Street as her residence by the time this bankruptcy case was filed.

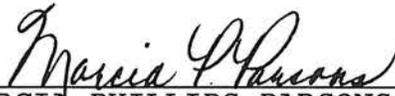
In further support of her position, the debtor refers this court to several cases cited in *Sivley* wherein a homestead exemption was allowed where the debtor was away from the homestead involuntarily. See *In re Sivley*, 14 B.R. at 908, citing *Hinds v. Buck*, 150 S.W.2d 1071 (Tenn. 1941) (wife was granted homestead exemption even though she was involuntarily confined to an insane asylum); *Collins v. Boyett*, 87 Tenn. 334, 10 S.W. 512 (1889); *Prater v. Prater*, 87 Tenn. 78, 9 S.W. 361 (1888); *Henry v. Wilson*, 77 Tenn. 1976 (1882); *Gray v. Baird*, 72 Tenn. 212 (1879); and *Roach v. Hacker*, 70 Tenn. 633 (1879). However, these cases cited in *Sivley* were decided under the predecessor to Tennessee's present homestead exemption, which was enacted by the Tennessee legislature in 1978. Under Tennessee's previous homestead exemption, residency was not a requirement. Instead, a homestead exemption was granted in any real property belonging to the head of the household. See *In re Sivley*, 14 B.R. 907-908. Therefore, the Tennessee cases construing the former homestead exemption with no residency requirement provide no authority for the present homestead exemption which explicitly requires that the debtor, his spouse or his dependents occupy the property as a principal residence.

Accordingly, because the property located at 1114 Market Street, Johnson City, Tennessee was not the debtor's principal place of residence at the time this bankruptcy case was filed, the debtor's claim of a homestead exemption in the settlement proceeds of the real property must be denied.

The foregoing constitutes findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052. An order will be entered in accordance with this memorandum denying the debtor's claim of homestead exemption and sustaining the trustee's objection thereto.

ENTER: June 7, 1995

BY THE COURT



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MARCIA PHILLIPS PARSONS  
United States Bankruptcy Judge