SO ORDERED.
SIGNED this 12th day of April, 2017

Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

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

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

In re

MARVIN KENNETH CLEMONS

Debtor

Case No. 3:16-bk-31921-SHB
Chapter 7

MEMORANDUM AND ORDER ON MOTION FOR REHEARING

On April 10, 2017, C.D. Mounger filed a Motion for Rehearing, asking the Court to reset and reconsider its determination at an evidentiary hearing held on March 30, 2017, that Debtor is entitled to claim a $5,000.00 homestead exemption in real property located at 102 Five Mile Road, Kingston, Tennessee ("Property") that he uses as a principal place of residence. Through the Motion for Rehearing, Mr. Mounger argues that the Order to Sell Propoerty [*sic*] Levied On and the Order of Sale of Propoerty [*sic*] Levied On (collectively, "State Court Orders"), both entered by the Roane County Circuit Court on June 22, 2016, two days prior to the petition date, denied Debtor's exemptions and divested Debtor of the Property such that he may not claim a homestead exemption in his bankruptcy case.

A debtor's bankruptcy estate, which includes all property and property interests owned by the debtor on the day the bankruptcy case is filed, is formed when the petition is filed under any chapter of the Bankruptcy Code. *See* 11 U.S.C. § 541; *In re Kennedy*, 552 B.R. 183, 189 (Bankr. E.D. Tenn. 2016). In order to ensure that "a debtor coming out of the bankruptcy process retains sufficient property to obtain a fresh start and to provide the debtor with the basic necessities of life so that he will not be left entirely destitute by his creditors," debtors are authorized by the Code to exempt certain property that "is subtracted from the bankruptcy estate and not distributed to creditors." *In re Arwood*, 289 B.R. 889, 892 (Bankr. E.D. Tenn. 2003). "[P]roperty exempted under [§ 522] is not liable during or after the case for any debt of the debtor that arose . . . before the commencement of the case[.]" 11 U.S.C. § 522(c).

Section 522(b), known as the "opt out" provision, allows states to use their own exemptions rather than the federal exemptions enumerated in § 522(d).

> (b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. . . . Such property is —
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> > (1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,
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> > (2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and
> >
> > (B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.
> >
> > . . .

11 U.S.C. § 522(b). Tennessee has "opted out" of the federal exemptions pursuant to Tennessee Code Annotated section 26-2-112, which states:

> **Exemptions for the purpose of bankruptcy**. — The personal property exemptions as provided for in this part, and the other exemptions as provided in other sections of the Tennessee Code Annotated for the citizens of Tennessee, are hereby declared adequate and the citizens of Tennessee, pursuant to section 522(b)(1), Public Law 95-598 known as the Bankruptcy Reform Act of 1978, Title 11 USC, section 522(b)(1), are not authorized to claim as exempt the property described in the Bankruptcy Reform Act of 1978, 11 USC 522(d).

See also Rhodes v. Stewart, 705 F.2d 159, 161-62 (6th Cir. 1983) (finding Tennessee's "opt-out" statute is constitutional). Notwithstanding that Tennessee has chosen to "opt-out" of the federal exemptions provided by 11 U.S.C. § 522(d), debtors in bankruptcy are nonetheless afforded exemption rights pursuant to § 522(b).

"There is a 'long-standing rule' in Tennessee that its exemption statutes are to be liberally construed," *In re Reeves*, 521 B.R. 827, 831 (Bankr. E.D. Tenn. 2014), and "when it is possible to construe an exemption statute in ways that both are favorable and unfavorable to a debtor, then the favorable method should be chosen." *In re Kennedy*, 552 B.R. at 189 (citation omitted). This includes the ability to claim a homestead exemption so long as the following requirements of Tennessee Code Annotated § 26-2-301 are met on the date that the bankruptcy petition is filed: (1) the debtor is an individual who (2) owns real property (3) that is used by the debtor, a spouse, or a dependent (4) as a principal place of residence.

At the March 30 evidentiary hearing, the Court granted Debtor's motion to avoid the judicial lien of Mr. Mounger, who objected on the primary basis that even though Debtor used the Property as a residence, because he also used it as a business, Debtor was not entitled to claim a homestead exemption in the Property. As the party objecting to the validity of the claimed exemption, Mr. Mounger bore the burden of proof by a preponderance of the evidence.

See In re Reeves, 521 B.R. at 831. Although Mr. Mounger attempted to raise issues concerning the underlying judgment providing him with the lien to be avoided, the Court did not hear evidence concerning the underlying judgment, determining that the issue turned solely on the wording of the statute and Debtor's use of the Property as a residence.

Through the Motion for Rehearing, Mr. Mounger misinterprets what the Court determined and erroneously argues that the Court ruled that it was not bound by the State Court, stating that the Court has violated the *Rooker-Feldman* Doctrine.[1] In actuality, the Court ruled that with respect to interpretation and implementation of the Bankruptcy Code, federal law concerning Debtor's bankruptcy exemptions is different from state law interpretation of exemptions in a state court lawsuit. The Court made no attempt whatsoever to make a judgment concerning the underlying state court lawsuit between Debtor and Mr. Mounger.

A review of the State Court Orders also confirms that the Property was owned on the petition date by Debtor and was not divested, as argued by Mr. Mounger. The State Court Orders merely gave the Roane County Sheriff authorization to sell the Property, after it had been

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[1] As previously explained by this Court,

> [P]ursuant to the *Rooker–Feldman* doctrine, lower federal courts may not sit in review of state court judgments, *see Sill v. Sweeney (In re Sweeney),* 276 B.R. 186, 195 (B.A.P. 6th Cir.2002), and [the doctrine] precludes "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 125 S. Ct. 1517, 1521–22 (2005). In short, as recently stated by the Sixth Circuit,
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> > the federal district courts lack jurisdiction over two types of cases originating in state court: (1) cases where appellate remedies have been exhausted in state court and issues raised and decided in the state courts are presented to the federal district courts for reconsideration; and (2) cases where the federal claims asserted turn so directly on state court judgments that the federal district courts must review the state court judgments to resolve the federal claims.
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> *Johnson v. Ohio Sup.Ct.,* 156 Fed. Appx. 779, 782, 2005 U.S. App. LEXIS 25306, at *11, 2005 WL 3113513, at *4 (6th Cir. Nov. 18, 2005).

In re Nevels, No. 06-31265, 2007 WL 2042449, at *11 n.7 (Bankr. E.D. Tenn. July 9, 2007).

executed upon, in order to satisfy Mr. Mounger's judgment. In essence, the State Court Orders afforded the same relief as a repossession of personal property would have done. No matter that the Property was rightfully "in the hands" of the Roane County Sheriff, until it was actually sold, the Property was owned by Debtor on June 22, 2016, when the State Court Orders were entered and on June 24, 2016, when he filed his bankruptcy case, at which point, the automatic stay went into effect. It would have been unlawful for the Roane County Sheriff to act upon the State Court Orders and sell the Property after the bankruptcy case was initiated on June 24, 2016.

For the foregoing reasons, the Court directs that Mr. Mounger's Motion for Rehearing is DENIED.

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