

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF IOWA**

In the Matter of:

Paula M. Sylvester,

Debtor(s)

Case No. 15-01496-als7

Chapter 7

**MEMORANDUM OF DECISION  
(date entered on docket: June 6, 2016)**

Before the Court are the Chapter 7 Trustee's ("Trustee") objection to the Debtor's (Sylvester's) claim of exemption in real property and Debtor's resistance. The Court has jurisdiction of this matter under 28 U.S.C. sections 157(b)(1) and 1334. For the reasons stated below the Debtor's objection is overruled and the Trustee's Objection to Debtor's Claim of Exemption is granted.

Sylvester filed a voluntary chapter 7 petition on July 17, 2015, which stated she lived in Iowa. Sylvester's Schedule A as initially filed reflected that she owned no real estate. An interest in personal property identified as an Equitable, Future Interest, Life Estate, etc. at Schedule B-19 provides the following description: "Debtor and her four siblings are listed on her" (sic). This asset appears on Schedule C and is claimed as exempt with a value of \$0.00. On September 14, 2015, after appearing at her 341 Meeting, Sylvester filed an amended Schedule A. This document identified her fractional interest in real estate located at 915 J. Street, David City, NE. In relevant part, her amended Schedule A stated:

When the Debtor's mother passes, the Debtor and her four siblings will inherit the property. The Debtor's mother is currently in very

good health and the Debtor and her siblings have made no decisions as to what will happen to the property at this time and do not intend to do so until the Debtor's mother passes.

Debtor is a victim of domestic violence, her abuser lives in the area near her mother's residence. For these reasons, Debtor currently rents a room at her brother's residence in Iowa and intends to maintain this residency until it is safe for her to move otherwise.

Using the assessed value of the property, the amended Schedule A reflects the value of her interest at \$15,574<sup>1</sup>. Sylvester argues that her move from Nebraska was justified and she intends to return there.

Sylvester separated from her husband in 2014. She filed for a divorce at the same time she filed for bankruptcy. Having no place to turn, she moved in with her mother. Sylvester explained that she was a victim of domestic violence and she feared for her and her mother's safety. Although she described the move to her mother's as not being temporary, after residing there for approximately two weeks, she left Nebraska and moved to Iowa to live with her brother and his family. When it is safe, Sylvester plans to return to the David City home, so she has place to live and can take of her mother. Madeline Hlavac, Debtor's mother, is 84 years old, in good health, and has lived independently in her home since her husband's death in 2011. She confirmed that her daughter stayed with her for a period of time in 2014. She did not discuss any plans for Sylvester's role as her caregiver for two reasons: 1) because she did not know how long her daughter was staying and 2) when she moved in it was not intended to be permanent. Sylvester's brother, Kevin Hlavac, testified that he offered, and Sylvester accepted, the opportunity to move to his home in Iowa. He elaborated that she can stay there as long as she

---

<sup>1</sup> Although Schedule A was amended to reflect a value of \$15,574, there was no corresponding amendment to Schedule C to claim this increased amount as exempt. Notwithstanding this observation, the merits of the parties' arguments will be addressed.

wants, even permanently. Although presuming his sister would move out at some point, he did not provide any testimony as to where she may move or when that might occur. When asked whether Sylvester was the “smart, obvious or only” choice to care for their mother, he did not outright disagree with those descriptions, but he did state that two other siblings live in close proximity to Mrs. Hlavac.

A preliminary issue arises related to the appropriate exemption to be applied. While Sylvester filed bankruptcy in the Southern District of Iowa, her claim of exemption relates to real estate located in Nebraska. When a bankruptcy case is filed in a state that has opted out of the federal exemption scheme, “the debtor is entitled to...the exemptions provided by the law of the state where the petition is filed.” *Drenttel v. Jensen-Carter (In re Drenttel)*, 403 F.3d 611, 614-15 (8th Cir. 2005). Accordingly, Iowa law governs Sylvester’s exemption rights. *See id.* Sylvester’s reliance on *In re Inmon*, 137 B.R. 757 (Bankr. E.D. Ark. 1992) is therefore misplaced. *Inmon* addresses a debtor’s ability to establish a homestead exemption under Arkansas law and whether not being a head of household can disqualify a debtor from exemption under the Arkansas Constitution. *In re Inmon*, 137 B.R. at 757. That case is easily distinguished from the matter before this court:: 1) it arises under an application of Arkansas law; 2) the Arkansas Constitution includes a requirement that the exemption can only be claimed by a “head of household; and 3) the creditor argued the debtor in that case no longer qualified as a “head of household under the constitution” . *Id.* Based on these unique factual considerations under Arkansas law, *Inmon* is not determinative in Sylvester’s case.

The starting point for a determination in this case is the statutory definition of a homestead:

1. The homestead must embrace the house used as a home by the owner, and, if the owner has two or more houses thus used, the owner may select which the owner will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead.

2. As used in this chapter, “owner” includes but is not limited to the person, or the surviving spouse of the person, occupying the homestead as a beneficiary of a trust that includes the property in the trust estate.

Iowa Code §561.1 (2015). The statute identifies two elements to establish a homestead: ownership and occupancy. *Am. Sav. Bank of Marengo v. Willenbrock*, 228 N.W. 295, 298 (Iowa 1929). Neither party raises any argument regarding Sylvester’s ownership of the David City home subject to her mother’s life estate. Due to the parties’ silence on this issue, the Court finds that there is a tacit stipulation that Sylvester’s fractional interest satisfies the ownership requirement. The sole issue to be determined is the element of occupancy.

There is a presumption that a homestead exemption continues once it is acquired. *In re McClain's Estate*, 262 N.W. 666, 669 (Iowa 1935). However, the homestead interest can be lost by waiver or abandonment of the owner. *Id.* at 670. Such a determination is not favored under Iowa law. *Schaffer v. Campbell*, 199 N.W. 334, 338 (Iowa 1924). Notwithstanding Iowa’s liberal construction of homestead rights, “(w)here actual occupancy of the homestead has ceased, a presumption of abandonment arises.” *Hanrahan v. Roberts (In re Roberts)*, 450 B.R. 159, 169 (N.D. Iowa 2011) (quoting *Fardal v. Satre*, 206 N.W. 22, 24 (Iowa 1925)). “Abandonment is largely a matter of intent, to be determined on the particular facts in each case.” *Schaffer*, 199 N.W. at 338. A number of factors may be considered in determining intent, including the length of the absence, and whether belongings were left at the home or are stored there. *See id.*; *see also Charter v. Thomas*, 292 N.W. 842, 843 (Iowa 1940). Mere intent to

return to the home sometime in the future “would not impress the premises” with the character of a homestead. *White v. Danforth*, 98 N.W. 136, 137 (Iowa 1904). Further, while it may have been a party’s intent at one time to return to the alleged homestead, a court may interpret that intent to have changed based on present circumstances. *Maguire v. Hanson*, 74 N. W. 776, 777 (Iowa 1898). Sylvester bears the burden of proof to establish that her abandonment of the David City home was not permanent and that she has a “fixed and definite” intent to return to that home. *See In re Roberts*, 450 B.R. at 169 (quoting *Ill. Oldsmobile Co. v. Miller*, 202 N.W. 751, 752 (Iowa 1925)). Her intention “must ... be determined from the testimony of the parties, in the light of the surrounding circumstances.” *See Fardal*, 206 N.W. at 24.

Sylvester does not define the time period for her return to the property in Nebraska. One reason proffered was that she planned to return in order to assist in the long-term care of her mother, but Mrs. Hlavac’s testimony did not corroborate this plan. Sylvester’s brother, with whom she currently lives, testified, “she is always welcome at our home,” but he did not provide any detail as to Sylvester’s intent to return to Nebraska. The Court does not question Sylvester’s credibility on her testimony related to domestic violence involving her ex-husband. However, it is noted that the record does not include any evidence that details the current nature of any threat she would face upon returning to Nebraska. She has continuously resided in Iowa since late 2014 and is employed in that vicinity. The record does not reflect whether she has visited or returned to the David City property since she moved approximately two years ago. The David City home does not appear as a prior address on Debtor’s Statement of Financial Affairs filed with the Court. When questioned about this omission Sylvester explained that it was not listed because it was her address for such a short period of time.

Exemptions are liberally construed in favor of a debtor to confer the intended benefit. *In re Estate of Waterman*, 847 N.W.2d 560, 567 (Iowa 2014); *see also Frudden Lumber Co. v. Clifton*, 183 N.W.2d 201, 203 (Iowa 1971). Under the most generous construction, the evidence does not lead to a conclusion that entitles Sylvester to a homestead exemption in the David City home. Sylvester has only proven that she would like to live in the David City home at some future point in time, which falls short of demonstrating a homestead interest. *See White*, 98 N.W. at 137. Moreover, her previous intent to return to the David City home appears to have been supplanted by her decision to reside in Iowa. The record contains no evidence that describes a time frame or what conditions must exist for Sylvester to return to the David City home. Absent specific information on these issues the Court is required to conclude that Sylvester has not carried her burden to establish a clear intent to return and has not rebutted the presumption of abandonment.

IT IS HEREBY ORDERED that:

1. The Debtor's objection is overruled.
2. The Trustee's objection to exemption is granted.

/s/ Anita L. Shodeen  
Anita L. Shodeen  
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:  
Electronic Filers in this Chapter Case