

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of
KATHERINE S. SHEDIWY,

Case No. 87-1462-C
Chapter 7

Debtor.

ORDER ON APPLICATION TO AVOID LIEN

On December 1, 1987, a resistance to debtor's application to avoid lien impairing exempt property; filed on behalf of Michael Shediwy came on for hearing before this court in Des Moines, Iowa. Tom W. George appeared on behalf of the creditor, Michael L. Shediwy, and Joel W. Bittner appeared on behalf of the debtor, Katherine S. Shediwy. Both parties filed letter briefs, and the court considers the case fully submitted.

FACTUAL BACKGROUND

On September 14, 1982, a Decree of Dissolution was filed in the Iowa District Court for Polk County dissolving the marriage of the creditor and debtor. That decree provided, among other things, that debtor would receive the parties' homestead, located at 6916 Reite, Des Moines, Iowa, subject to a \$16,000 lien in favor of the creditor/former spouse.

On June 1, 1987, debtor filed her petition for relief under Chapter 7 of the Bankruptcy Code and listed Michael L. Shediwy as an unsecured creditor with a judicial lien claim of \$16,000

arising out of a property settlement per their 1982 Dissolution Decree. On August 10, 1987, debtor filed an application pursuant to 11 U.S.C. section 522(f) to avoid the lien on the property claimed as an exempt homestead. On August 24, 1987, creditor/former spouse filed a resistance to debtor's application to avoid the lien, asserting that pursuant to Iowa Code sections 561.16 and 598.21, debtor's homestead property was not exempt to the extent of the judicial lien's value.

DISCUSSION

The issue in this case is whether debtor can avoid a Dissolution Decree-granted judicial lien held by creditor/former spouse on the homestead debtor is claiming as exempt. The operative statutes necessary to resolve this issue are section 522(f) of the Bankruptcy Code (lien avoidance), section 561.16 of the Iowa Code (1987) (homestead exemption statute) , and section 598.21 of the Iowa Code (1987) (marriage dissolution statute)

Section 522(f) states in material part:

(f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is --

(1) a judicial lien; or

Iowa's homestead exemption statute provides:

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary, provided that persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial sale.

Iowa Code §561.16 (emphasis added).

Iowa's marriage dissolution statute in sum provides that when a dissolution of marriage is decreed, the court may make such orders in relation to the children, property, parties and maintenance of parties as is justified by the circumstances.

See Iowa Code §§598.21(1), (3), and (4). Specifically the statute states:

Upon every judgment of annulment, dissolution or separate maintenance the court shall divide the property of the parties and transfer the title of the property accordingly.

Iowa Code §598.21(1).

In the case at bar, it is undisputed that creditor has a judicial lien against debtor's claimed-as-exempt homestead. Since that lien does impair debtor's exemption, she normally could avoid it pursuant to section 522(f) (1) of the Bankruptcy Code. However, the lien in question was granted in a Dissolution Decree under the power bestowed on the state district court by Iowa Code section 598.21. The Iowa Supreme Court has construed section 598.21 as a "special declaration of statute to the contrary" of the homestead exemption granted by Iowa law. In re Marriage of Tierney, 263 N.W.2d 533, 534-35 (Iowa 1978); Kobringer v. Winter,

263 N.W.2d 892, 893-94 (Iowa 1978) . Therefore, the effect of a judicial lien granted pursuant to Iowa Code section 598.21 is to render the otherwise exempt homestead property not exempt to the extent of the value of such lien. In re Adams, 29 B.R. 452, 454 (Bankr. N.D. Iowa 1982); In re Graham, 28 B.R. 928, 931 (Bankr. N.D. Iowa 1983); In the Matter of Rainey, No. 80-1730-C, Adv. Pro. No. 80-0274, slip op. at 3-4 (Bankr. S.D. Iowa, May 11, 1980); see Boyd v. Robinson, 741 F.2d 1112, 1114 (8th Cir. 1984).

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the court concludes debtor's homestead property is not exempt to the extent of creditor Michael L. Shediwy's \$16,000 judicial lien.

THEREFORE, debtor's application to avoid lien is hereby denied.

DATED this **7th** day of January, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE