UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In re:	:	**Case No. 02-00061-CH**
LAWRENCE DANIEL	:	
STEIGERWALD,	:	
	:	**Chapter 7**
Debtor.	:	
	:	

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ORDER—MOTION TO AVOID JUDICIAL LIENS AND OBJECTION THERETO

On June 13, 2002, a telephone hearing was held on Debtor's Motion to Avoid Judicial Liens and Creditor's Objection Thereto. Paul D. Gandy represented Debtor Lawrence Daniel Steigerwald. Richard R. Schlegal II represented Creditor Patricia Steigerwald. At the conclusion of the hearing, the court took the matter under advisement. Post-hearing briefs have been received, and the court considers the matter fully submitted.

The court has jurisdiction of these matters pursuant to 28 U.S.C. §§ 157(b)(1) & 1334 and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K). Upon review of the pleadings, evidence, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 9014 and 7052.

FINDINGS OF FACT

1. Lawrence Daniel Steigerwald (hereinafter Larry) filed a voluntary petition for chapter 7 bankruptcy relief on January 7, 2002.

2. On Schedule A – Real Property, Larry scheduled a homestead described as:

> The East one-half of the Northeast Quarter of the Southeast Quarter of Section Sixteen (16), Township Seventy-two (72) North, Range Eleven.

The property is located at 1862 Carnation Blvd., Batavia, IA. Debtor values the property at $30,000.00, and indicated that it was encumbered by a secured claim of $13,353.63.

3. Larry claimed the homestead as exempt pursuant to Iowa Code § 561.16.

4. No one filed an objection to the claim of exemption.

5. Larry scheduled his former spouse, Patricia Steigerwald (hereinafter Patricia), as a secured creditor holding a claim for $10,500.00. Debtor identified her interest as a judicial lien on the homestead, which was incurred in September 1995.

6. Larry filed a petition for dissolution of marriage with the Iowa District Court for Jefferson County. The district court dissolved the parties' marriage by decree entered on September 15, 1995.

7. The portion of the dissolution decree that is relevant to this matter provides as follows:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner (Larry) is be [sic] awarded the homestead property of the parties located at R.R. #2, Batavia, Iowa and agrees to assure full and complete responsibility for the mortgage and lien entirety thereon and agrees to hold Respondent (Patricia) harmless and free from lability [sic].
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> * * *
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner (Larry) pay Respondent (Patricia) the sum of $8,000.00 as property settlement payable on or before September 15, 1996. Said sum shall carry no interest during [sic] the time period this Decree is entered, until the due date, September 15, 1996.

8. The dissolution decree also included the following statement:

> I, Patricia L. Steigerwald, hereby acknowledge that Attorney Michael R. Brown has acted only on behalf of Petitioner and has in no way provided legal representation to me in this matter and that I have had opportunity to consult other counsel regarding matters herein.

9. Both parties signed the dissolution decree, as did the attorney who represented Larry in the divorce. Patricia also signed the acknowledgement set forth in the previous paragraph.

10. On April 8, 2002, Lawrence filed a motion to avoid judgment liens held by Patricia Steigerwald, in the Iowa District Court for Jefferson County, Case # CDCV001594, and by Asset Acceptance Corp., in the Iowa District Court for Jefferson County, Case # SCSC13819.

11. On April 22, 2002, Patricia filed an objection to the motion to avoid liens. Asset Acceptance Corp. did not object to the motion.

DISCUSSION

Debtor filed the instant motion seeking to avoid judgment liens of Asset Acceptance Corp. and Patricia Steigerwald that he alleges impair his homestead exemption. Asset Acceptance Corp. did not file a timely objection to the motion. Accordingly, its lien will be avoided.

Patricia filed a timely objection to the motion. At the telephonic hearing, her counsel suggested that the underlying debt might be considered one for alimony, maintenance, or support. In her post-hearing brief, Patricia argues that her lien secures a pre-acquisition debt, pursuant to Iowa Code § 561.21(1), and therefore, Larry is not entitled to the exemption. Consequently, he should not be able to avoid her lien.

At the outset, the court notes that neither party provided the court with a great deal of assistance in determining this matter. Larry's motion did not include any citation to statutory or case authority. Patricia's objection cited a portion of the avoidance statute, but did not cite any other authority. The only evidence before the court is a copy of the dissolution decree that Patricia attached to her objection, and the court has the case file containing the petition. Neither party requested an evidentiary hearing in order that testimony could be offered.

At the telephonic hearing, Patricia's counsel identified this court's decision, In re Shediwy, No. 87-1462-C (Bankr. S.D. Iowa, Jan. 7, 1988) (Judge Hill Dec. #1), as support for his client's objection.

The statutory provision providing for avoidance of judgment liens from exempt property is found in 11 U.S.C. § 522(f). That section provides in relevant part:

> (f)(1)Notwithstanding any waiver of exemptions but subject to paragraph (3), 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--
>
> (A) a judicial lien, other than a judicial lien that secures a debt--
>
> (i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and
>
> (ii) to the extent that such debt--
>
> (I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and
>
> (II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.

* * *

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

In order for a debtor to avoid a lien pursuant to 11 U.S.C. § 522(f), the debtor must show an entitlement to an exemption under § 522(b); the property interest must be scheduled and claimed exempt; the lien sought to be avoided must impair the exemption; and, the lien must be a judicial lien. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir.1993); see also Estate of Catli v. Catli (In re Catli), 999 F.2d 1405, 11406 (9th Cir. 1993) (does not include the scheduling requirement). The 1994 amendments to the Bankruptcy Code added the requirement that the lien not secure a liability for alimony, maintenance, or support for the benefit of a former spouse or child of the debtor. The burden is on the debtor to prove that the conditions for avoidance are met. In re Streeper, 158 B.R. 783, 786 (Bankr. N.D. Iowa 1993).

As to the elements, the parties do not dispute that the lien is a judicial lien, or that the property was scheduled and claimed exempt. The issues before the court concern Larry's entitlement to the exemption and whether the lien impairs the exemption. Patricia's counsel also suggests that the claim might be considered one for support.

The court notes that the decree expressly provides that Larry will pay Patricia $8,000.00 as property settlement. There is no evidence in the record as to the length of the

marriage, the values of other assets, the amount of marital debt, the value of the personal and real property, the factors including the calculation of the property settlement payment, or the intent of the parties. Based on the lack of record, the court cannot determine that the liability is intended to be for alimony, maintenance, or support. Accordingly, the court determines that Larry is not precluded from avoiding the lien by 11 U.S.C. § 522(f)(1)(A)(i) & (ii)(II).

Next, the court considers whether Larry is entitled to exempt the property. 11 U.S.C. § 522(b)(1) permits the states to "opt out" of the federal exemption scheme and require the debtor to use the exemptions provided by state law. Iowa has chosen to opt out of the federal exemptions. Iowa Code § 627.10. Accordingly, Iowa law governs the scope of the exemptions. Owen v. Owen, 500 U.S. 305, 308 (1991); In re Norkus, 256 B.R. 298, 301-302 (Bankr. S.D. Iowa 2000).

Iowa provides an exemption for each person's homestead. Iowa Code § 561.16. The statute provides:

> The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. 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. A single person may claim only one homestead to be exempt from judicial sale. For purposes of this section, "household unit" means all persons of whatever ages, whether or not related, who habitually reside together in the same household as a group.

Iowa Code § 561.16.

Iowa courts have long recognized that the statute providing for division and disposition of marital property in dissolution cases, now Iowa Code § 598.21, constitutes a "special declaration of statute to the contrary" of the homestead exemption. Daniels v.

Morris, 6 N.W. 532 (Iowa 1880); Luedecke v. Luedecke, 192 N.W. 515 (Iowa 1923); Kobringer v. Winter, 263 N.W.2d 892 (Iowa 1978). A state court presiding over the dissolution of a marriage may enter an appropriate order disposing of the homestead.

Patricia claims that Larry is not entitled to a homestead exemption. She argues that the $8,000.00 claim constitutes an antecedent debt and under Iowa Code § 561.21(1), the homestead is still liable for the debt. She contends that both Larry's obligation to pay her the $8000.00 and her obligation to transfer her interest in the residence arose in the dissolution decree. After its entry, she deeded her interest to Larry as required by the decree. Therefore, Patricia maintains that Larry's debt to her predates his acquisition of a homestead interest in the residence. The court disagrees.

The court notes that Iowa amended the homestead exemption provision in 1981 and 1987. Prior to the 1981 revision, the section provided that, "[t]he homestead of every family, whether owned by the husband or wife, is exempt from judicial sale, where there is no special declaration of statute to the contrary, and such right shall continue in favor of the party to whom it is adjudged by divorce decree during continued personal occupancy by such party." The 1987 amendment provided that a single person can claim only one homestead as exempt.

The prior law recognized the continuance of the homestead exemption after the divorce. As such it advanced the law's purpose "to provide a margin of safety to the family, not only for the benefit of the family, but for the public welfare and social benefit which accrues to the state by having families secure in their homes." In re Estate of McClain, 67 N.W. 666, 669 (Iowa 1935). The 1981 revision expanded the coverage of

the statute to provide a homestead exemption to every person, not just every family. It follows that each spouse has a separate homestead interest in the martial residence, and the exemption in that residence will continue with the party who is awarded the residence by the decree when a marriage is dissolved. To hold otherwise would transform any debt incurred over the course of marriage into antecedent for which the homestead would be liable, and thereby undermine the safety provided to the party and any dependants of the dissolved marriage, who receive the right to occupy the residence after the divorce.

In this case, prior to the dissolution of their marriage, both Patricia and Larry had a homestead interest and claim of exemption in the marital residence. Larry received the marital residence, and he retained his homestead exemption. The record does not reveal when the parties acquired the real property in question, however, Patricia bases her claim on the property settlement obligation included in the dissolution decree. Accordingly, the court finds that Patricia's claim is not an antecedent debt under Iowa Code § 561.21(1).

Patricia further argues Larry may not claim a homestead exemption against her lien because it arises from a dissolution decree, notwithstanding the fact that the decree does not expressly provide her with a lien. Patricia cites no case authority for her position, and the court finds it dubious at best.

As early as 1866, the Iowa Supreme Court held that a homestead is not liable for an ordinary judgment for alimony. Byers v. Byers, 21 Iowa 268, 1866 WL 295 (Iowa 1866); see also Whitcomb v. Whitcomb, 2 N.W. 1000, 1004-05 (Iowa 1879) (same, citing Byers). In Byers, the Iowa court stated:

> In the divorce suit the wife obtained no special order in relation to the children (if there are any), or the property of the husband. Admitting, that under section 2537

> of the Revision, the court might have set apart the homestead to her absolutely, or for a qualified period; admitting (though not deciding) that it might have made the alimony a lien upon the homestead and other property, still it did not, but rendered a simple money judgment for the amount, directing this to be enforced in default of payment by execution in the usual manner.

Id.

The court notes that the former section 2537 became section 598.21 in the present code. Also, former sections 2485 and 2489 are now contained in section 624.23, the section on which Patricia relies as the basis for her lien. Section 624.23 provides that "judgments are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all the defendant may subsequently acquire, for the period of ten years from the date of the judgment." The Iowa Supreme Court has also held that judgment liens do not attach to exempt homestead property. Lamb v. Shays, 14 Iowa 567, 569-70 (Iowa 1863). The court deduces that the Iowa court considered the relevant law in arriving at its decision.

The court can find no case expressly overturning Byers. In fact, the Daniels case cited above for the proposition that § 598.21 is a special declaration of statute to the contrary of the homestead exemption statute indicates that Byers is good law, and does not conflict with its holding. Daniels v. Morris, 6 N.W. at 533. In fact, and quite probably in response to Byers, courts presiding over dissolutions often provide a lien on the homestead to secure payment of awards. See e.g. Id. (attachment granted by court in conjunction with annulment action valid against homestead); Luedecke v. Luedecke, 192 N.W. at 516 (lien for alimony, attorney fees, and costs of the action made a lien on all of defendant's real estate); Heminway v. Wood, 3 N.W. 794, 796 (Iowa 1879) (a judgment

for alimony was made a special lien upon the land); Slack v. Mullenix, 66 N.W. 99, 101 (Iowa 1954) (stating that the general rule in divorce actions is that the court may make alimony and support money awards, liens on the husband's realty, but holding that an installment alimony or support money judgment does not constitute an automatic lien for future unpaid installments); Kobringer v. Winter, 263 N.W.2d at 893 (a lump sum alimony award made a lien on real estate upon a Nunc Pro Tunc order to correct an omission in the order upon remand); Smith v. Brown, 513 N.W. 2d 732, 732-33 (Iowa 1994) (husband awarded property settlement secured by lien on lien on family residence); Davis v. Davis, 292 N.W. 804, 808 (Iowa 1940) (lien granted against all husband's real property). The court concludes that the dissolution decree must contain some reference to a lien encumbering real property in order to defeat an ex-spouse's proper claim of homestead exemption. Therefore, Larry is not precluded from claiming his homestead exemption.

However, the analysis does not end with a determination of whether Larry is entitled to assert the exemption against the lien under Iowa law. In re Macke, 136 B.R. 209, 210 (Bankr. S.D. Iowa 1992). "Judicial liens may be avoided under § 522(f) even though the state has defined the exempt property in such a way as specifically to exclude property encumbered by such liens." Id. at 210-11. According to the United States Supreme Court, a court must "ask first whether avoiding the lien would entitle the debtor to an exemption, and if it would, then avoid and recover the lien." Owen v. Owen, 500 U.S. at 313. In other words, the court must determine whether avoiding the lien would entitle the debtor to the exemption. In re Macke, 136 B.R. 211. In this case, the answer

is yes; but for Patricia's lien, Larry would be entitled to the homestead exemption. See contra In re Reinders, 138 B.R. 937, 943 (Bankr. N.D. Iowa 1992).

Again, the analysis does not end at this point. Section 522(f) permits the avoidance of the "fixing" of a lien on the debtor's interest in exempt property. If the lien attached prior to or simultaneously with the debtor's acquisition of the interest, then the lien does not fix "on an interest of the debtor." Farrey v. Sanderfoot, 500 U.S. 291, 298 (1991).[1]

The dissolution decree does not secure Patricia's $8,000.00 award with a lien. She relies on Iowa Code § 624.23 as the basis for her lien. The court additionally notes that Iowa Code § 624.24 provides:

> When the real estate lies in the county wherein the judgment of the district court of this state or of the circuit or district courts of the United States was entered in the judgment docket and lien index kept by the clerk of the court having jurisdiction, the lien shall attach from the date of such entry of judgment, but if in another it will not attach until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies.

Consequently, under Patricia's theory, her lien did not attach to the property prior to or simultaneously with the creation of Larry's interest in the property.[2] Larry already had an interest in the property prior to her lien.

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[1] Prior to Farrey v. Sanderfoot, in a split panel decision, the Eighth Circuit in interpreting 11 U.S.C. § 522(f) in relation to Minnesota law, held that the lien created by the family court was not avoidable because it simply recognized and provided a remedy to enforce a pre-existing property right in the marital home.

[2] In the case of In re Macke, 136 B.R. at 211, the court stated: "Iowa case law has never addressed whether a lien granted in a divorce decree fixes before, simultaneously, or after a joint tenancy is converted to a fee simple interest. At the risk of resorting to common sense, it appears the lien fixed on the debtor's fee simple interest simultaneously to the creation of the fee simple interest because both were brought into legal existence in the same decree. Nothing in the decree would indicate a temporal order within which the lien and fee simple interest were created and the joint tenancy extinguished." However, in a wrongful death action brought by a judgment creditor seeking to impress the judgment lien on real property belonging to the judgment creditor, the Iowa Supreme Court provided some insight into the transfers made

As noted above, in Iowa, judgment liens do not attach to exempt homestead property. See Lamb v. Shays, 14 Iowa at 569-70. However, judgment liens do provide a cloud on the title of real property located within the state, and create headaches for title examiners and parties attempting to sell their homes. Accordingly, the court will grant Larry's motion to avoid Patricia's lien.

ORDER

IT IS ACCORDINGLY ORDERED that Lawrence Daniel Stiegerwald's Motion to Avoid Liens is GRANTED.

FURTHER, The judgment liens held by Asset Acceptance Corp. and Patricia Steigerwald are avoided to the extent that they encumber the debtor's homestead property.

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RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE

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in a dissolution of marriage. The Iowa Supreme Court stated that "a joint tenant owns an undivided interest in the entire estate to which is attached the right of survivorship." Brown v. Vonnahme, 343 N.W. 2d 445, 451 (Iowa 1984). "The dissolution court in dividing the property merely removed any interest [husband] had in the homestead property." Id. It deleted the husband's interest and apparently did not create a new interest in the wife. Id. Regardless, of the extent, if any, that this authority effects the analysis of In re Macke, it has no effect on the current case.