

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of  
JONI DAWN McNEW,

Case No. 87-1666-C  
Chapter 7

Debtor.

ORDER ON MOTION TO AVOID LIEN

On December 1, 1987, an objection to debtor's motion to avoid lien impairing exempt property filed on behalf of Donald D. McNew came on for hearing before this court in Des Moines, Iowa. Mark A. Otto appeared on behalf of the creditor, Donald D. McNew, and R. Eugene Knopf appeared on behalf of the debtor, Joni Dawn McNew.

FACTUAL BACKGROUND

On June 10, 1985, a Decree of Dissolution was filed in the Iowa District Court for Jasper County dissolving the marriage of the creditor and the debtor. The decree provided, among other things, that debtor would receive the parties' homestead, located at 616 W. 5th St. S., Newton, Iowa, subject to a \$7500 plus interest lien in favor of creditor/former spouse.

On June 23, 1987, debtor filed her petition for relief under Chapter 7 of the Bankruptcy Code and listed Donald D. McNew as a secured creditor with a claim of \$7500 arising out of a property settlement per their 1985 Dissolution Decree. On October 1.3, 1987, debtor filed a motion pursuant to

11 U.S.C. section 522(f) (1) to avoid the lien impairing her claimed-as-exempt homestead property. On October 27, 1987, creditor/former spouse filed an objection to debtor's motion to avoid lien, asserting that pursuant to In re Adams, 29 B.R. 452 (Bankr. N.D. Iowa 1982), debtor's otherwise exempt 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 the 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 ....

11 U.S.C. §522(f) (1).

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 provided 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, 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).

Creditor's reliance on In re Adams for the proposition that debtor's otherwise exempt homestead property is not exempt to the extent of creditor's judicial lien value is well founded. That case is directly on point with the case at bar and this court's decision is consistent with the Adams decision.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the court concludes debtor's homestead property is not exempt to the extent of creditor Donald McNew's \$7500 judicial lien.

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

Signed this 8<sup>th</sup> day of January, 1988.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE