

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION**

**IN RE: RICKY LYNN ELLISON, Debtor**

**No. 2:17-bk-70822  
Ch. 13**

**ORDER SUSTAINING TRUSTEE'S OBJECTION TO EXEMPTIONS**

The debtor filed this chapter 13 case on March 31, 2017. On Schedule C of his petition, the debtor claimed a homestead exemption under the Arkansas Constitution, Article 9, sections 3 and 4, in property identified as 1238 Hilltop Drive, Alma, Crawford County, Arkansas. On the debtor's amended Schedule A, the debtor stated what he believed to be his interest in the property:

Debtors are claiming as homestead the house plus 1 acre along with contiguous [sic] raw land of 10.79 acres and 26.31 acres. The value below is taken from the assessment of Crawford County valuing the house and 1 acre at \$102,450, the contiguous [sic] 10.79 acres at \$9,700 and the 26.31 acres at \$5,500. Dolores Gaines Edwards holds a life estate in what the Debtor believes to be the mineral rights to the property on the 27.2 acres (26.31 acres listed above) parcel of property.

On May 22, 2017, the chapter 13 trustee objected to the debtor's claimed exemptions as exceeding the amount allowed under the Arkansas Constitution. Specifically, the trustee objects to the debtor's claim of exemption in the 26.31 acre parcel; the parties have stipulated that the debtor is entitled to claim the Arkansas constitutional exemptions on the other listed property. The trustee's objection is currently set for hearing on November 8, 2017. On October 10, 2017, the parties submitted to the Court their *Stipulations of Fact and Legal Argument Regarding Trustee's Objection to Claimed Exemptions*. Based on the stipulated facts and exhibits presented by the parties, the Court sustains the trustee's objection and denies the debtor's claimed exemption as more fully described below.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(B). The following opinion

constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014.

According to the parties' stipulations, Dolores and Rhuel Edwards conveyed the 26.31 acre parcel to the debtor and his non-filing spouse by Quitclaim Deed. The deed was filed in the Crawford County records on February 19, 2001. The granting clause states that Dolores and Rhuel Edwards grant, sell, and quitclaim to the debtor and his spouse "all of our right, title and interest in and to the following described real estate lying in the County of Crawford, and State of Arkansas, to wit:" [legal description omitted]. The legal description includes two "less and except" paragraphs and the following paragraph:

This conveyance is specifically subject to a life estate in the Grantors, Dolores Goines Edwards and Rhuel D. Edwards, which is herein retained. The Grantors also specifically retain all oil, gas, and other mineral rights herein.

Following the legal description is the habendum clause, which states: "To have and to hold the same unto the said GRANTEES and unto their heirs and assigns forever, with all the appurtenances thereto belonging."

The issues before the Court are whether the reservation of a life estate that is contained within the legal description is a sufficient reservation of grantor rights and, if so, whether the debtor can claim a homestead interest in a remainder interest. The debtor's argument is that the grantors' reservation of a life estate does not appear in either the granting clause or the habendum clause, thus creating an ambiguity. The debtor requests the Court to find either that (1) the granting clause controls and there is no life estate (and, presumably, no retention of mineral interests), or (2) the Court should look to the intent of the parties concerning a retention of a life estate and mineral interests. The trustee's argument is three-fold: (1) the debtor is not entitled to claim an exemption in a remainder interest under Arkansas law; (2) the debtor should not be allowed to introduce parole evidence to support an alleged waiver of the life estate; and (3) the grantors' reservation

of the life estate and mineral interests were valid.

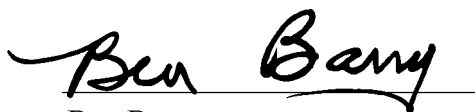
The debtor would like the Court to look to the intent of the parties concerning the retention of a life estate. According to Arkansas law, when interpreting a deed, primary consideration should be given to the intent of the grantor. *Harrison v. Loyd*, 192 S.W.3d 257, 263 (Ark. Ct. App. 2004). Further, the Arkansas courts recognize that the examination should be from the deed's "four corners for the purpose of ascertaining that intent . . . ." *Id.* The grantor's intention should be gathered "not from some particular clause, but from the whole context of the agreement." *Gibson v. Pickett*, 512 S.W.2d 532, 535-36 (Ark. 1974). The debtor argues that the reservation of the life estate appears neither in the granting clause nor the habendum clause. However, the Court disagrees.

As recognized by the parties, Black's Law Dictionary defines "granting clause" as the words that transfer an interest in a deed. The granting clause in the Quitclaim Deed before this Court is that part of the deed in which Dolores and Rhuel Edwards granted, sold, and quitclaimed to the debtor and his spouse all of their right, title, and interest *to the following described real estate* in Crawford County. The "described real estate" is the legal description of the property transferred, including the two "less and except" paragraphs and the statement that the conveyance was subject to a life estate in Dolores and Rhuel Edwards. In other words, the reservation of a life estate was part of the granting clause in this deed. It was not, as the debtor suggests, a free floating clause that appears in neither the granting clause nor the habendum clause. The Court finds that the Quitclaim Deed is clear and contains no ambiguities; the debtor's interest in the 26.31 acres is a remainder interest subject to the life estate of Dolores Edwards (Rhuel Edwards is deceased).

Because the debtor holds only a remainder interest in the 26.31 acres, the Court finds that he is not entitled to a homestead exemption under Arkansas law. The party that holds the life estate is entitled to the homestead exemption. *Middleton v. Lockhart*, 43 S.W.3d 113, 119 (Ark. 2001) (citing *Brooks v. Goodwin*, 186 S.W. 67 (Ark. 1916)). Because the

Court finds that the debtor is not entitled to claim a homestead exemption in the 26.31 acres, the Court sustains the trustee's objection to the debtor's claimed exemptions.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Ben Barry". The signature is written in a cursive style with a horizontal line underneath the name.

Ben Barry  
United States Bankruptcy Judge  
Dated: 10/13/2017

cc: Donald Brady  
Joyce B. Babin