

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

IN RE: BOBBY J. CHAMBERS AND
SHERRY J. CHAMBERS

CASE NO. 4:02-bk-72834M
CHAPTER 7

ORDER

On May 3, 2002, Bobby J. Chambers and Sherry J. Chambers (“Debtors”) filed a voluntary petition for relief under the provisions of chapter 7 of the United States Bankruptcy Code. Richard L. Cox was appointed Trustee.

The Debtors have claimed their residence at 1802 Peachtree Street, Nashville, Arkansas, as an exempt urban homestead pursuant to Article 9, Section 5 of the Arkansas Constitution and also as an exempt rural homestead pursuant to Article 9, Section 4. The Trustee objected to the claim of exemption under both cited sections of the constitution, claiming that the two sections are mutually exclusive. The Trustee argues that the homestead is urban and, therefore, should be limited to one-fourth of an acre without regard to value, pursuant to the state constitution’s provisions. At trial, the Debtors argued that the homestead is rural in character and should be governed by Article 9, Section 4 of the Arkansas Constitution, which permits a claim of homestead of up to 80 acres without regard to value.

After a hearing upon the merits in Texarkana, Arkansas, on January 16, 2003, the Court took the matter under advisement. In addition to evidence submitted at trial, the Court

conducted a visual inspection of the property at issue.

The matter before the Court is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B)&(0)(2000), and the Court has jurisdiction to enter a final judgment in this case. The following shall constitute the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

FACTS

The testimony at trial established that the Debtors' homestead consists of a single family residence located at 1802 Peachtree Street outside the city limits of Nashville, Arkansas. The Debtors' attorney stated that the residence is situated on a tract of land which is approximately 3.3 acres in area. The property lies on the south side of State Highway 24 and 0.3 miles east of the city limits of Nashville, Arkansas.

The stop light at the center of Main Street is 1.7 miles from the property, and the fire and police departments are 1.2 miles away. Nashville City Hall is 1.2 miles and the post office is 1.4 miles from the property. A mobile home park containing 20 mobile homes is located one-tenth of a mile east and on the opposite side of the highway from the subject property. Also, on the opposite side of the highway and several hundred yards to the east is a subdivision known as Fox Run with eight or ten relatively new dwellings. A Jehovah's Witnesses Church is located directly across the street from the residence, and the nearest grocery store is within two miles.

A modular home is situated on the northwest portion of the property adjacent to the highway. The modular home is occupied by a relative of the Debtors. Next door, on the east

side of the property, is a full service garage. One hundred yards east is a body shop contained in a metal building. On the day of the Court's visual inspection, several automobiles in various degrees of disrepair were parked around the building. On the west side of the tract closer to town is a tract of undeveloped woods which slopes from the highway in a southern direction.

The residence is serviced by 911 emergency service originating in Nashville. The city fire department is a volunteer fire department with one regular employee. Although the rural water association has a line along the front of the property, the Debtors have elected not to obtain water from that source and instead receive water from a nearby well. Electricity is provided by SWEPCO, and natural gas is provided also. The property has no sewer services but has a septic system.

The zip code for the Debtors' mail includes Nashville and a part of Howard County not within the Nashville city limits. The property adjoining the subject on the south is used for agricultural purposes. The Debtors testified that the property located approximately one mile east of the residence is devoted exclusively to agricultural purposes. Upon inspection, the Court observed that much of the agricultural activity further east of the residence on Highway 24 concerns the raising of cattle and poultry.

The title to the property in question is held by Mrs. Chambers and her mother as joint tenants with right of survivorship.

DISCUSSION

Section 522 of the Bankruptcy Code allows a debtor to claim exemptions pursuant to

state law applicable on the date the petition is filed. 11 U.S.C. § 522(b)(2)(A) (2000). With regard to homestead exemptions, section 16-66-217 of the Arkansas Code permits a choice of exemptions provided by the Constitution of the State of Arkansas. Ark.Code Ann. § 16-66-218(b)(3) & (4) (Michie Supp. 2001). Article 9, section 4 of the Arkansas Constitution provides that:

[t]he homestead outside any city, town or village, owned and occupied as a residence, shall consist of not exceeding one hundred and sixty acres of land, with the improvements thereon, to be selected by the owner, provided the same shall not exceed in value the sum of twenty-five hundred dollars, and in no event shall the homestead be reduced to less than eighty acres, without regard to value.

Ark. Const. art. IX, § 4.

Article 9, section 5 of the Arkansas Constitution further provides:

[t]he homestead in any city, town or village, owned and occupied as a residence, shall consist of not exceeding one acre of land, with the improvements thereon, to be selected by the owner, provided the same shall not exceed in value the sum of two thousand five hundred dollars, and in no event shall such homestead be reduced to less than one-quarter of an acre of land, without regard to value.

Ark. Const. art. IX, § 5.

_____The Court has previously considered the issue of whether a homestead is rural or urban in nature. See In re Oldner, 191 B.R. 146, 150 (Bankr. E.D. 1995) (holding property outside city limits was urban because accessible to city conveniences); In re Evans, 190 B.R. 1015, 1023 (Bankr. E.D. Ark. 1995) (stating that property outside city limits was urban), aff'd, 108 F.3d 1381 (8th Cir. 1997); In re Weaver, 128 B.R. 224, 228 (Bankr. W.D. Ark.

1991) (ruling that property platted as a subdivision was rural in nature).

Outlining the principles to apply in determining whether a property is rural or urban in character, the Oldner opinion stated the following:

The rule is well established in Arkansas that homestead laws are remedial and should be liberally construed to effectuate the purpose for which they are intended. Smith v. Flash T.V. Sales & Serv., Inc., 17 Ark. App. 185, 190, 706 S.W.2d 184, 187 (1986). The party objecting to the claim of exemption has the burden of proving that the exemption is not properly claimed. Fed.R.Bankr.P. 4003(c).

The question of whether a homestead claimed as exempt constitutes a rural or urban homestead must be determined based on the facts of each case and must be considered in light of the intent of the constitutional provisions allowing the exemption. King v. Sweatt, 115 F.Supp. 215, 220 (W.D. Ark. 1953); Farmers Coop. Ass'n v. Stevens, 260 Ark. 735, 736-37, 543 S.W.2d 920, 921 (1976). The rural/urban issue is not “altogether controlled by the corporate limits,” thus property located outside the corporate limits may be determined urban. First Nat'l Bank v. Wilson, 62 Ark. 140, 143, 34 S.W. 544, 544 (1896). In Wilson, the Arkansas Supreme Court stated:

[T]here may be towns that have overgrown their corporate limits, so that one may dwell within the town, and still be outside the corporate limits. In such cases it may be that the courts would look to the facts to determine whether the homestead claimed was located in town or country, and not be altogether controlled by the corporate limits.

Wilson, 62 Ark. at 143, 34 S.W. at 544.

No precise legal definition is provided in the case law for the terms “city, town or village,” as used in the Arkansas Constitution in describing the two types of homestead exemptions. The Arkansas Supreme Court has determined that the “words were used in the Constitution in their popular sense.” King v. Sweatt, 115 F.Supp. at 220. The Arkansas Supreme Court discussed the popular meaning of the word “town” in an analogous context in Southeast Ark. Levee Dist. v. Turner, 184 Ark. 1147, 1150, 45 S.W.2d 512, 514 (1932). In that case the issue was whether certain property was situated in the town of McGehee, Arkansas. The residences were all of a permanent and substantial character and the residents engaged in “pursuits related to and carried on in the city of McGehee.” Turner, 184 Ark. at 1150, 45 S.W.2d at 513. In addition, the occupants were furnished with gas, water, electric, and telephone services from the city of McGehee. In holding that the area was within the town of McGehee, even though outside the physical corporate

limits of McGehee, the Court stated:

We have here a compact community of 42 houses, occupied by persons who may fairly be said to dwell together, and who are separated from a city of the second class only by the city's incorporation line, and who have all the conveniences which proximity to the city affords, and whose property is assessed for general taxation as addition to this city.

...

The city of McGehee has grown in various directions and is now, and was at the time the assessments in question were made, a larger town than its corporate limits indicate. In other words, many persons are residents of the town of McGehee within the popular meaning of the word "town" who do not reside within the corporate limits thereof.

Turner, 184 Ark. at 1152-53, 45 S.W.2d at 514. Property will be determined to be urban if it is in a community that contains the common attributes and conveniences of a town or city. See Bank of Sun Prairie v. Hovig, 218 F. Supp. 769, 785 (W.D. Ark. 1963); King v. Sweatt, 115 F.Supp. 215 (W.D. Ark. 1953); Farmers Coop. Ass'n v. Stevens, 260 Ark. 735, 739, 543 S.W.2d 920, 923 (1976). Numerous factors have been considered by the courts in determining the nature of a homestead. E.g., Bank of Sun Prairie v. Hovig, 218 F.Supp. at 785 (finding rural homestead where property is located in unincorporated community with no local fire protection, public schools, sewer systems, public waterworks, street lights, or public sidewalks and where cost of paving the road was partly borne by the landowners); King v. Sweatt, 115 F.Supp. at 215 (finding rural homestead where property is located in unincorporated community with no post office, school, church, or other improvements except filling stations, tourist courts, and one or two "country stores").

In re Oldner, 191 B.R. at 148-49.

When considered in light of applicable law, the facts in this case compel the conclusion that the nature of the Debtor's homestead is urban. As in In re Oldner, this property has immediate access to all of the common attributes and conveniences of an urban area. The distance to all of the urban amenities available in Nashville, Arkansas, are either

adjacent to the property or accessible by a vehicle in less than ten minutes.¹

Therefore, the property is determined to be urban in character and the area of this homestead may not exceed one-fourth acre without regard to value as provided by Article 9, Section 5 of the Arkansas Constitution.

IT IS SO ORDERED.



THE HON. JAMES G. MIXON
U. S. BANKRUPTCY JUDGE

DATED: 03-08-03 _____

cc: Richard L. Cox, Trustee
Billy Moritz, Esq.
Debtor

¹However, this case is distinguishable from Oldner in one important aspect: the Debtor only owns an undivided-half interest in the property as a joint tenant with her mother. Not only is the Debtor entitled to select her homestead acreage but the co-tenant's interest must also be recognized as not belonging to the estate.