

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION**

IN RE: DAVID WAYNE LONG, Debtor

**No. 6:20-bk-70427
Ch. 13**

**ORDER SUSTAINING OBJECTION TO EXEMPTIONS AND
DENYING MOTION FOR RELIEF FROM STAY**

Before the Court are the *Motion for Relief from Automatic Stay and for Abandonment* [motion for relief] filed by the estate of Ronald D. Heird, by and through its personal representative Ronald D. Heird, II [Heird] on March 30, 2020; the debtor's response to the motion for relief filed on April 21, 2020; and the *Objection to Claimed Exemptions* [objection to exemptions] filed by Heird on May 13, 2020. The Court held a video hearing on July 28, 2020 [July 28 hearing]. Marc Honey appeared on behalf of the debtor. Matthew A. Kezhaya appeared on behalf of Heird. Michael E. Sanders appeared on behalf Cara Long. James C. Hunt appeared on behalf of Jack W. Gooding, the chapter 13 trustee.¹ At the conclusion of the hearing, the Court took the matters under advisement. For the reasons stated below, the Court sustains Heird's objection to the debtor's exemptions and denies Heird's motion for relief.

Jurisdiction

The Court has jurisdiction over this matter pursuant to 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) and (G). This order contains findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

¹ Mr. Sanders and Mr. Hunt observed but did not actively participate in the hearing.

Background

The debtor has owned Precision Performance Auto Body Repair, LLC [Precision Performance] for approximately twenty-five years. Precision Performance is an auto repair and restoration business located on .69 acres of property owned by the debtor at 141 Marion Anderson Road, Hot Springs, Arkansas. On May 4, 2017, Ronald D. Heird [Mr. Heird]² sued both the debtor and Precision Performance in the Circuit Court of Garland County, Arkansas [state court], alleging that they failed to perform restoration work on Mr. Heird's vehicle after Mr. Heird had paid thousands of dollars for the work. On August 9, 2017, Mr. Heird obtained a default judgment against the debtor and Precision Performance in the amount of \$58,878 [state court judgment]. On May 13, 2019, the state court issued a writ of execution. On July 12, 2019, the sheriff levied 141 Marion Anderson Road. A judicial sale of the property was subsequently scheduled for July 31, 2019. On July 27, 2019, the state court entered an order staying the sale because the debtor had filed a motion to set aside the default judgment that the court had not yet resolved and the court questioned whether other parties could be holding interests in the property. On October 31, 2019, the state court denied the debtor's motion to set aside the default judgment. On January 16, 2020, the state court scheduled a hearing for February 18, 2020, to address the disposition of the property.

On February 17, 2020, the debtor filed a skeletal chapter 13 petition. On March 13, 2020, the debtor filed his plan and schedules. On Schedule C, the debtor claimed a homestead exemption under the Arkansas Constitution, Article 9, sections 3 and 5, in property identified as 141 Marion Anderson Road, Hot Springs National Park, Arkansas, Garland County 71913 and described parenthetically as the debtor's "homestead and place of business." The property is not encumbered by a mortgage and, according to the debtor's Schedule C, has a value of \$331,700. On March 30, 2020, Heird moved for relief from the stay for cause, alleging that the stay should be lifted because the debtor filed his

² The Court references Ronald D. Heird as "Mr. Heird" to differentiate him from his son and the personal representative of his estate, Ronald D. Heird, II.

bankruptcy petition “the day before the hearing to delay the hearing and to deny [Heird] timely payment on the judgment.” On May 13, 2020, Heird objected to the debtor’s exemptions, alleging that the debtor has never lived at the property he is claiming as his homestead—and certainly not while he was married or the head of a family—and therefore, the debtor is not entitled to claim a homestead exemption under the Arkansas Constitution.

Summary of the Parties’ Positions

The debtor contends that 141 Marion Anderson Road [the shop] was his home when he filed his bankruptcy petition on February 17, 2020. He maintains that he properly claimed a homestead exemption in the shop pursuant to the Arkansas Constitution.

While the debtor, who was divorced in 2018, acknowledges that the Arkansas homestead exemption is available only to claimants that were married or the head of a family at the time the homestead was established, the debtor nonetheless argues that he qualifies for the exemption based on his assertions that he was married when he established the shop as his permanent home in July 2016, and became the head of a family when his girlfriend’s son, Justin Koonce [Justin],³ moved into the shop with him approximately one year ago. Because the debtor says that the shop became his homestead in 2016, he argues that the state court judgment that Heird obtained on August 9, 2017, did not become a lien on the property under Arkansas law.

Heird asserts that his state court judgment became a lien on the shop because it was not the debtor’s homestead prior to the lien attaching on August 9, 2017—or ever. Rather, Heird alleges that the debtor resided at 176 Copper Mountain Loop, Hot Springs, Arkansas [Copper Mountain Loop] from July 2016 until January 2019, at which time the debtor moved in with his girlfriend, Marcy Lawson [Marcy], at her home. Heird contends

³ The Court refers to certain parties and witnesses by first name not out of disrespect but to be consistent with the names used by the litigants during the July 28 hearing or to distinguish witnesses sharing a last name.

that the debtor still lived with Marcy on the date he filed his current bankruptcy case on February 17, 2020, and disputes that Marcy's son, Justin, is the debtor's dependent.

Evidence

The parties agree that the debtor and Cara Long [Cara] separated on May 8, 2016, and divorced on March 16, 2018—and disagree about almost everything else. The debtor's seventeen-year-old daughter, Taylor Long [Taylor], testified that when her parents first separated, she remained at the Copper Mountain Loop home—where she and her parents had lived as a family for the prior seven years—and her parents took turns coming back to the home to stay with her until July 2016. Taylor said that in July 2016, her mother rented an apartment and her father—the debtor—continued to live at the Copper Mountain Loop home until it was foreclosed upon in January 2019.

According to Taylor, after the foreclosure of the Copper Mountain Loop home in January 2019, her father moved in with his girlfriend, Marcy. Taylor also testified that the debtor has never lived at the shop and the only overnight visits that she has had with him since he moved out of the Copper Mountain Loop home have taken place at Marcy's home, where Taylor keeps toiletries and has her own bedroom. Taylor said that during the school year, including in February of this year, she had overnight visitations with her father at Marcy's home once or twice a week. Taylor testified that she has never had an overnight visit with her father at the shop—a fact that no other witness disputed.

However, Taylor goes to the shop on a regular basis to see her father, sometimes picking up dinner beforehand for the two of them to eat at the shop. On other occasions, she and her father have dinner at Marcy's home. Taylor testified that her father's bedroom at the shop was recently constructed, stating that she first saw a bed at the shop in March 2020. However, she admitted on cross-examination that she did not know the exact date of the bedroom construction.

The debtor's ex-wife, Cara, also testified that the debtor has never lived at the shop. She stated that from May to July 2016, the debtor stayed at his mother's house when he was not with Taylor at the Copper Mountain Loop home. Cara testified that she rented an apartment for herself on July 2, 2016, where she still resides. Like Taylor, Cara said that the debtor continued to live at the Copper Mountain Loop home from July 2016 until the home was foreclosed upon in January 2019—which is consistent with paragraph 10 of the parties' March 16, 2018 divorce decree that provides:

The marital residence of the parties shall be sold with the opening bid to be equal to the payoff of the mortgage as of the date of the sale. Division of the net proceeds, if any, shall be 55% to the Plaintiff [Cara] and 45% to the Defendant [debtor] based on the Defendant's [debtor's] failure to timely pay the monthly mortgage payments for 13 months despite living in the marital residence.

Heird Ex. 2. Cara also testified that she drove Taylor to and from the Copper Mountain Loop home for visitation with the debtor until Taylor was old enough to drive on her own and, on one occasion after the foreclosure in January 2019, Cara picked Taylor up from visitation with the debtor at Marcy's home. Cara never picked Taylor up or dropped her off at the debtor's shop.

The debtor testified that when he and Cara separated in May 2016, he moved into the shop and has lived there ever since—a contention that conflicts with the debtor's answer to Part 1, Question 2 of the Statement of Financial Affairs [SOFA] that the debtor filed on March 13, 2020. Heird's counsel asked the debtor to explain why, if he has lived at the shop since May 2016, did he state on his SOFA that he had lived at 176 Copper Mountain Loop from June 2007 to June 2018. The debtor responded that "June 2018" was a "typo" and his SOFA should have stated that he lived at 176 Copper Mountain Loop from June 2007 to June 2016.⁴ The debtor testified that although he lives at the shop, he stays

⁴ The Court takes judicial notice of the fact that the debtor's statement on his SOFA that he lived at 176 Copper Mountain Loop from June 2007 to June 2018 is consistent with the statement that the debtor made on his previous voluntary petition in case 6:18-bk-71168 that he lived at 176 Copper Mountain Loop on April 30, 2018. *See*

overnight at Marcy's home on the weekends and sometimes on week nights.

The debtor said that Cara continued to live in the Copper Mountain Loop home after the separation and, when it was the debtor's turn to stay at the home with Taylor, Cara left Copper Mountain Loop and stayed at her father's house. When the debtor was asked to explain why, then, the divorce decree stated that he had failed to "pay the monthly mortgage payments for 13 months despite living in the marital residence," he said that the decree was referring to non-consecutive missed mortgage payments that had occurred *prior* to his separation from Cara on May 8, 2016—claiming that he had given Cara money to pay the mortgage while they were both still living at Copper Mountain Loop, but that Cara had kept the funds to rent an apartment so that she could leave him. Upon further questioning by Heird's counsel, the debtor confirmed that Cara had subsequently rented an apartment. Despite his own contradictory statements regarding where Cara lived following their separation, the debtor said that he believes the reason that Taylor testified as she did (that her mother lived in an apartment and the debtor lived in the Copper Mountain Loop house after their separation) was because Taylor is upset with him for falling behind on child support payments and not allowing her to drive the car that he bought her when she goes to her mother's.⁵

The debtor testified that he hired a contractor in July 2016 to help him add a bedroom to the shop because he intended to live there permanently.⁶ The debtor called two

Fed. R. Evid. 201; *In re Penny*, 243 B.R. 720, 723 n.2 (Bankr. W.D. Ark. 2000) ("a [c]ourt may take judicial notice of its own orders and of records in a case before the court, and of documents filed in another court.").

⁵ Taylor was not asked about the alleged dissension with her father but neither her demeanor nor the substance of her testimony suggested any ill will on her part.

⁶ The debtor also introduced several photographs that he initially said were all taken in July or August 2016 and showed various stages of the construction of his bedroom at the shop. However, the debtor later testified that some of the photographs were actually taken in the summer of 2019—in particular, the debtor testified that Debtor's

witnesses—Jeff King [King] and Tracy Caldwell [Caldwell]—in support of his own testimony that he added the bedroom in July 2016 and has lived at the shop ever since. King testified that he and the debtor have known each other since childhood. King said that he visits the debtor’s shop frequently—sometimes as often as once per week but at least once per month—and that the debtor has done work on King’s jet boat. King testified that in July 2016, the debtor hired him to finish a construction job at the shop—specifically, to perform drywall and paint work on the debtor’s “sleeping quarters.” King had no documentation to substantiate the date that he did the job for the debtor because “usually [he] wouldn’t give a receipt for a friend of [his] for a cash deal.” At first, King testified that he could not say where the debtor was actually living during the summer of 2016, but later said that the debtor has lived at the shop and nowhere else since the summer of 2016. When asked on cross-examination about his understanding of the debtor’s relationship with Justin, King responded that he knew that Justin stayed at the shop and that the debtor “watched after him,” but King did not know why that was the case. King testified that he has only met Justin a few times but said he has seen Justin doing work around the shop and confirmed that he appeared able-bodied. King estimated Justin’s age as fifteen or sixteen years old.

Exhibit 17 showed the completed construction on his bedroom at the shop but said that the photograph was taken in 2019 because Marcy—and a full-sized bed that had originally been Marcy’s—were in the photograph. Because the debtor never gave a clear answer regarding when most of the photographs were taken (with the exception of Debtor’s Exhibit 17, which the debtor eventually said was taken in 2019), the photographs did little to support the debtor’s contention that he built the bedroom in the shop in the summer of 2016.

Caldwell has been employed by the debtor at Precision Performance since 2015.⁷ He testified that he believes that the debtor separated from his wife in 2015 or 2016, renovated the shop around the same time, and moved into the shop in 2016. Caldwell testified that Justin moved into the shop “at least a couple of years ago,” and said that Justin runs errands for the debtor. When asked whether the debtor helps Justin out with “money or food or anything else,” Caldwell said he did not know. He said the debtor’s relationship with Marcy is the reason that Justin lives at the shop.

Marcy and the debtor began dating a few weeks after meeting in December 2018 when Marcy took her car to the debtor’s shop for repairs. She said that when she and the debtor first met, he told her that he was living at the shop. Marcy testified that the debtor stays overnight at her house on weekends and sometimes spends nights during the week. According to Marcy, the debtor does not live with her because she has a seventeen-year-old daughter and “does not think it is the best idea for him to live there all the time until she is an adult.” Nonetheless, Marcy’s home contains the debtor’s dining room table, his dresser, some of his home decorations, and his bed.⁸ Taylor’s bedroom furniture is also at Marcy’s. Marcy estimated that Taylor has had three to four overnight visits with her father at Marcy’s home in the past year and a half. Marcy said that Taylor last stayed overnight at Marcy’s home on February 9, 2020.

⁷ In addition, Caldwell testified that he has known Taylor since she was born and that he has seen her come to the shop to see her father “off and on.” Although Caldwell could not say how often Taylor visits her father at the shop, he testified that her visits to the shop in 2020 have occurred with the same frequency as they did four or five years ago—which is some indication that Taylor’s relationship with her father is not as strained as the debtor testified.

⁸ Marcy testified that she and the debtor exchanged beds—she took the debtor’s queen-sized bed to her home and the debtor took Marcy’s full-sized bed to his shop. Marcy also testified that Justin sleeps on the full-sized bed that was moved from her house to the shop—which conflicts with the debtor’s testimony that Debtor’s Exhibit 17 was a photograph of Marcy’s full-sized bed in his own bedroom at the shop. Based on this contradiction, the Court is left to wonder whether the only bed at the shop is the one that came from Marcy’s house and, if so, whether the bed is Justin’s or the debtor’s.

Marcy testified that her son, Justin, moved into the shop with the debtor in October or November 2019. Marcy said that Justin has epilepsy and, as a result, needs constant supervision by an adult in case he has a seizure.⁹ Because she works Monday through Friday from 7:15 a.m. to 5:30 or 6:00 p.m., Marcy cannot be with Justin during the day. When asked why Justin does not stay with her at night, she said that it would be a “hardship” and “very inconvenient” for her to wake Justin up early enough to drive him to the debtor’s shop before she went to work each day.¹⁰ She said that she has seen Justin help out at the shop by sweeping and taking out the trash and that she believes doing work around the shop is good for Justin because it makes him feel useful. She testified that the debtor may give Justin “a little money here and there for personal things and food and groceries” but that she and the debtor “both support him.” She said that if Justin were not able to live with the debtor, she would have to hire someone to stay with him full-time and she cannot afford to do that. Marcy said Justin is thirty-one-years-old and, to date, has been unable to qualify for disability benefits.¹¹

Prior to Marcy testifying to Justin’s actual age—which occurred well into the July 28 hearing—the testimony of other witnesses had created the impression that Justin was significantly younger than thirty-one. As a result, after Marcy testified that Justin was thirty-one, Heird’s counsel requested on the record that Marcy provide him with photographs of Justin by text message. During a recess, the Court received emails from both Heird’s counsel and the debtor’s counsel with photographs of Justin attached, all of which were introduced into evidence without objection. The photograph introduced by

⁹ Marcy did not say how often Justin has seizures, but testified that they have increased in frequency as Justin has gotten older.

¹⁰ Marcy testified that Justin cannot drive because he has not been seizure-free for one year, as required for a valid driver’s license.

¹¹ The Court has no objective evidence that Justin is disabled as a result of his epilepsy because Justin did not testify and the debtor did not introduce Justin’s medical records at the July 28 hearing.

Heird was taken on July 20, 2018, and depicted Justin with a full beard.¹² The photographs of Justin introduced by the debtor were taken two months prior to the hearing and showed Justin with no facial hair.¹³

After the photographs of Justin were introduced into evidence, Heird's counsel asked Marcy where Justin was currently located. Marcy responded that Justin was on vacation in Alabama with a female friend. When asked how long he had known this friend, Marcy said that she did not know because she does not "get into my son's relationships or how long they have known each other." She said—somewhat defensively—that "his personal relationships with his friends are his personal relationships." Eventually, Marcy estimated that Justin had known his travel companion for three years and said that Justin had brought her to Marcy's home—along with some of his other friends—six months to a year ago. She testified that Justin goes "all kinds of places" with his friends.

Regarding his living arrangement with Justin, the debtor testified that Justin moved in with him at the shop approximately one year ago—in July 2019—because Justin "needed someone to look after him" and the debtor was "trying to help Marcy out and we got along good and it worked for everybody." He repeatedly testified that Justin "needed someone to take care of him during the day." When asked why Justin lives at the shop at night if he needs daytime supervision, the debtor replied "because me and him get along great, we are buddies, I mean...he likes cars and I work on cars...we just get along good." The debtor admitted that Justin could live somewhere other than the shop but said that "someone else would probably charge him" and Justin has no job and has been turned

¹² Taylor testified that she obtained the photograph of Justin with a beard earlier that day—July 28, 2020—from Justin's Facebook account; however, when she tried to view the account later the same day, she could not find it.

¹³ Three of the four photographs of Justin that were introduced by the debtor were taken with filters that altered Justin's appearance. Although Justin appeared young for his age in some of the photographs introduced by the debtor, he nonetheless looked like an adult.

down for disability benefits twice. The debtor testified that Justin does whatever needs to be done around the shop, including office work, sweeping, and picking up auto parts. The debtor said that Justin sometimes walks to AutoZone, which the debtor estimated to be a five-minute walk from the shop, to pick up parts. During cross-examination by Heird's counsel, the debtor could not say how often Justin walked to AutoZone, whether Justin went there alone, how often Justin ran this particular errand or how long he was absent from the shop when he did. The debtor testified that he gives Justin "a little money to get something to eat" and sometimes buys him a meal. The debtor confirmed on cross-examination that he stated in his bankruptcy schedules that he has no dependents.

Findings of Fact and Conclusions of Law

I. Objection to Exemptions

Arkansas residents with "the right to claim exemptions in a bankruptcy proceeding pursuant to 11 U.S.C. § 522 shall have the right to elect either: (i) The property exemptions provided by the Constitution and the laws of the State of Arkansas; or (ii) The property exemptions provided by 11 U.S.C. § 522(d)." Ark. Code. Ann. § 16-66-217; *see also Peoples' State Bank of Wells v. Stenzel (In re Stenzel)*, 301 F.3d 945, 947 (8th Cir. 2002) ("A debtor may exempt from his bankruptcy estate property that is exempt under state law on the date the petition is filed."). In this case, the debtor filed his petition on February 17, 2020, and elected the Arkansas state exemptions. Because "[b]ankruptcy exemptions are 'fixed on the date of filing' and 'only . . . the law and facts as they exist[ed] on the date of filing the petition' are to be considered," the question before the Court is whether the debtor had established 141 Marion Anderson Road—the shop—as his homestead under the Arkansas Constitution on February 17, 2020. *See In re Jones*, 193 B.R. 503, 507 (Bankr. E.D. Ark. 1995) (quoting *Armstrong v. Peterson (In re Peterson)*, 897 F.2d 935, 937 (8th Cir. 1990)). The portion of the Arkansas Constitution under which the debtor claimed the shop exempt provides that "[t]he homestead of any resident of this state who is married or the head of a family shall not be subject to the lien

of any judgment, or decree of any court, or to sale under execution or other process thereon[.]” Ark. Const. of 1874, art. IX, § 3.

Three elements are required to establish a homestead under the Arkansas Constitution: (1) the claimant must be married or the head of a family; (2) the property must be occupied as a home; and (3) the claimant must be a resident of Arkansas. *Smith v. Webb (In re Webb)*, 121 B.R. 827, 829 (Bankr. E.D. Ark. 1990). Once a claimant establishes a homestead under Arkansas law, the homestead will endure—even if dependents leave, a spouse dies, or a divorce occurs—so long as the claimant continues to occupy the homestead property. *See In re Webb*, 121 B.R. at 829 (citing cases). As the objecting party, Heird has the burden of proving that the debtor is not entitled to the exemption that he has claimed. *See Fed. R. Bankr. P. 4003(c)*; *see also In re Stenzel*, 301 F.3d at 947. Heird did not dispute that the debtor is a resident of Arkansas. However, for the reasons stated below, the Court finds that Heird proved by a preponderance of the evidence that the debtor did not occupy the shop as his home while he was married or the head of a family.

As an initial matter, the Court finds that the debtor did not live at the shop prior to his divorce on March 16, 2018—in other words, the Court finds that the debtor did not live at the shop while he was still married. The Court acknowledges that the debtor and two of his witnesses, King and Caldwell, testified that the debtor constructed a bedroom in the shop in July 2016 and has lived nowhere else since then. However, the Court has far more evidence—some of it from the debtor himself—that the debtor lived at 176 Copper Mountain Loop until after he was divorced on March 16, 2018: (1) Taylor testified that the debtor lived at Copper Mountain Loop until the property was foreclosed upon in January 2019; (2) Cara testified that the debtor stayed at the Copper Mountain Loop home until January 2019; (3) the debtor testified that Cara was saving money to rent an apartment prior to their separation and admitted that she did subsequently rent an apartment—something that would make little sense if Cara was the one living at the

Copper Mountain Loop home, as the debtor also—contradictorily—testified; (4) paragraph 10 the divorce decree dated March 16, 2018, stated that the debtor had failed to pay the mortgage on the Copper Mountain Loop home for thirteen months *despite living there*;¹⁴ (5) the debtor stated on his previous bankruptcy petition in case 6:18-bk-71168 that he lived at 176 Copper Mountain Loop on April 30, 2018—a date that was approximately six weeks after his divorce on March 16, 2018, and almost two years after he claims to have moved permanently to the shop; and (6) the debtor stated on his SOFA in this case that he lived at 176 Copper Mountain Loop from June 2007 to June 2018—which the Court does not believe was a “typo” in the light of all the other evidence supporting its accuracy. In addition, the Court finds it unlikely that the debtor would have chosen to live at the shop when the Copper Mountain Loop home—which was presumably a more desirable residence—was available to him from July 2016 (when Cara rented her apartment) until the foreclosure in January 2019. For all of these reasons, the Court finds that the debtor resided at 176 Copper Mountain Loop until after his divorce on March 16, 2018, and if he subsequently moved into the shop, it was as an unmarried man.

The Court also finds that the debtor has never lived at the shop as the head of a family. Arkansas courts evaluate three factors when determining whether an unmarried claimant qualifies as the head of a family (also referenced in case law as the “head of household”) as required to claim the homestead exemption under Arkansas law:

(1) whether there is an obligation on part of claimant to support others residing in the household; (2) whether there is a corresponding state of dependence upon those being supported; and (3) whether there is a role of authority for head of the family where the status or relationship of the family exists. *In re Morris*, 340 B.R. 78, 82 (Bankr. W.D. Ark. 2006) (citations omitted). While an unmarried claimant need not be a parent to be

¹⁴ If, as the debtor contended, the state court was referencing events that had occurred prior to the parties’ separation—when both the debtor and Cara were living in the Copper Mountain Loop home—it is unlikely that the court would have singled out the debtor as the only party to miss thirteen mortgage payments while living in the home.

the head of a family, something more than “a mere aggregation of individuals residing in the same house” is required to qualify for the homestead exemption under Arkansas law. *See Harbison v. Vaughan*, 42 Ark. 539, 541 (1884).

First, the Court has no evidence that the debtor is under any legal or moral obligation to support Justin. In fact, the Court has no evidence that the debtor *is* supporting Justin—other than a single statement by Marcy that she and the debtor “both support him.” Although the Court does not doubt that Justin has epilepsy and should be in the vicinity of another adult in the event that he has a seizure, there is nothing in the record to suggest that the debtor must be that person. In fact, the debtor did not indicate that he feels an obligation to support Justin—he merely gets along with him and wishes to help Marcy by providing him with a place to live and work. Likewise, although Marcy said that it would be a hardship for her to take Justin to the shop every morning because she and Justin would have to get up earlier than they otherwise would, she never said, or even implied, that the debtor is obligated to supervise Justin during the day or house him at night. For these reasons, the Court finds that Justin lives at the shop because the arrangement is convenient and beneficial for all parties—the debtor is helping his girlfriend and has Justin’s assistance around the shop, Marcy is spared the inconvenience of driving Justin to the shop every morning before she goes to work, and Justin is around other adults during the day while enjoying a rent-free place to stay at night.

Second, the Court finds that Justin is not in a state of dependence upon the debtor. Justin is a thirty-one-year-old adult that has a medical condition, but does not qualify for disability benefits. Justin is independent enough to take out-of-state trips with friends and run errands for the debtor on his own. Although Justin enjoys some benefits from his relationship with the debtor, such as a bedroom at the shop, a “little grocery money” from time to time, and the occasional free meal, the Court has no evidence that Justin actually

depends upon the debtor for anything.¹⁵

Finally, there is no evidence that the debtor has a role of authority over Justin. According to the debtor, he and Justin are “buddies” and their living arrangement is convenient for everyone and helpful to Marcy. Although Justin runs errands and performs other tasks while he is at the shop during the day, there is no evidence that Justin is not free to refuse the debtor’s work-related requests at any time without consequence. For all of these reasons, the Court finds that Justin is not the debtor’s dependent and, therefore, the debtor is not the head of a family for purposes of the Arkansas homestead exemption.¹⁶

II. Motion for Relief from Stay

In addition to objecting to the debtor’s exemptions, Heird moved for relief from the automatic stay for cause, as permitted by 11 U.S.C. § 362(d)(1). The bankruptcy code does not define cause and, as a result, “courts are left to interpret its meaning on a case by case basis.” *In re Kowalsky*, 235 B.R. 590, 595 (Bankr. E.D. Tex. 1999) (citing *Reitnauer v. Tex. Exotic Feline Found., Inc. (Matter of Reitnauer)*, 152 F.3d 341, 343 n.4 (5th Cir.1998)). Here, Heird argued that there is cause to lift the stay based on the timing of the debtor’s bankruptcy filing—specifically, Heird alleged that the debtor filed his case in bad faith on February 17, 2020, for the purpose of delaying the state court hearing scheduled for February 18, 2020, and to deny Heird payment on the state court judgment.

The burden of proof on a request for relief for cause, pursuant to 11 U.S.C. § 362(d)(1), is on the debtor. 11 U.S.C. § 362(g). This ultimate burden only exists, however, where adequate grounds for causal relief are first laid out by the moving party. *In re Layne*, 17 B.R. 140, 142 (Bankr. Ohio

¹⁵ While the Court cannot rule out the possibility that Justin feels some level of dependence upon the debtor, the Court has no evidence to that effect because Justin was on an out-of-state vacation at the time of the hearing and did not testify.

¹⁶ Because the Court finds that the shop is not the debtor’s homestead, it need not discuss the evidence and arguments relating to the debtor’s effort to carve out a quarter-acre of shop property to comply with the size parameters of a homestead under the Arkansas Constitution.

1981) . . . Once the initial burden of the *prima facie* case is satisfied, the burden of proof shifts to the debtor. [11 U.S.C.] § 362(g); *In re Anthem Cmty's/RBG, L.L.C.*, 267 B.R. 867, 871 (Bankr. D. Colo. 2001); *In re Elmira Litho, Inc.*, 174 B.R. 892, 902 (Bankr. S.D.N.Y. 1994).

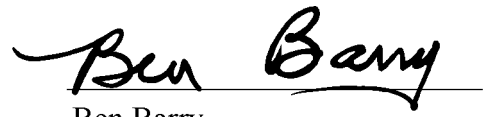
In re Panther Mountain Land Dev., LLC, 438 B.R. 169, 188 (Bankr. E.D. Ark. 2010).

Despite Heird's allegation that the debtor filed his chapter 13 case for the sole purpose of stopping an imminent state court hearing scheduled for the following day, the Court has no evidence to that effect—and even if it did, the timing of the debtor's filing would not equate to bad faith without more. *See In re Penny*, 243 B.R. at 729 n.5 (filing bankruptcy on the eve of a state court proceeding is not in itself bad faith). As a result, the Court finds that Heird failed to carry the initial burden of establishing a legal and factual basis to lift the stay for cause. *See In re Elmira Litho, Inc.*, 174 B.R. at 902. Therefore, the Court denies Heird's motion for relief from stay. *See Sonnax Indus. Inc. v. Tri Components Prod. Corp. (In re Sonnax Indus.)*, 907 F.2d 1280, 1285 (2d Cir. 1990) (if a movant "fails to make an initial showing of cause . . . the court should deny relief without requiring a showing from the debtor that [he] is entitled to continued protection.").

Conclusion

For the above-stated reasons, the Court finds that the debtor is not entitled to claim 141 Marion Anderson Road, Hot Springs, Arkansas as his homestead under Arkansas law and, therefore, the Court sustains Heird's objection to exemptions. The Court also denies Heird's motion for relief from stay because Heird failed to establish a *prima facie* case that it is warranted.

IT IS SO ORDERED.


Ben Barry
United States Bankruptcy Judge
Dated: 09/04/2020

cc: Marc Honey
Matthew A. Kezhaya
Michael E. Sanders
Jack W. Gooding
United States Trustee