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

IN RE: GERALD SNOW FREEMAN **No. 5:19-bk-72568**
LAURA MARIE FREEMAN, Debtors **Ch. 7**

ORDER OVERRULING TRUSTEE'S OBJECTION TO DEBTORS' AMENDED EXEMPTIONS

Before the Court are the amended Schedules A/B and C [first amended schedules] filed on January 31, 2020, by the debtors, Gerald Freeman [Mr. Freeman] and Laura Freeman [Ms. Freeman], the amended Schedules A/B and C filed by the debtors on February 4, 2020, [second amended schedules], and the chapter 7 trustee's *Objection to First and Second Amended Exemptions and Motion for Turnover* [objection] filed on February 9, 2020. The Court held a hearing on the trustee's objection on February 12, 2020, [February 12 hearing], and heard closing arguments on February 18, 2020. Forrest Stolzer appeared on behalf of the debtors. Trustee Bianca Rucker [Rucker or trustee] appeared *pro se.* Following the conclusion of closing arguments, the Court took the matter under advisement. For the reasons cited below, the trustee's objection to the debtors' first and second amended exemptions is overruled.

Jurisdiction

The Court has subject matter jurisdiction under 28 U.S.C. § 157(b)(1). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B) and is a contested matter under Federal Rule of Bankruptcy Procedure 9014. This order contains findings of fact and conclusions of law under Federal Rule of Bankruptcy Procedure 7052(a)(1).

Background

The debtors filed their chapter 7 case on September 20, 2019. In their original schedules, the debtors listed an interest in four tracts of land: a nine (9) acre tract [the 9 acres] with two mobile homes; two one-acre tracts adjacent to the 9 acres; and one 86.75 acre tract adjacent to the other three tracts. The debtors listed the total value of their interests in the

property at $13,100,[1] elected the federal exemptions, and exempted the $13,100 under 11 U.S.C. § 522(b)(2) and (d)(1).[2] The debtors' first meeting of creditors was scheduled for and commenced on October 21, 2019, [October 21 first meeting], and continued to and concluded on November 18, 2019. On November 19, 2019, the trustee requested that the Court issue a notice of assets, which it did on November 20, 2019. During the October 21 first meeting, Rucker told the debtors that her realtors would visit the property because her initial valuation of the real properties exceeded the values that the debtors had listed and exempted on their original schedules. Following the conclusion of the creditors' meeting on November 18, counsel for the debtors communicated to Rucker that the debtors would amend their exemptions from federal to state exemptions, if it became necessary to do so. Rucker did not object to the debtors' original exemptions within 30 days of the conclusion of the creditors' meeting. *See* Fed. R. Bankr. P. 4003(b)(1).

On January 31, 2020, the debtors filed their first amended schedules and listed four (4) tracts of land:

(1) the 9 acres,[3] value unknown;

(2) a 40-acre tract [40 acres],[4] value unknown;

(3) a "land-locked" one-acre tract [1 acre], valued at $100; and

(4) a 66.75-acre tract [66 acres], value unknown.

All four tracts [together referenced as the property] are adjacent to one another. In their first amended schedules, the debtors again elected the federal exemptions on Schedule C.

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[1] Other persons own interests in all of the tracts. The debtors' schedules listed only the value of the debtors' interest in the property.

[2] The debtors' original schedules also reflected unencumbered personal property in the amount of $3244, which they exempted under the federal exemption scheme.

[3] The debtors' original schedules listed the same 9 acres with the two mobile homes.

[4] Salem Springs Road bisects the 40 acres: one acre is adjacent to the 9 acres and the remaining 39 acres is across the road.

Four days later, on February 4, 2020, the debtors filed their second amended schedules. The second amended Schedule A/B listed the same four tracts that were listed on the first amended Schedule A/B, but with different values:

(1) the 9 acres, valued at $35,000;

(2) the 40 acres, valued at $16,000;

(3) the 1 acre, valued at $100; and

(4) the 66 acres, valued at $57,500. [5]

In the debtors' second amended Schedule C they elected the Arkansas state exemptions—instead of the federal exemptions—as permitted by 11 U.S.C. § 522(b)(3) and as allowed under Arkansas Constitution Article 9, §§ 3 and 4, claiming a homestead exemption in the 9 acres with their mobile home, the 1 acre, and the 66 acres, for a total of 76 acres.

On February 9, 2020, the trustee filed her objection to the debtors' first and second amended exemptions, alleging that

> [t]he paramount issue before the Court is a determination of whether the Debtors may return previously exempted value in real and personal property under 11 U.S.C. § 522(b)(2), ("Federal Exemptions"), *after* exemptions were allowed under 11 U.S.C. § 522(*l*) and claim amended exemptions under 11 U.S.C. § 522(b)(3) ("Arkansas State Exemptions").

In her brief filed in support of her objection, the trustee argued that because she did not object to the debtors' original federal exemptions, those exemptions were allowed and the debtors are now prohibited from amending their exemptions from federal to state. The trustee argued that a debtor's exemption removes an asset from the estate[6] (presuming no objection) and that there is no mechanism for a debtor (or the Court) to return an asset to the bankruptcy estate once an exemption has been "allowed" under 11 U.S.C. § 522(l).

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[5] The debtors' second amended schedules indicate that the values stated in those schedules were derived from an appraisal obtained by the debtors in January 2019. However, based upon the debtors' testimony and their counsel's representations to the Court during the February 12 hearing, the Court believes that the "2019" date referenced in the debtors' second amended schedules was a scrivener's error and that the appraisal occurred in January 2020.

[6] The trustee cited *Owen v. Owen* for the proposition that once property is exempted, it is no longer property of the estate. 500 U.S. 305, 308 (1991).

The trustee stated that, while it would be permissible for the debtors to "amend their exemptions" to increase their federal exemptions up to the maximum amount allowed, they should not be permitted to amend their exemptions to claim the state exemptions, because the federal exemption scheme had already been "allowed," as a result of her choice not to object to the exemptions originally elected by the debtors. She argued that there is no statute in the bankruptcy code that allows debtors to "return exempted value to the bankruptcy estate so that a debtor may exempt other value in property[.]" The trustee also argued that if a trustee cannot return exempt assets to the bankruptcy estate under *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992) or *Law v. Siegel*, 571 U.S. 415 (2015), then the debtors should not be allowed to return previously exempted value to the estate and "exchange" it for other estate property. In other words, the trustee's position is that the debtors should not be allowed to do what a trustee cannot do.

At the February 12 hearing, the trustee's real estate agent, Nathan Genovese [Genovese], testified that Baron Fork [the creek] bisects the 66 acres[7] and touches a tip of the 9 acres. He also testified that no type of boat with a motor could run on the creek. He testified that no one lives on the 40 acres and that the 9 acres has two mobile homes on it. He further testified that there is a mortgage on the 9 acres and the 40 acres. He agreed that the 66 acres is adjacent to the 9 acres and the 1 acre.

Mr. Freeman testified that, although his name does not appear on any of the deeds to the property, he and his wife have lived together in their mobile home for the past 25 to 26 years. During that time, the mobile home has remained in the same spot on the 9 acres. Mr. Freeman also testified that, over the years, he built two wooden decks that are attached to the mobile home. He also testified that it would be possible to fish in the creek, but it would not be possible to move a boat on it or through it, because the water runs between ankle and knee-cap high. Mr. Freeman also testified that sometimes the creek is completely dry and there has never been any commercial activity on the creek.

[7] There is no evidence to identify how many acres are on each side of the creek.

He testified that he and Ms. Freeman are seeking a homestead exemption on the 76 acres under the Arkansas Constitution.

Ms. Freeman also testified that she and her husband have lived in the mobile home on the 9 acres for at least 25 years. She testified that her sister and her sister's husband live in the other mobile home on the 9 acres. She testified that a person could fish in the creek but could not use a kayak or small boat in it.

On February 18, 2020, the Court heard closing arguments on the trustee's objection to the debtors' amended exemptions. The trustee renewed and expanded the arguments in her brief, arguing that once the debtors' federal exemptions were "allowed" (because no one objected under Rule 4003(b)), the debtors were then precluded from amending their exemptions from federal to state, because there is no "mechanism" for the debtors to "return" exempt assets to the bankruptcy estate and "exchange" those assets for others.[8] The trustee asserted that the debtors can "modify" (amend) their federal exemptions up to the statutory limit under § 522(d), but amending to take advantage of any remaining federal exemptions should be the extent of any amendments. She argued that if the debtors are allowed to amend their exemptions from federal to state, then the debtors would be impermissibly claiming exemptions under both the federal and state exemption schemes. The trustee argued that if the Court permits the debtors to amend their exemptions from federal to state, then she would be obligated to pay the debtors those amounts they had previously exempted under the federal exemptions, and, in addition, the debtors would receive the benefit of the state exemptions because "there is no way to put exempt property back into the estate once it is exempt."

The trustee argued further that if the Court permits the debtors' amendments, then the Court is creating a "return and exchange counter" in a chapter 7 trustee's office, and she

[8] The trustee compared the debtors' attempt to return previously exempt property to the estate as trying to "put the toothpaste back into the tube." *See In re Erickson*, 406 B.R. 522, 526 (Bankr. W.D. Mich. 2009). It appears to this Court that the *In re Erickson* opinion is highly questionable following the Supreme Court's decision in *Siegel*.

was unable to identify any statute that allowed such a "counter."[9] She argued that once property is exempt under § 522(l), it is exempt and removed from the bankruptcy estate—essentially forever—without any mechanism to be returned to the bankruptcy estate. She argued that if the debtors were going to amend their exemptions, then they should have filed a motion to extend the time to object to the exemptions under Rule 4003(b), because nothing prevents the debtors from extending the time to object to exemptions. Finally, the trustee argued that a mobile home that is not attached or permanently affixed to the ground is "personal property," and that the creek potentially destroyed the contiguous nature of the 66 acres.

Law and Analysis

"The filing of a bankruptcy petition under Chapter 7 creates a bankruptcy 'estate' generally comprising all of the debtor's property." *Law v. Siegel*, 571 U.S. 415, 417 (2014) (reversing the lower courts' assessment of a surcharge against a debtor's homestead exemption based on debtor's bad faith). *See also* 11 U.S.C. § 541(a)(1). The bankruptcy code authorizes the debtor to exempt "certain kinds of property from the estate, enabling him to retain those assets post-bankruptcy." *Siegel*, 571 U.S. at 417. *See also* 11 U.S.C. § 522(b)(1). In *Siegel*, the Supreme Court said:

> Section 522(d) of the Code provides a number of exemptions unless they are specifically prohibited by state law. § 522(b)(2), (d). One [is] commonly known as the "homestead exemption[.]" . . . The debtor may elect, however, to forgo the § 522(d) exemptions and instead claim whatever exemptions are available under applicable state or local law. § 522(b)(3)(A). Some States provide homestead exemptions that are more generous than the federal exemption.

Siegel, 571 U.S. at 418. Arkansas has such an exemption.

"[Section] 522 does not give courts discretion to grant or withhold exemptions based on whatever considerations they deem appropriate. Rather, the statute exhaustively specifies the criteria that will render property exempt." *Siegel*, 571 U.S. at 423-24. In *Siegel*, the

[9] Although the trustee did not specifically identify what sort of "counter" she was referencing, the Court envisions one that might be seen in a retail store where items are returned or exchanged.

Supreme Court rejected the trustee's argument that a bankruptcy court retains the discretion to grant or deny exemptions even when the statutory criteria are met.

> [T]he subject of "may exempt" in § 522(b) is the debtor, not the court, so it is the debtor in whom the statute vests discretion. A debtor need not invoke an exemption to which the statute entitles him; but if he does, the court may not refuse to honor the exemption absent a valid statutory basis for doing so.

Id. at 424. *See also Rucker v. Belew* (*In re Belew*), 943 F.3d 395, 396 (8th Cir. 2019). "The Code's meticulous—not to say mind-numbingly detailed—enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions." *Siegel*, 571 U.S. at 424.

The Supreme Court acknowledged that its ruling in *Siegel* "may produce inequitable results for trustees and creditors in other cases. We have recognized, however, that in crafting the provisions of § 522, 'Congress balanced the difficult choices that exemption limits impose on debtors with the economic harm that exemptions visit on creditors.'" *Siegel*, 571 U.S. at 426-27 (quoting *Schwab v. Reilly*, 560 U.S. 770, 791 (2010)). Although the trustee argued that the debtors should not be allowed to do what the courts have said the trustee cannot do, it is obvious from *Siegel* that the trustee and the debtors are not on the same footing. Therefore, the Court does not find the trustee's "fairness" argument persuasive.

Section 522 allows a debtor to claim exemptions. Federal Rule of Bankruptcy Procedure 1009(a) allows a debtor to amend exemptions. Rule 1009 provides:

> **(a) General Right to Amend.** A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby.

Fed. R. Bankr. P. 1009(a). Rule 1009(a) allows liberal amendments to exemptions. *See Kaelin v. Bassett* (*In re Kaelin*), 308 F.3d 885, 889 (8th Cir. 2002) (overruled on other grounds by *In re Belew*, 943 F.3d 395, 397 (8th Cir. 2019)); s*ee also In re Harris*, 886 F.2d 1011, 1015 (8th Cir. 1989). When an exemption is amended, a party in interest may file an objection within 30 days of the filing of the amended exemption. Fed. R. Bankr.

P. 4003(b)(1). Rule 4003(b)(1) gives a trustee and creditors the opportunity to determine whether the debtors' amended exemptions are valid under the law.[10]

In her arguments before the Eighth Circuit Court of Appeals in *In re Belew*, Rucker argued that the Supreme Court's decision in *Siegel* should not apply because *Siegel* "addressed the application of an equitable surcharge and not the amendment of claimed exemptions." *In re Belew*, 943 F.3d at 397. The Eighth Circuit did not find the distinction meaningful, stating that

> [I]n rejecting an argument from the trustee in *Law* [*v. Siegel*], the Court equated the act of barring a debtor from amending an exemption schedule to the act of denying an exemption. [*Siegel*] at 425.

In re Belew, 943 F.3d at 397 (citing *Siegel*, 571 U.S. at 425). Similarly, in the present case, the trustee seeks to bar the debtors from amending their exemptions from federal law to state law, because the federal exemption scheme had already been "allowed."[11] The trustee has not cited any state law that would prohibit the debtors from claiming a homestead exemption under the Arkansas Constitution. If this Court were to bar the debtors from amending their schedules to claim a homestead exemption under the Arkansas Constitution, then the Court would be, in effect, denying the exemption.[12] Such denial is prohibited under the rulings of *Siegel* and *In re Belew*.

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[10] There does not appear to be a limit to the number of times a debtor can amend under Rule 1009(a) and Rule 4003(b)(1) protects parties in interest by providing the opportunity to object with each new amendment.

[11] The trustee repeatedly used the term "allowed" in referring to the debtors' federal exemptions. The term "allowed" implies that the Court took some action with regard to the debtors' election of exemptions. However, the term "allowed" does not appear in § 522(l). The Court could find no statute or rule that requires the Court to take some sort of action in "allowing" a debtor's exemptions.

[12] The Court was unable to find—and the trustee did not provide—a single case to support the trustee's argument that once federal exemptions were "allowed," the debtors would be prohibited from amending to the state exemptions.

In addition, nearly ten years prior to *Law v. Siegel*, the Eighth Circuit allowed debtors to amend their exemptions from federal to state. *Ladd v. Ries* (*In re Ladd*), 450 F.3d 751 (8th Cir. 2006). In *Ladd*, the debtors had elected the federal exemptions when they filed their original schedules. *In re Ladd*, 450 F.3d at 753. The trustee objected to the exemptions, but the debtors did not contest the objection and a default order was entered sustaining the trustee's objection. *Id.* Fifteen months later, the debtors filed amended schedules and elected to claim their farm property as exempt under Minnesota homestead law. *Id.* The trustee objected again, arguing that the doctrine of res judicata barred the debtors' amended exemption. *Id.* The bankruptcy court sustained the trustee's objection and the Bankruptcy Appellate Panel affirmed. *Id.* The Eighth Circuit reversed, finding that significant differences existed between the federal exemption—which is limited by monetary value—and the Minnesota homestead exemption—which is primarily limited by acreage. *Id.* at 754. As a result, the Eighth Circuit held that res judicata did not apply and the bankruptcy court should have permitted the debtors to amend their exemptions under Rule 1009(a). *Id.* at 755.

Arkansas, like Minnesota, allows a debtor to elect between federal exemptions and state exemptions. As in Minnesota, the homestead exemption under the Arkansas Constitution is limited by acreage. A debtor cannot "cherry pick" parts of each exemption scheme by choosing to exempt some assets under the federal exemptions while exempting other assets under the state exemptions. *See In re Ladd*, 450 F.3d at 754; s*ee also* 11 U.S.C. § 522(b)(1).[13] The bankruptcy forms do not allow a debtor to choose both exemption schemes at the same time. Schedule C asks debtors "which set of exemptions are you claiming?" In response, a debtor must check a single box on Schedule C, thereby choosing either the federal exemptions or the state exemptions. Furthermore, one joint debtor cannot elect the federal exemptions while the other elects state exemptions.

[13] [A]n individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, *in the alternative*, paragraph (3) of this subsection. 11 U.S.C. § 522(b)(1). (emphasis added).

Here, despite the trustee's arguments to the contrary, the debtors have not attempted to claim exemptions under both the state and federal exemption schemes or as otherwise prohibited by law. By choosing the state exemptions in their second amended schedules, the debtors have abandoned the federal exemption scheme, and, instead, elected the homestead exemption under state law. "Maximization of exemptions, especially the homestead exemption, is a fundamental policy of the Bankruptcy Code . . . which is likely why Rule 1009(a) allows liberal amendment." *In re Ladd*, 450 F.3d at 755.

In *Ladd*, the trustee argued that Rule 1009 does not contemplate amendment after a final order has been entered on a claimed exemption. *In re Ladd*, 450 F.3d at 753. Here, the trustee makes a similar argument. Without specifically referring to "res judicata," the trustee asserts that once an objection deadline under Rule 4003(b) has expired, and the debtors' exemption scheme has been "allowed," the debtors cannot amend their exemptions to a different exemption scheme. Under the trustee's theory, Rule 1009(a) is only applicable as long as the debtors' exemptions have not previously been "allowed," because, according to the trustee, there is no way to return exempt property to the bankruptcy estate. However, as previously stated, *Siegel* is clear that the trustee and the debtors are not on the same footing. *Siegel*, 571 U.S. at 426-27.

In *Ladd*, the trustee argued that the debtors should have asserted their intent to use the state homestead exemption before default judgment was entered on the federal exemption. *In re Ladd*, 450 F.3d at 755. Here, the trustee alleges that the debtors should have filed a motion to extend the time to object to their exemptions under Rule 4003(b)(1). However, nothing in the code requires debtors to file a motion to extend the time to object to their own exemptions. Why would debtors want to file a motion to extend the time to object to their own exemptions? The Court is hard-pressed to understand why such a motion would be necessary when Rule 1009(a) permits a debtor the unambiguous opportunity to amend schedules (including exemptions), and Rule 4003(b)(1) provides a trustee with a new 30-day opportunity to object when an amendment is filed.

The trustee argued that the statutory scheme of § 522(l) has greater force than Rule 1009(a), such that once the debtors' exemptions are "allowed," then the debtors are unable to return formerly exempt property to the estate and "exchange" that property for other property. The trustee provided no case law that supports this proposition and the Court could find none.[14]

Section 522(l) states:

> The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

11 U.S.C. § 522(l). As previously cited in *Siegel*, exemptions are for the debtors.

> Nothing in the text of Rule 1009(a) provides an exception—equitable or otherwise—to a debtor's unambiguous ability to amend exemptions "as a matter of course at any time before the case is closed." Thus, *Siegel* constrains the Court from applying the equitable exception urged by the Trustee.
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> Moreover, a recent Fourth Circuit decision comports with the view that the strict interpretation of the Bankruptcy Code demanded by *Siegel* applies with equal force to the Bankruptcy Rules.

Shehan v. Scotchel, No. 1:14CV196, 2015 U.S. Dist. LEXIS 117293, at *9-10 (N.D. W. Va. Sept. 3, 2015). This Court must apply the unambiguous text of Rule 1009(a), under *Siegel* and its progeny. *See id.* "It is a settled principle that unless there is some ambiguity in the language of a Bankruptcy Rule, a court's analysis must end with the Rule's plain meaning." *Klesalek v. Klesalek* (*In re Klesalek*), 307 B.R. 648, 652 (8th Cir. 2004). "The Supreme Court promulgates the Federal Rules of Bankruptcy Procedure so application of the plain meaning must be contrary to the Supreme Court's intent for the plain meaning rule not to apply." *Id.* at n.2.

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[14] The Court does not view an amendment to exemptions as an "exchange" of property, but rather property that had been exempt prior to an amendment is now no longer exempt. Then, it is up to the trustee to decide whether to take and liquidate the property that is now non-exempt property of the bankruptcy estate.

Rule 1009(a) is not ambiguous. It clearly states that the debtors may amend their exemptions "as a matter of course at any time before the case is closed." Fed. R. Civ. P. 1009(a). It is not necessary to have a "mechanism" for the debtors to "return" property to the bankruptcy estate. Common sense and logic compel the position that if a debtor utilizes Rule 1009(a) to amend exemptions, then any property that is no longer exempted as a result of the amendments becomes property of the estate—automatically—by operation of law.[15] For all of these reasons the Court finds that the trustee's objection to the debtors' second amended exemptions is overruled.[16]

Now that the Court has determined that the debtors may amend their exemptions from federal to state, the Court turns to the trustee's claim that the debtors' mobile home should be declared "personal property," such that it would not be part of the debtors' homestead. The Court finds that the debtors' mobile home is part of their homestead and is protected under their homestead exemption for the reasons stated below.

In Arkansas, a homestead exemption arises pursuant to its state constitution.

> The 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, except such as may be rendered for the purchase money, or for specific liens, laborers' or mechanics' liens for improving the same, or for taxes, or against executors, administrators, guardians, receivers, attorneys for moneys collected by them, and other trustees of an express trust, for moneys due from them in their fiduciary capacity.
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> The 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,

[15] There is no evidence in this case that the property no longer claimed as exempt (or "returned" to the bankruptcy estate as the trustee would phrase it) has changed in character or value since the commencement of the case. Furthermore, the trustee has not been prejudiced by the debtors' amendments or "return" of the property to the bankruptcy estate. But, even if there was prejudice, the *Siegel* decision permits "inequitable results for trustees." *Siegel*, 571 U.S. at 426.

[16] The trustee's objection to the debtors' first amended exemptions is moot pursuant to the debtors' second amended exemptions.

> and in no event shall the homestead be reduced to less than eighty acres, without regard to value.

Ark. Const. art. 9, §§ 3 and 4; *see also* Ark. Code Ann. § 16-66-210(b) and (c)(1). Three requirements must be met in order to claim a homestead exemption under the Arkansas Constitution. *In re Ellis*, 456 B.R. 401, 404 (Bankr. E.D. Ark. 2011). "First, the party claiming the exemption must be married or the head of household; second, the property must be occupied as a residence; and third, the party claiming the exemption must be an Arkansas resident." *Id.* (citing *In re Webb*, 121 B.R. 827, 829 (Bankr. E.D. Ark. 1990)). Further,

> [a]s a general matter, homestead exemptions under the Arkansas Constitution are to be liberally construed in favor of the exemption. *In re Kimball*, 270 B.R. 471, 478 (Bankr. W.D. Ark. 2001). Commensurately, all presumptions are to be made in favor of preservation and retention of the homestead. *In re Jones*, 193 B.R. 503, 506 (Bankr. E.D. Ark. 1995). The burden of proof, under both federal bankruptcy law and Arkansas law, is allocated to the parties objecting to the claimed homestead exemption. Fed. R. Bankr. P. 4003(c); *Jones*, 193 B.R. at 506.

In re Ellis, 456 B.R. at 404 (citing *In re Warnock*, 323 B.R. 249, 252 (Bankr. W.D. Ark. 2005)). Here, there is no dispute that the debtors are married, Arkansas residents that have occupied the real property and the mobile home as their residence for at least 25 years. The question raised by the trustee is whether the structure of the mobile home itself is part of the homestead exemption.

"The object of homestead laws is the protection of the family from dependence and want." *Middleton v. Lockhart*, 43 S.W.3d 113, 119 (Ark. 2001) (citation omitted). "It is intended to preserve the family home." *Id.* Accordingly, "homestead exemptions under the Arkansas Constitution are to be liberally construed in favor of the exemption." *In re Morris*, 340 B.R. 78, 81 (Bankr. W.D. Ark. 2006) (citing *In re Kimball*, 270 B.R. 471, 478 (Bankr. W.D. Ark. 2001)). Moreover, "all presumptions are to be made in favor of the preservation and retention of the homestead." *Id.* (citation omitted).

It is well-settled Arkansas law that in order to claim a homestead exemption on real property, the property must be occupied. *In re Ellis*, 456 B.R. at 404. A "tract or lot of real estate must be occupied in good faith as a home before it becomes impressed with

the character of a homestead under the law. This court has steadily adhered to the rule that actual occupancy in good faith is essential to the impressment of the homestead character." *Chastain v. Ark. Bank & Trust Co.*, 249 S.W. 1, 8 (Ark. 1923).

> A homestead necessarily includes the idea of a house for residence, or mansion house. The dwelling may be a splendid mansion, a cabin, or tent. If there be either, it is under the protection of the law; but there must be a home residence before it and the land on which it is situated can be claimed as a homestead.

Flowers v. U. S. Fidelity & Guar. Co., 117 S.W. 547, 548 (Ark. 1909) (quoting *Williams v. Dorris*, 31 Ark. 466, 468 (1876)); *see also Gibbs v. Adams*, 89 S.W. 1008, 1009 (Ark. 1905) ("[a] thatched-roofed cabin, however humble, even a canvas tent, may be a homestead, if the owner actually dwells in it, and has his home there.")

To the extent that the trustee argues that the mobile home is not part of the homestead because the structure is not sufficiently affixed to the land, the trustee has provided no case law or statute that requires a dwelling to be "affixed" or "attached" to the land in order to be considered part of the homestead. Removing the mobile home (the dwelling place of the debtors) from the property would destroy their homestead exemption under the law. The Court finds that the mobile home is part of the debtors' homestead and is therefore exempt under Arkansas Constitution Article 9, §§ 3 and 4.

There is no dispute that the debtors' property—comprised of four parcels—is rural. Because the property is rural, the debtors may claim up to 80 acres under the Arkansas Constitution. Ark. Const. art. 9, § 4. However, "when a landowner claims a homestead in two [or more] parcels of land, the land constituting the homestead must be contiguous." *In re Hatton*, No. 6:13-bk-72529, 2015 Bankr. LEXIS 4512, at *10 (Bankr. W.D. Ark. March 9, 2015) (finding that the Ouachita River which bisected the debtors' rural acreage destroyed the contiguous nature of the debtors' claimed homestead). Property is not contiguous if bisected by a navigable stream. *Id.* In this case, Baron Fork bisects the 66 acres that the debtors have claimed as part of their homestead. However, there is no evidence before the Court that the portion of the creek that bisects the debtors' property is navigable. To the extent that the trustee objected to the debtors' exemption in

the 66 acres based on the location of the creek, the Court overrules her objection. Accordingly, the Court finds that the debtors claimed homestead exemption of 76 rural acres comprised of the 66 acres, the 1 acre, and the 9 acres with the debtors' mobile home is exempt under the Arkansas Constitution as claimed in the debtors' second amended exemptions.

The trustee properly seeks turnover of non-exempt property. Based on this decision, the Court encourages the parties to submit an agreed order of turnover as to the remaining non-exempt property no longer claimed by the debtors. In the event an agreement cannot be reached, either of the parties may advise the Court that a hearing on the matter is desired.

IT IS SO ORDERED.

Ben Barry
United States Bankruptcy Judge
Dated: 03/18/2020

cc: Bianca Rucker, chapter 7 trustee
Forrest Stolzer, attorney for debtors
Gerald Freeman, debtor
Laura Freeman, debtor