

In re Bier

Case No. 391-33141-H7 USDC No. 92-438-JO 4-27-92 (EOD 6-18-93)

Judge Jones of the US District Court affirmed Judge Hess's letter ruling that held that the debtor was entitled to claim a homestead exemption under ORS 23.240 in real property that she occupied by living in a travel trailer on the property that was not hers. The trial court held that the debtor need not own the structure that sits on the realty in order to claim the realty as a homestead. Thus, the debtor was entitled to claim a homestead exemption in the realty.

FILED

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

COLLINS & COLLINS,)
)
 Appellant,)
)
 v.)
)
 PATRICIA A. BIER, aka)
 Patricia B. Bier,)
)
 Appellee.)
)
 ROBERT E. RIDGEWAY, Trustee,)
 Post Office Box 993)
 Pendleton, OR 97801)

Civil No. 92-438-JO
Bkcy No. 391-33141-HO7

OPINION AND ORDER

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

APR 27 1992 *led 6/18/93*

TERENCE H. DUNN, CLERK

BY *LR* DEPUTY

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JONES, Judge:

The issue in this appeal centers on an allowed homestead exemption. The court has jurisdiction under 28 U.S.C. § 158.

Certified to be a true and correct copy of original filed in my office.

Dated 6-18-93

By *Donald M. Cinnamon*, Clerk Deputy

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The debtor, Patricia Bier ("Bier"), owned two pieces of real property: 1) 2 acres with a permanent home; and 2) 8.28 acres with a travel trailer. The Oregon Department of Veteran's Affairs ("ODVA") held a lien against the 2 acres. The ODVA foreclosed upon the 2 acres and sold the property on March 8, 1991.

The creditor in this bankruptcy appeal is a law firm ("Collins"), who on May 13, 1990, obtained a judgment lien against Bier's real property, which at the time consisted of the two parcels. Collins executed the lien on March 28, 1991. The sale was scheduled for May 15, 1991.

On May 10, 1991, Bier filed for chapter 7 protection, claiming a mobile home exemption pursuant to O.R.S. 23.164. Also on May 10, 1991, Bier filed a land use request application at the Umatilla County Planning Department.

Bankruptcy Judge Hess allowed Bier to claim a homestead exemption in the travel trailer, which Bier does not own, and which allegedly occupies land in violation of applicable land use planning laws, on the 8.28 acres. Judge Hess stated

. . . [T]he debtor moved directly from the house to a trailer located upon the 8 acre parcel. There is a dispute as to the date the debtor moved from the house to the trailer located on the 8 acres. There seems to be no dispute, however, that, whenever the move occurred, the debtor moved directly from the house into the trailer. Thus, it would appear that the debtor has continuously occupied the 8 acres as a homestead and is entitled to claim an exemption therein.

. . . .

. . . [E]ven if the county zoning requirements were relevant to the determination at hand, the court would conclude that the debtor would be able to satisfy those

requirements.

Therefore, unless there is a dispute over the debtor's use of the 8 acres as a part of the homestead before the house was foreclosed upon or unless there is a contention that the debtor has not continuously occupied either the house or the 8 acres at all relevant times, the court will enter an order overruling the objections [to the claimed exemption]. The parties must notify the court in writing and within 20 days of the date of this letter if there is a dispute over the issues mentioned.

Collins responded to the judge's letter with a supplemental affidavit, providing that Bier's travel trailer did not comply with applicable zoning laws. Collins thus concludes that Bier has no legal right of occupancy and accordingly her homestead claim should be rejected.

This court shall not set aside the bankruptcy judge's findings of fact unless clearly erroneous. Bankruptcy Rule 8013. Questions of law are reviewed de novo. See In re Daniels-Head & Assocs., 819 F.2d 914, 919 (9th Cir. 1987).

O.R.S. 23.240 provides that "[a] homestead shall be exempt from sale on execution, from the lien of every judgment and from liability in any form for the debts of the owner to the amount in value of \$15,000. . . . The homestead must be the actual abode of and occupied by the owner."

O.R.S. 23.164 provides that "[a] mobile home, and the property upon which the mobile home is situated, that is the actual abode of and occupied by the owner . . . when that mobile home is occupied as a sole residence and no other homestead exemption exists, shall be exempt."

While both statutes employ the word "owner," this word is

not fatal to Bier's claim.

A homestead right is not an estate in land but a mere privilege or exemption of such an estate as the holder has in the land: Mansfield v. Hill, 56 Or. 400 Our statute . . . uses the term "owner" in defining the person who shall be entitled to a homestead exemption but it does not define the word "owner" or require that the homestead claimant shall be the absolute owner in fee of the land. There is abundant authority for holding . . . that under a statute as broad as ours a tenant in common may acquire a homestead exemption in lands of which he is a cotenant only if the land claimed as a homestead is occupied by him as his actual abode and place of residence and that his homestead right does not depend upon the character or extent of the estate owned by him, provided he is not a mere intruder.

Marvin & Co. v. Piazza, 129 Or. 128, 133, 276 P. 680, 681 (1929).

Although Bier's ex-husband owns the trailer, the trailer is Bier's abode and is occupied by Bier. This is sufficient to satisfy O.R.S. 23.240.

With regard to mobile homes, the bankruptcy statutes do not define the term, except to state that the term "includes, but is not limited to, a houseboat." O.R.S. 23.164(8). There is no evidence to indicate that a travel trailer should not be considered a mobile home for purposes of the bankruptcy statutes.


Having already discussed the satisfaction of the "owner" requirement, other requirements of O.R.S. 23.164 are that the mobile home be the sole residence and no other homestead exemption exists. Both requirements are clearly satisfied.

There is no requirement that the property claimed under the homestead exemption comply with applicable zoning laws. This court has conducted a de novo review of the law. This court has

additionally not found any clearly erroneous findings of fact.
Accordingly, this court finds no error.

The decision of the bankruptcy court is AFFIRMED.

DATED this 27th day of April, 1992.



ROBERT E. JONES
United States District Judge