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Exemptions - Mobile home

In re Helen Harney 697-64758-fra7

12/8/97 FRA Unpub.

The debtor claimed her Fleetwood motor home as exempt under the statute allowing an exemption for a mobile home. The trustee objected on the ground that the motor home is a vehicle and cannot be claimed as a mobile home. The motor home itself is 28 feet long and eight feet wide and has all the amenities normally found in a small dwelling or apartment. The motor home is used exclusively as the debtor's only home and, while driven occasionally, it is normally parked on a specially made concrete pad on the debtor's husband's property and has sewer and electrical hookups.

The court held that for purposes of the Oregon exemption statute, the motor home should be considered a mobile home. The trustee's objection was overruled.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)
HELEN LORRAINE HARNEY,) Case No. 697-64758-fra7
Debtor.) MEMORANDUM OPINION

The Trustee objects to the Debtor's claimed exemption of a fractional interest (held with her nondebtor husband) in a motor home. I find that the motor home is a "mobile home" under Oregon's exemption statute, and that the objection should be denied.

I. FACTS

At the time the petition was filed the Debtor owned a fractional interest in a Fleetwood motor home. The motor home is a self-propelled motor vehicle, 28 feet in length and 8 feet wide, with a kitchen, bath, bedroom, and small living area. While it is occasionally used for travel, the motor home is ordinarily kept parked on land owned by the Debtor's husband. The land was improved for this purpose, with a pad, electrical hook-up, and sewer hook-up. Debtor, at the time the petition was

1 filed, resided in the motor home on the described real property
2 as her sole residence.

3 The motor home was purchased by Debtor from the proceeds of
4 the sale of her former residence. The Debtor's intention was to
5 use the motor home as a residence.¹

6 II. DISCUSSION

7 11 U.S.C. § 522 provides that a debtor may exempt from
8 property of the estate certain property defined either in the
9 Bankruptcy Code or by applicable state law. The Code also allows
10 states to "opt out" of the federal exemption scheme, thereby
11 leaving state law as the sole source for determining exemptions.
12 Oregon has opted out pursuant to O.R.S. 23.305.

13 O.R.S. 23.164 provides for an exemption in a "mobile home",
14 and the property upon which it is situated, when the mobile home
15 is occupied as a sole residence and no other homestead exemption
16 exists.²

17 The question here is whether the Debtor's present residence
18 qualifies as a "mobile home" under the statute. The issue is not
19 a new one. This Court has previously, in an unpublished
20 decision, held that a camper attached to a pickup truck, but

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22 ¹ Debtor testified that the motor home was "the only thing I could
afford."

23 ² O.R.S. 23.164(1): "A mobile home, and the property upon which the
24 mobile home is situated, that is the actual abode of and occupied by the
owner, or the owner's spouse, parent or child, when that mobile home is
25 occupied as a sole residence and no other homestead exemption exists, shall be
exempt from execution and from liability in any form for the debts of the
26 owner to the value of \$23,000 [\$30,000 for joint debtors], except as otherwise
provided by law. . . ."

1 capable of removal, was not subject to the exemption. On the
2 other hand, a travel trailer on blocks, but otherwise having the
3 same amenities as Debtor's motor home has been held to be a
4 "mobile home" under O.R.S. 23.164. In re Loomis, 34 B.R. 427
5 (Bankr. D.Or. 1983).

6 The Trustee argues that the property in question is not a
7 "mobile home", in light of O.R.S. 83.510(5). However, this
8 definition is found in a statute concerned with retail
9 installment contracts. Other definitions appear in statutes
10 concerned with *ad valorem* taxation. See O.R.S. 481.021.

11 As the Court pointed out in Loomis, the provisions of the
12 exemption laws are more elastic: "As used in this section,
13 unless the context requires otherwise, 'mobile home' includes,
14 but is not limited to, a houseboat." O.R.S. 23.164(8). This
15 section, and general policy that Oregon homestead exemption laws
16 be liberally construed, see In re Laughlin's Estate, 170 Or. 450,
17 134 P.2d 961 (Or. 1943), make it clear that the Court should take
18 an expansive, rather than restrictive view of whether a
19 particular dwelling or shelter qualifies under O.R.S. 23.164.

20 The Debtor's residence is distinguishable from the travel
21 trailer in Loomis in only one respect: it has a motor and wheels,
22 rather than being on blocks. The self-propelled feature aside,
23 the motor home has most of the essential amenities ordinarily
24 found in a small dwelling or apartment. It is, in every
25 important respect, Debtor's home. The mere fact that the home
26 has a motor and wheels does not disqualify it from exempt status

1 as a "mobile home." See In re Peters, 168 B.R. 710 (Bankr. D.
2 Idaho 1994).³

3 The Trustee's objection should be denied, and an order to
4 that effect will be entered. The foregoing constitutes the
5 Court's findings of fact and conclusions of law, which will not
6 be separately stated.

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9 FRANK R. ALLEY, III
10 Bankruptcy Judge
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25 ³ Idaho law includes in its definition of homestead a "mobile home in
26 which the owner resides or intends to reside." Oregon, on the other hand, has
a separate exemption for the two types of residence. The distinction is not
material to this analysis.