

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

In

re:	Chapter 7 Case
Kathleen O'Clyne,	BKY Case No. 3-92-3380
Debtor.	ORDER

This matter came before the court on hearing on objections to claimed exempt property by Trustee. Mary Langan appears for Trustee. Thomas M. Brudvig appears for Debtor. Based upon the files, records, and arguments of counsel, the Court makes its findings of facts and conclusions of law pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

FACTS

Debtor filed for relief under Chapter 7 on June 15, 1992. She has elected the nonbankruptcy exemptions under 11 U.S.C. Section 522(b)(2)(A) and has claimed her homestead as exempt property under MINN. STAT. Section 510.01.(FN1) The property claimed exempt consists of two adjoining five-acre parcels, which are unplatted and located

(FN1)MINN. STAT. 510.01 provides:

The house owned and occupied by a debtor as the debtor's dwelling place, together with the land upon which it is situated to the amount hereinafter limited and defined, shall constitute the homestead of such debtor and the debtor's family, and be exempt from seizure or sale under legal process on account of any debt not lawfully charged thereon in writing, except such as are incurred for work or materials furnished in the construction, repair, or improvement of such homestead, or for services performed by laborers or servants.

in Dakota County, Ravenna Township. Debtor's homestead is located on one parcel. After filing the petition, Debtor has sold one of the five-acre parcels. The other, together with her residence, has been listed with a realtor.(FN2)

The Trustee objects to the exemption as to both lots contending that the homestead exemption is only available to one parcel of property; the property consists of two separate building sites and have not been co-owned historically; the property has

only been co-owned since 1983 when the Debtor purchased the property; and that, the lots either separately or in the aggregate, exceed the area limitation imposed by MINN. STAT. Section 510.02 and should be limited to one-half acre as they are in the laid out or platted portion of a city. To support this objection, the Trustee argued, at the hearing, that while the homestead is not located in a traditional city, the area definitely has a neighborhood character to it. These characteristics include: the houses surrounding Debtor's are traditional, not farm houses; there are no farm buildings or other farm houses in the immediate area; and there is no agricultural use in the immediate area. Further, the Trustee argues the neighborhood is posted as "private property." Because of all of these characteristics, the Trustee asserts the property is in the "laid out" portion of Ravenna Township, which Township constitutes a city.(FN3) Evidently, Ravenna

(FN2)Since the hearing, the Court has been advised that Debtor may have found a potential buyer for her residence pending approval of financing.

(FN3)Ravenna Township is unincorporated and has approximately 2,300 residents.

Township does have town board meetings as well as zoning ordinances. Therefore, the Trustee argues, the homestead exemption should be limited to one-half acre as provided under MINN. STAT. Section 510.02.

The Debtor contends that the property is not within the laid out or platted portion of a city and is unplatted real estate. The fact that there are two separate five-acre parcels, only one of which contains a house is immaterial, she argues. The Debtor asserts the homestead may consist of two or more separate descriptions, parcels or tracts of land, provided they are so situated as to occupy one body of land. Furthermore, the Debtor purchased the two parcels as one body of land and has treated the property as one parcel for homestead property tax classification purposes since 1983. The property is listed as a "hobby farm;" wood has been cut on the property; and the Township will not allow a home on less than five-acres. Located within a half-mile radius of Debtor's homestead is a dairy farm, sheep farm, and produce farm. Moreover, the Hastings' mailman does not deliver mail to her home, rather a rural route mail carrier delivers the mail, thereby adding to the rural nature of the area. Accordingly, Debtor asserts that she is entitled to the larger homestead qualification of the two adjoining five-acre parcels as provided under MINN.

STAT. Section 510.02.

## II.

### DISCUSSION

At issue here is whether the Debtor's homestead property is within the laid out or platted portion of the City and whether Debtor is entitled to claim both parcels as her homestead under MINN. STAT. Sections 510.01 and 510.02. MINN. STAT. Section 510.02 provides:

The homestead may include any quantity of land not exceeding 160 acres, and not included in the laid out or platted portion of such place as its area shall not exceed one-half of an acre.

To determine whether the property falls within the laid out or platted portion of a city, Courts consider if the property has a rural or urban quality to it. This is a question of fact determined on a case-by-case basis. In re Sybrant, BKY 4-91-2460 (Bankr. D. Minn. Judge Kressel 8/30/91), citing National Bank or Banholzer, 69 Minn. 24, 29, 71 N.W. 920, 921. (Minn. 1897). A parcel located in a city is eligible for larger, rural exemption if its character is rural regardless of whether the surrounding property has been platted or has become part of the urban portion of the city. In re Owens, 1991 WL 53653 (Bankr. D. Minn. 1991), citing Banholzer, 69 Minn. 24, 29, 71 N.W. 919, 920-21.

To ascertain whether Debtor is entitled to both parcels: "[I]s that it shall be occupied and cultivated as one piece or parcel of land, on some part of which is located the residence." Brixius v. Reimrigner, 112 N.W. 273 (Minn. 1907). In homestead exemption matters, the Court must focus on the law and facts as they existed at the time debtor filed the petition in bankruptcy. Armstrong v. Peterson (In Re Peterson), 897 F.2d 935, 937 (8th Cir. 1990).

At the time Debtor filed her petition, she owned both parcels and treated the property as one parcel for homestead tax classification purposes. She had been treating both adjoining parcels as one body of land since purchasing it in 1983, with one parcel containing her residence. Based on these factors, Debtor's two parcels of property at the time of filing the petition was actually treated as one parcel and should be treated as one parcel for homestead exemption purposes.

Additionally, Debtor's property is more rural than urban. Debtor has listed the property as a Hobby Farm;(FN4) the property is unplatted; the township will not allow a home on less than five-acres of land; a rural route mail carrier delivers the mail; and, within a half-mile radius of Debtor's residence three farming operations exist.(FN5)

At some future time, Debtor's property may become urbanized. However, this fact is insufficient to deprive Debtor of her homestead exemption today.(FN6) Therefore, Debtor is entitled to

the

larger homestead exemption as provided under MINN. STAT. Section 510.02 on both five-acre parcels of property.

ACCORDINGLY, IT IS ORDERED:

(FN4)The fact that one of the parcels was sold and the other placed on  
petition was filed is irrelevant because the Courion was filed. Additionally  
the homestead exemption applies to proceeds as well. See: MINN. STAT. Section  
510.07

(FN5)As Judge Kressel held in Sybrant at p. 7, "Although Minn. Stat. 510.02 may have been written to protect the family farmer, there is no language in statute which requires one who claims the larger exemption to farm the land. The only statute requirement is that the land not be laid out or platted in order for one to claim the larger exemption."

(FN6)See: In re Sybrant, at p. 5, 6.

1. The Trustee's objections as to Debtor's claimed homestead exemption are overruled.

2. The Debtor's property legally described as:

The North Half of the Northeast Quarter of the Southeast Quarter of the Northeast Quarter of Section 28, Township 114, Range 16 AND the South Half of the Southeast Quarter of the Northeast Quarter of Section 28, Township 114, Range 16, Dakota County, Minnesota.

is exempt.

Dated this \_\_\_\_ day of November, 1992.

Dennis D. O'Brien  
United States Bankruptcy Judge