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No. 94-4078

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Charles W. Ries,  
Trustee of the Bankruptcy  
Estate,  
  
                  Appellant,  
  
          v.  
  
Linda C. Thiesse,  
  
                  Appellee.

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\* Appeal from the United States  
\* District Court for the  
\* District of Minnesota.  
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Submitted: June 15, 1995

Filed: July 31, 1995

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Before BEAM, Circuit Judge, ROSS, Senior Circuit Judge, and MURPHY,  
Circuit Judge.

BEAM, Circuit Judge.

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This appeal involves the application of Minnesota's homestead exemption. The bankruptcy court held that the debtor, Linda C. Thiesse, was entitled to the exemption, and the district court affirmed. We reverse and remand.

#### I. BACKGROUND

For many years, Thiesse owned and occupied real property in Fairmont, Minnesota. In September 1993, Thiesse left Minnesota, apparently to help her fiancée settle in Michigan. Five months later, Thiesse filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code and claimed her Minnesota property as a homestead exemption. The Trustee objected to the exemption on the grounds that Thiesse had abandoned the homestead.

Thiesse filed a motion for summary judgment. The bankruptcy court granted the motion, holding that Thiesse "did not lose her homestead rights through nonoccupancy, regardless of her intentions, and she did not `abandon' the homestead." The Trustee appealed to the district court, which affirmed the bankruptcy court without comment. This appeal followed.

#### II. DISCUSSION

Under Minnesota law, a debtor's homestead is exempt from seizure or forced sale. Minn. Stat. Sections 510.01. The homestead exemption applies to the "house owned and occupied by a debtor as the debtor's dwelling place, together with the land upon which it is situated." Id. The exemption does not require constant occupancy; the owner can "remove" from the homestead without affecting the exemption, if the owner does not abandon the homestead as "the place of abode." Minn. Stat. Section 510.07.

The creditor must establish abandonment of the homestead by clear and convincing evidence. *Vickery v. First Bank*, 368 N.W.2d 758, 763 (Minn. App. 1985). "`Abandonment of a homestead results when the owner removes therefrom and ceases to occupy the same, with the intention of never returning, or with no intention of returning thereto to reside.'"(1) *In re Hickman*, 23 N.W.2d 593, 597 (Minn. 1946) (quoting *Bowers v. Norton*, 218 N.W. 108, 109 (Minn. 1928)). Accord *Gordon v. Emerson-Brantingham Implement Co.*, 210 N.W. 87, 88 (Minn. 1926); *Clark v. Dewey*, 73 N.W. 639, 640 (Minn. 1898); *Williams v. Moody*, 28 N.W. 510, 511 (Minn. 1886). This definition of abandonment requires a court to address whether the owner truly "ceased to occupy" the homestead and whether the owner had the requisite intent. See *Muscala v. Wirtjes*, 310 N.W.2d 696, 698 (Minn. 1981).(2)

Given this background, we find the bankruptcy court's ruling unclear in two respects. First, it is unclear whether the court used the correct definition of abandonment; although the court cited several of the cases noted above, the court also stated in a footnote that "abandonment results from the act of declaration or renunciation, not from removal or subjective intention." Second, it is unclear how the court applied the definition of abandonment to the facts of this case; the court did not make specific findings as to either occupancy or intent. Rather than contribute to the confusion, we think the most prudent course would be to remand the case to the bankruptcy court for clarification.

### III. CONCLUSION

We reverse the decision of the bankruptcy court and remand the cause for further proceedings consistent with this opinion. At a minimum, the bankruptcy court should use the definition of abandonment from *In re Hickman*, supra, and should make specific findings as to occupancy and intent. A true copy. Attest:

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(1) Alternatively, abandonment results when the owner ceases to occupy the homestead for more than six months without filing the requisite notice. Minn. Stat. Sections 510.07. In the present case, Thiesse ceased to occupy her homestead, if at all, for less than six months. Therefore, notice is not at issue.

(2) For cases focusing on cessation of occupancy, see *In re Lehman*, 44 B.R. 946, 948 (Bankr. D. Minn. 1984); *In re Joy*, 5 B.R. 681, 683-84 (Bankr. D. Minn. 1980); *Millett v. Pearson*, 173 N.W. 411, 412 (Minn. 1919); *Jaenicke v. Fountain City Drill Co.*, 119 N.W. 60, 61 (Minn. 1909). For cases focusing on intent, see *Vickery v. First Bank*, 368 N.W.2d 758, 763-64 (Minn. App. 1985); *Donaldson v. Lamprey*, 11 N.W. 119, 120-21 (Minn. 1881).