

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE**

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IN RE:

MAYE BREEDEN,

Debtor.

BK #95-24637-WHB  
Chapter 7

COUNTRY HILLS NEIGHBORHOOD  
ASSOCIATION, INC.,

Movant,

v.

MAYE BREEDEN and  
NORMAN P. HAGEMEYER, Trustee,

Respondents.

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**ORDER ON MOTION TO TERMINATE STAY  
AND AUTHORIZE FORECLOSURE**

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Country Hills Neighborhood Association, Inc., ("Country Hills") filed a motion to terminate the automatic stay and to authorize that creditor to foreclose upon certain real estate described as 1596 Oaken Bucket, Memphis, Tennessee 38018, being Lot 269, Section D, Country Hills Subdivision in Shelby County, Tennessee. The motion asserts that Country Hills is the holder of two judgments for attorney fees in the total amount of \$10,500.00, which judgments accrue interest at the Tennessee statutory rate. The judgments were entered in the Chancery Court of Shelby County, Tennessee and recorded in the Shelby County Register's Office as Instrument Numbers ER 9846 and EW 3997.

The debtor filed an objection to the motion. At the hearing on the motion and objection, testimony was accepted from the debtor and certain exhibits were introduced, including some by stipulation.

The Court notes first that the debtor's objection essentially raises an issue concerning the validity of Country Hills' judgment lien. As such, the debtor's attack on the lien should more appropriately be in the form of an adversary proceeding. FED. R. BANKR. P. 7001(2). However, neither of the parties raised the absence of an adversary proceeding as an issue. Moreover, all of the proof relevant to this dispute was presented at the contested hearing on the motion and objection, and the resolution of this dispute is essentially a question of law and interpretation of applicable law. There is no material factual dispute that will determine the outcome of this contested matter. Therefore, the Court will not require the filing of an adversary proceeding and will enter this order on the motion and objection pending before the Court.

First, the debtor does not contest that Country Hills obtained two judgments in the Chancery Court of Shelby County, Tennessee, nor that those judgments were properly recorded in the Shelby County Register's Office, thereby becoming judgment liens of record against the debtor's residence. Rather, the debtor asserts that the liens are preempted by her right to claim all of her interest in this real property as exempt under applicable Tennessee law. The debtor makes an innovative argument concerning Tennessee exemptions, but she furnishes no authority directly on point to support her position.

Among the stipulated documents is a warranty deed, wherein William E. Jones and Maye Breeden (formerly Maye Jones) executed a deed to the subject property back to themselves as joint tenants with right of survivorship. Exhibit 1. This deed is dated July 23, 1992, and followed the

entry of a divorce decree in the Circuit Court of Shelby County, Tennessee. As a part of their divorce, the parties entered into a marital dissolution agreement dated March 1, 1991. Exhibit 1. That agreement recites that the parties fully understand all of the provisions of their agreement. Among the terms of the agreement are that the two parcels of real property acquired by the parties during their marriage would be divided as follows:

The parties agree that the property described as 1596 Oaken Bucket, Cordova, Tennessee shall be held by the parties with the right of survivorship. However, the Husband agrees to give the Wife a life estate in the said property during the term of her life. Neither party shall have the right to sell or otherwise dispose of the property during the life of the other. Further, the Wife shall have the exclusive use of the house. The Husband agrees to pay and be responsible for all the taxes and property insurance on the said property.

Exhibit 1.

The other real property owned by the parties, 775 Gulf Shore Drive, Number 28, Destin, Florida, was quit claimed by the wife to the husband.

The marital dissolution agreement goes further to divide personal property, checking accounts, etc. Numerical paragraph 12 of that agreement specifically provides that "[n]either party shall pay alimony to the other." Exhibit 1. Further, numerical paragraph 20 of that agreement provides that any modification of the agreement would be effective only if made in writing and executed by the parties.

The parties final decree of divorce was entered in the Circuit Court of Shelby County, Tennessee, Division IX, on March 27, 1991. The decree refers to the marital dissolution agreement signed by the parties and finds that that agreement "makes a full, fair and equitable division of all marital properties and obligation of the parties." Exhibit 1. The decree grants an absolute divorce on the grounds of irreconcilable differences, approves the marital dissolution agreement, restores

this debtor's maiden name of Breeden, and makes no reference to either alimony or support payments. There was no reference in the dissolution agreement or decree to minor children of these parties.

The debtor testified that she and her former husband purchased the Oaken Bucket property for approximately \$80,000, with each of them paying \$40,000 in cash, and that there was no mortgage debt on the property. The debtor made reference to a temporary support order entered in the Circuit Court on November 8, 1990, wherein the former husband was directed to pay alimony *pendente lite* in the amount of \$500.00 per month beginning November 1, 1990 and continuing for four months through March, 1991. Exhibit 2. However, that temporary agreement was not expanded nor referred to in the final decree of divorce.

The debtor further testified that she received \$466 per month in Social Security benefits and that this was her sole income other than some financial assistance from her adult children. Exhibit 3. The debtor is 66 years old. She testified that without the life estate interest in her home she could not pay rent or otherwise have that residence.

The debtor relies upon Tennessee Code Annotated §26-2-111(1)(E) providing for the exemption of certain alimony due more than thirty days after the debtor asserts a claim to such exemption in any judicial proceeding. Moreover, the debtor asserts her right to an exemption under Tennessee Code Annotated §26-2-111(3) providing for an exemption of "payment in compensation of loss of future earnings of the debtor . . . to the extent reasonably necessary for the support of the debtor and any dependent of the debtor." It is the debtor's theory that she received her life estate interest in the subject property in the divorce either as a form of alimony or as a form of compensation for her loss of future earnings. Neither argument convinces the Court.

First, as previously noted, there is no provision in either the marital dissolution agreement or in the final decree of divorce for either alimony or support. Moreover, the debtor already owned a tenancy by entireties interest in this same property, which was transferred to a joint tenancy with right of survivorship both by the divorce and by the parties' warranty deed. Rather than receiving any alimony, the change in the nature of the ownership of this property reflects a division of property by the parties in their divorce agreement.

As to the debtor's argument that she received her interest in this real estate as compensation for loss of future earnings, this is a weaker argument than the alimony argument. First, the debtor testified that she received Social Security at or around the time of the divorce in the amount of approximately \$402 per month. She is currently receiving \$466 per month. Apparently her divorce had no detrimental effect upon the amount of her Social Security benefits. There is clearly no reference in the marital dissolution agreement to any compensation by the former husband for the debtor's loss of future earnings. In fact, there is no proof that the debtor lost future earnings either as a result of the divorce or otherwise.

The case authority provided by debtor's counsel does not directly support the debtor's argument. Rather, those cases refer to the liberal interpretation that should be accorded by Tennessee and bankruptcy courts to exemption laws. This Court agrees. However, the Court can not so liberally construe the exemption laws as to create an exemption that the legislature has not established.

In the debtor's amended schedule C, filed on June 23, 1995, the debtor claims the entire value of this real property, \$80,000, as exempt under Tennessee Code Annotated §26-2-111(1)(E) and (3). The Court does not find either of those statutory exemptions to be applicable to the debtor's interest

in this property. Of course, the debtor would have a homestead exemption under Tennessee law, but the amount of that exemption would not protect the debtor against this judgment creditor. Clearly there is equity in the debtor's interest in this property above the movant's judgment liens.

The Court concludes that the objection of the debtor is not sustainable and that the Court has no choice but to grant the motion of Country Hills Neighborhood Association, Inc., lifting the automatic stay so as to permit Country Hills to execute upon its judgments under applicable state law. The Court would observe that the judgments attached to Country Hills' motion do not reflect that a judgment has been obtained against the joint tenant of this property, William E. Jones. Therefore, the Court would assume that Country Hills does not intend to execute upon any interest in the property owned by Mr. Jones. Rather, Country Hills would be permitted to execute only upon the debtor's interest in this property. This Court is not ruling upon the extent or nature of execution or what Country Hills would or would not be able to do with the debtor's interest. These are issues that may be resolved, if necessary, in an appropriate Tennessee state court.

The Court also notes that the trustee, Norman P. Hagemeyer, did not participate in the hearing on this motion and that the trustee has filed a Report of No Distribution. Therefore, the Court assumes that the trustee does not resist foreclosure or other execution by Country Hills Neighborhood Association, Inc.

In view of the Court's ruling concerning the exemptions not available to the debtor on this real property, with her amended exemption filed on June 23, 1995, the trustee may still have an opportunity to object to the debtor's exemptions. The Court is not ruling that the trustee is entitled to any interest in this real property, but merely alerting the parties that due to the debtor's filing of an

amended exemption schedule, the trustee may still have an opportunity to participate in the disposition of the debtor's interest in this real property.

**SO ORDERED** this 12<sup>th</sup> day of July, 1995.

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WILLIAM HOUSTON BROWN  
UNITED STATES BANKRUPTCY JUDGE

cc:

Mr. Steven G. Beam  
Attorney at Law  
Suite 3201  
100 N. Main Building  
Memphis, Tennessee 38103

Mr. Ronald D. Tuech  
Attorney at Law  
1850 Poplar Crest Cove  
Suite 200  
Memphis, Tennessee 38119

Mr. Norman P. Hagemeyer  
Attorney at Law  
99 North Third Street  
Memphis, Tennessee 38103