

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

---

**In re**

**CAROL N. FOSTER,**

**Case No. 97-14972**

**Debtor.**

**Chapter 13**

**WILLIAM L GUY, Standing Chapter  
13 Trustee,**

**Movant,**

**vs.**

**CAROL N. FOSTER,**

**Respondent.**

---

**MEMORANDUM AND ORDER RE STANDING CHAPTER 13  
TRUSTEE'S OBJECTION TO DEBTOR'S CLAIMED EXEMPTION**

---

The instant matter before the court arises out of the "Trustee's Objection to Claimed Exemption" filed by the movant, William L. Guy, Standing Chapter 13 Trustee ("Trustee"), pursuant to FED. R. BANKR. P. 4003(b). Trustee objects to the homestead exemption claimed by the respondent, Mrs. Carol N. Foster, the above-named debtor ("Mrs. Foster"), under TENN. CODE ANN. § 26-2-301.

By virtue of 28 U.S.C. § 157(b)(2)(B), this is a core proceeding. The court has jurisdiction of this action under 28 U.S.C. § 1334(a)-(b) and 157(a) and Miscellaneous District Court Order No. 84-30 entered on July 11, 1984. Based on undisputed background facts, statements of counsel, and consideration of the entire case record as a whole, the following shall constitute the court's findings

of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

The relevant background facts may be very briefly summarized as follows: Mrs. Foster filed this chapter 13 case on December 30, 1997, listing an unencumbered 1995 single-wide mobile home in Schedule A as her principal place of residence having a market value of \$15,000.00. In addition, Mrs. Foster listed the mobile home in Schedule C and claimed a homestead exemption of \$5,000.00 under TENN. CODE ANN. § 26-2-301. Without doubt, the mobile home is Mrs. Foster's permanent home. Mrs. Foster's only source of income is from social security. She draws the sum of \$462.00 per month and her non-filing husband draws the monthly sum of \$472.00 for a total combined income of \$934.00 per month. The mobile home is in Mrs. Foster's name only.

Mrs. Foster pays "lot rent" at a mobile home park where the mobile home is underpinned. Trustee timely objected to her claimed exemption essentially asserting that Mrs. Foster is not entitled to the homestead exemption because she does not own the underlying land on which the mobile home is situated. Counsel for Mrs. Foster, on the other hand, strongly asserts that she is entitled under the particular facts and circumstances and applicable law to the homestead exemption since the mobile home is used as her permanent home or "principal place of residence."

The State of Tennessee elected to "opt out" of the section 522 federal bankruptcy exemption scheme, including the homestead exemption provision contained in 11 U.S.C. § 522(d); therefore, the applicable exemption statute here is TENN. CODE ANN. § 26-2-301, which provides, in relevant part, as follows:

**Basic exemption.** — (a) An individual, regardless of whether he is head of a family, shall be entitled to a homestead exemption upon real property which is owned by the individual and used by him, his spouse, or a dependent, as a principal place of residence. The aggregate value of such homestead exemption shall not exceed \$5,000.00.

Section 522(l) of the Bankruptcy Code provides:

(l) the debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt. (emphasis added.)

Rule 4003 of the Federal Rules of Bankruptcy Procedure provides, in pertinent part, as follows:

(a) **Claim of Exemptions.** A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) **Objections to Claim of Exemptions.** The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list or supplemental schedules unless, within such period, further time is granted by the court. Copies of the objections shall be delivered or mailed to the trustee and to the person filing the list and the attorney for such person.

(c) **Burden of Proof.** In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

A debtor's rights in property claimed as exempt are defined and fixed on the date that the bankruptcy petition is filed. *White v. Stump*, 266 U.S. 310 (1924). See also for example, *In re Butcher*, 62 B.R. 162 (Bankr. E.D. Tenn. 1986), aff'd, 75 B.R. 441, aff'd 848 F.2d 189; *In re John Taylor Co.*, 935 F.2d 75 (5<sup>th</sup> Cir. 1991); *In re Bowes*, 160 B.R. 290 (Bankr. N. D. Tex. 1993).

Since the instant issue is one of first impression for this court, the court must construe the applicable statute as a whole and ascertain its underlying purpose or intention. See, for example, *In re Young*, 42 B.R. 892, 897 (Bankr. E.D. Tenn. 1984) (“In endeavoring to divine the legislative intent [of TENN. CODE ANN. § 26-2-301], the court must be guided by the leading idea or purpose of the whole statute.”). It cannot be overemphasized here that the homestead exemption law must be liberally construed in favor of the exemption. See, for example, *In re Hackler*, 35 B.R. 326 (Bankr. E.D. Tenn. 1983).

The objective of the Tennessee General Assembly in drafting the homestead exemption statute was “to protect poor persons” and “to secure the poor in the possession and use of the means necessary for their subsistence.” 13 TENN. JURIS., *Exemptions From Execution and Attachment* § 3 (citing *Keen v. Alexander*, 260 S.W.2d 297 (1953)). The exemption is “not alone to benefit the debtor, but also and mainly to protect the family in the possession of a home. . . .” *Swift v. Reasonover*, 77 S.W.2d 809 (1935). See also *In re Walls*, 45 B.R. 145 (Bankr. E.D. Tenn. 1984).

It repeatedly has been held in Tennessee that the right to a homestead exemption does not constitute an estate in the lands, but merely is a right of occupancy and use. See, for example, *In re Walls*, 45 B.R. at 147; see also *Carey v. Carey*, 163 Tenn. 486, 43 S.W.2d 498 (1931); *Briscoe v. Vaughn*, 103 Tenn. 308, 52 S.W. 1068 (1899). Technically, the homestead is an artificial estate in land and is defined to be the “home place” or the “place of the house.” *Dickinson v. Mayer*, 58 Tenn. (11 Heisk.) 515 (1872). See also 13 TENN. JURIS., *Exemptions From Execution and Attachment* § 4; BLACK’S LAW DICTIONARY 660 (5<sup>th</sup> ed. 1979). In light of the foregoing case law interpreting TENN. CODE ANN. § 26-2-301, the court need not decide whether Mrs. Foster’s mobile home is technically “real property.” Even so, the court additionally notes that Mrs. Foster actually

pays local city and county real property taxes on her mobile home pursuant to the mobile home statute set forth in TENN. CODE ANN. §67-5-802(a).

After careful consideration of the purpose and spirit of the homestead exemption under applicable Tennessee law, the logical and relevant inquiry here is only whether Mrs. Foster actually utilizes the mobile home as her permanent home or principal place of residence. Compare *In re Young*, 42 B.R. at 897. Mrs. Foster's clear position is, and the facts support her, that the mobile home indeed is her permanent "home" or "principal place of residence."

For example, in *In re Matthews*, 43 B.R. 466 (N.D. Ill. 1984), the district court reversed the bankruptcy court and held that a mobile home is a homestead estate if the debtor intended to permanently affix the mobile home to the realty. *Id.* at 467 (citing *In re Morphis*, 30 B.R. 589, 591 (Bankr. N.D. Ala. 1983); *Hartford Nat'l Bank & Trust Co., v. Harvey*, 420 A.2d 230 (Me. 1980)). The Illinois district court stated in *Matthews* that bankruptcy court erred in considering the mobile home personal property merely because the wheels had been removed and because the home rested on concrete blocks rather than a foundation. Instead, the district court reasoned that such factors more properly reflect the debtor's financial inability to make improvements, not the debtor's intention to move the mobile home to another location in the future. *Id.* See also *In re Mangano*, 158 B.R. 532 (Bankr. S.D. Fla. 1993) (the homestead exemption applied based on the debtor's use of the motor home as residence, not just its physical characteristics); *In re Meola*, 158 B.R. 881 (Bankr. S.D. Fla. 1993) (court held that homestead exemption applied since trailer was debtor's only possession of any value and had been his sole shelter for many years); *In re Scudder*, 97 B.R. 617 (Bankr. S.D. Ala. 1989) (houseboat was "homestead" where debtor made it his principal residence);

*In re McMahon*, 60 B.R. 632 (Bankr. W.D. Ky. 1986) (same).

After considering the purpose of Tennessee's homestead exemption statute, the particular facts and circumstances of this case, and applicable law, the court finds that Mrs. Foster is within the letter and spirit of the law in claiming this homestead exemption. Based on the foregoing, the "Trustee's Objection to Claimed Exemption" is denied under these particular facts and circumstances; and Mrs. Foster's claimed homestead exemption in the mobile home is hereby allowed.

**IT IS SO ORDERED.**

**BY THE COURT**

---

**David S. Kennedy**  
**Chief United States Bankruptcy Judge**

**Dated: March 31, 1998**

cc: William L. Guy, Esquire  
Standing Chapter 13 Trustee  
59 Conrad Drive  
P.O. Box 1313  
Jackson, TN 38302-1313

Lloyd A. Utley, Esquire  
Attorney for Mrs. Foster  
425 East Baltimore  
Jackson, TN 38301-6350

Ellen B. Vergos, Esquire  
United States Trustee for Region 8  
200 Jefferson #400  
Memphis, TN 38103