

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In Re:

In Bankruptcy

ROBERT ONEAL BOGSTAD
ARLENE R. A. BOGSTAD

No. EF7-83-00354

Debtors

FILED

DEC 1 1983

FINDINGS OF FACT, CONCLUSIONS OF LAW AND CLERK
ORDER DENYING OBJECTION TO HOMESTEAD EXEMPTION CLAIM U.S. BANKRUPTCY COURT

Production Credit Association, by its attorney, Peter F. Herrell of Jordan, Herrell & Thiel, having filed an objection to the homestead exemption claimed by debtor Robert Oneal Bogstad; and the matter coming on for hearing before the Court; and the debtor appearing in person and by his attorney, Mart W. Swenson; and the Court having considered the arguments of counsel, the briefs of the respective parties, and all the filings and proceedings herein, FINDS:

1. That debtors Robert Oneal Bogstad (the husband) and Arlene R. A. Bogstad (the wife) filed for relief under Chapter 7 of the Bankruptcy Code on March 9, 1983.

2. That the assets listed by the debtors included an improved lot in Pepin County valued at \$50,000.00.

3. That the debts listed by the debtors included:
\$10,060.51 owed to Royal Credit Union and secured by a first mortgage on the Pepin County property;
\$10,509.37 owed to Clarence H. Williams and listed as a second mortgage on the Pepin County property on Schedule B-1 (Real Property of Debtor) but as a personal note on Schedule A-3 (Creditors Having Unsecured Claims);
and

\$6,108.38 owed to Pepin County for taxes (presumably real estate taxes on the Pepin County lot).

4. That the exemptions claimed by the debtors included:
\$25,000.00 on the Pepin County lot (claimed by the husband under Wis. Stats. sec. 815.20);
\$7,500.00 on the Pepin County lot (claimed by the wife under 11 U.S.C. 522(d)(5)(1982)).

5. That Production Credit Association, an unsecured creditor, has objected to so much of the husband's exemption claim as exceeds his equity interest in the homestead.

6. That spouses may "stack" state and federal exemptions. In re Ageton, 14 B.R. 832, 836-837 (Bankr.9th Cir. 1981).

7. That Wis. Stats. sec. 815.20 provides, in pertinent part:

Such exemption extends to land owned by husband and wife jointly or in common, and when they reside in the same household may be claimed by either or may be divided in any proportion between them, but in no event shall the exemption exceed \$25,000.00 for such household.

8. That the relevant language of the statute is not clear regarding the question at bar: Whether Wisconsin law permits a spouse to claim a larger exemption than that spouse's ownership interest.

9. That the Wisconsin homestead exemption is liberally construed in favor of debtors. In re Neis, 27 B.R. 985, 988 (W.D.Wis. 1983).

10. That neither In re Jolly, 13 B.R. 123, 126 (Bankr. E.D.Wis. 1981), nor the unreported case it cites, In re Janze, 76-384 (Bankr.E.D.Wis. 1977), are persuasive authority on the question at bar because neither decision reflects litigation of the question before the court.

11. That the Wisconsin homestead laws are designed to

preserve home and family. In re Blodgett, 115 F.Supp. 33, 38 (E.D.Wis. 1953).

12. That a spouse may claim a homestead exemption larger than that spouse's ownership interest. See In re Howe, 20 B.R. 938, 942 (Bankr.W.D.Wis. 1982).

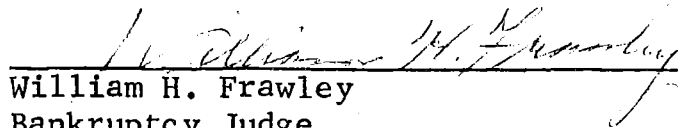
CONCLUSION OF LAW

Production Credit Association's objection to the husband's homestead exemption claim should be denied.

NOW, THEREFORE, IT IS ORDERED that the objection to debtor's homestead exemption claim should be, and the same hereby is, denied without costs to either party.

Dated: December 1, 1983.

BY THE COURT:



William H. Frawley
Bankruptcy Judge