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Summary of In re Nilsson, 129 Nev. Adv. Op. 101

Keivan Roebuck
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BANKRUPTCY: HOMESTEAD EXEMPTION

Summary

The Court determined whether a debtor may claim Nevada's homestead exemption when he does not reside on the property but his minor children do.

Disposition

“A debtor must actually reside on real property in order to properly claim a homestead exemption for that property.”

Factual and Procedural History

David and his wife, Kelli, purchased property in 1994 as joint tenants and subsequently built a home on it. In 2006, David moved out of the house, leaving Kelli and their two children to live there. Kelli filed for divorce that same year, which ultimately led to her and David each holding a half interest in the property as tenants in common. In 2011, over three years after the divorce decree, Kelli recorded a homestead declaration that listed the property as her individual homestead. Although David did not take part in the declaration, Kelli did note that his name was on the title of the property.

Thereafter, David filed a Chapter 13 bankruptcy, in which he tried to claim the property as exempt pursuant to Nevada's homestead exemption. The Bankruptcy trustee objected to the exemption because David had not resided in the property since 2006. The trustee also argued that David could not claim the exemption because he did not record a declaration of homestead. David contended that although he had not lived on the property for over three years, he should still be able to claim the homestead exemption to benefit his children. Furthermore, he argued that he could claim the exemption under the doctrine of constructive occupancy because his children still lived there. The bankruptcy court certified the question to the Nevada Supreme Court.

Discussion

The homestead exemption

In Nevada, a homestead may be exempted from the bankruptcy estate.² Only the statutory or constitutional provisions that establish this exemption may extend or limit it. While such provisions are construed liberally in favor of the debtor, the debtor must substantially comply with the provisions for the exemption to apply. To determine whether a debtor must actually reside on a property to qualify for the homestead exemption, the Court interpreted the constitutional and statutory provisions governing Nevada's homestead law.

¹ By Keivan Roebuck.

² NEV. REV. STAT. 21.090(1)(1) (2013); NEV. CONST. art. 4, § 30.

Nevada law requires that a debtor must reside on real property in order to exempt that property as a homestead.

The Court looked to the definition of “homestead” found in NRS 115.005(2)(a) and noted that it does not expressly state whether one must reside on his or her homestead. However, it does require that either a married couple or a single person “select” the homestead by written declaration, which is governed by NRS 115.020. When a married couple selects a homestead by declaration, at least one of them must reside on the premises at that time.³ A single person, on the other hand, must indicate that he or she is a householder,⁴ which the Court has interpreted as being the occupier of the house.⁵

Furthermore, any claimant of property must state that it is their intention to claim it as their homestead.⁶ Here, David argued that the phrase “any claimant” indicated that a single person could declare a homestead that he or she did not live on, as this part of the statute did not have a residency or householder requirement. The Court rejected this argument, however, finding it to be inconsistent with NRS 115.020(2)(a), which requires single persons to declare that they are householders.

David may not exempt the Reno property as a homestead under the doctrine of constructive occupancy.

David argued that he should be able to claim constructive occupancy because his divorce was the only reason he moved out of his house. He also argued for constructive occupancy in order to protect his children that still lived on the property. The Court, however, pointed to precedent, which required that claimants reside on the property with the intent to use and claim it as their homestead when filing a declaration of homestead. Accordingly, it concluded that a homestead must be a claimant’s “bona fide residence.” Because David was not living on the property, the Court reasoned that it was not his bona fide residence. As such, it rejected David’s constructive occupancy argument and held that he could not claim the property under the homestead exemption.

Conclusion

Although the debtor’s children lived on the property, he did not actually reside on it and therefore could not claim it as his bona fide residence. The Court held that the debtor could not effectively declare the property as his homestead, and it refused to extend Nevada’s homestead law under the doctrine of constructive occupancy.

³ NEV. REV. STAT. 115.020(2)(a)–(b) (2013).

⁴ NEV. REV. STAT. 115.020(2)(a) (2013).

⁵ *Goldfield Mohawk Mining Co. v. Frances-Mohawk Mining & Leasing Co.*, 31 Nev. 348, 354, 102 P. 963, 965 (1909).

⁶ NEV. REV. STAT. 115.020(2)(c) (2013).