

IT IS ORDERED as set forth below:



Date: April 30, 2014

A handwritten signature in black ink, appearing to read "W. Homer Drake", is written over a horizontal line.

**W. Homer Drake**  
**U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
ROBERT GARY VAUGHN,	:	13-13062-WHD
DIANA LYNN VAUGHN,	:	
	:	
Debtors.	:	
	:	
	:	
ADAM M. GOODMAN,	:	CONTESTED MATTER
as CHAPTER 13 TRUSTEE,	:	
	:	
Movant.	:	
	:	
v.	:	
	:	
ROBERT GARY VAUGHN,	:	IN PROCEEDINGS UNDER
DIANA LYNN VAUGHN,	:	CHAPTER 13 OF THE
	:	BANKRUPTCY CODE
Respondent.	:	

**ORDER**

Before the Court is Adam M. Goodman's, in his capacity as Chapter 13 Trustee

(hereinafter the "Trustee") for the estate of Robert Gary Vaughn and Diana Lynn Vaughn (hereinafter the "Debtors"), Objection to the Debtors' Chapter 13 plan and the Trustee's Motion to Dismiss the Debtors' case, both filed on January 21, 2014 and supplemented on March 12, 2014. A Confirmation Hearing was held on March 27, 2014.

At the hearing, the Trustee argued that the central issue before the Court involves whether the Debtors' five and one-half acres of property, contiguous to the Debtors' two acre tract of land containing their home, qualifies as their "residence" in accordance with Official Code of Georgia Annotated (hereinafter the "O.C.G.A.") § 44-13-100(a)(1) for the purposes of an allowed exemption. The Trustee and the Debtors both made factual proffers to the Court and set forth arguments related to this issue. The Court took the matter under advisement. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) & (L) and jurisdiction and venue are proper. See 28 U.S.C. §§ 157(a) & (b)(2); 1334(b); & 1409.

### **Findings of Fact**

On December 6, 2013, the Debtors filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code.<sup>1</sup> The Debtors filed their Chapter 13 Plan on the same day. The Debtors listed in their initial schedules a house and seven and one half acres on 87 Stovall Road, Lagrange, Georgia 30241 (hereinafter the "Property"). In the description of the Property, the Debtors explained that the secured lien on the property attaches only to 2 acres containing the home, even though all seven and one-half acres were

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<sup>1</sup> 11 U.S.C. § 101. *et. seq.*

part of the house note. The remaining five and one-half acres (hereinafter the "5.5 acre Tract") was further described in the schedules as "land locked". The Debtors listed the value of the Property as \$126,469.00 with a secured claim of \$140,632.00.

On January 21, 2014, the Trustee filed an Objection to Confirmation and a Motion to Dismiss. In the Objection to Confirmation, the Trustee argued that the Debtors' schedules and Chapter 13 Plan failed to provide enough information as to the description of the Property owned by the Debtors. The Trustee also asserted that the Debtors improperly exempted the 5.5 acre Tract because it does not meet the definition of "residence" in accordance with Georgia's state exemption statute O.C.G.A. 44-13-100(a)(1). The Trustee further alleged that the Debtors' schedules were too ambiguous to determine the value of the Debtors' 5.5 acre Tract.

On February 14, 2014, the Debtors amended their Schedules A and C. In the amendments, the Debtors split the Property into the 5.5 acre Tract and the 2 acre tract on which the Debtors' home is located (hereinafter the "2 acre Tract"). The Debtors valued the 2 acre Tract at \$93,281.00 with a secured claim of \$140,632.08. Additionally, the Debtors valued the 5.5 acre Tract at \$32,598.00 without any secured claims. In Schedule C the Debtors each nominally exempted \$1.00 of the 2 acre Tract in accordance to O.C.G.A. § 44-13-100(a)(1) because the 2 acre Tract is oversecured. The Debtors also each exempted \$16,299.00, for a total of \$32,598.00, in accordance with O.C.G.A. § 44-13-100(a)(1), for the 5.5 acre Tract.

At the Confirmation Hearing on March 27, 2014, the Trustee stated that the Debtors' exemption is improper because the 5.5 acre Tract is not used as the Debtors' residence. Without objection by the Trustee, the Debtors' attorney submitted a proffer at the hearing. Counsel proffered that the entire 7.5 acres of the Property was purchased at the same time, as unimproved land, for approximately \$19,500.00 in 2000. A few years after the purchase of the Property, the Debtors purchased a manufactured home from Horton Homes and used the 2 acre Tract as collateral for its purchase. The 2 acre Tract and the 5.5 acre Tract are contiguous pieces of property. In addition to using the 5.5 acre Tract for general enjoyment and recreational use, the Debtors have a septic system with fill lines originating from the 2 acre Tract and crossing over into the 5.5 acre Tract. The 2 acre Tract includes the manufactured home, a mailbox, and a well. The 5.5 acre Tract consists of rural unimproved property without a street number and contains a beaver pond and marsh. Counsel proffered that the Debtors occupy and use the entire 7.5 acres of the Property as their residence; and, therefore, their exemption is proper in accordance with Georgia law. The Court took the matter under advisement.

### **Conclusions of Law**

The sole issue remaining for the Court's consideration is whether the 5.5 acre Tract qualifies as part of the "residence" for purposes of O.C.G.A. § 44-13-100(a)(1). The Trustee argues that the 5.5 acre Tract fails to meet the definition of "residence" so as to qualify for the residential exemption; and, therefore, the plan fails to conform to 11 U.S.C.

§ 1325(a)(4), for unsecured creditors will receive less than in a Chapter 7 liquidation. Conversely, the Debtors argued at the hearing that the 5.5 acre tract meets the definition of "residence", in accordance with O.C.G.A. § 44-13-100(a)(1), and that the Chapter 13 plan should be confirmed.

Section 522 of the Bankruptcy Code defines the property of the debtor that may be claimed as exempt. See generally, 11 U.S.C. § 522. While subsection (d) of Section 522 specifies the type of property that a debtor may exempt, subsection (b) allows a state to "opt out" of this federal exemption scheme and impose state exemption provisions on debtors. In re Taylor, 320 B.R. 214, 216 (Bankr. N.D.Ga. 2005) (Mullins, B.J.). The state of Georgia has opted out of the federal exemptions and has codified state bankruptcy exemptions in Section 44-13-100(a) of the O.C.G.A. Id. Georgia's homestead exemption is set forth in O.C.G.A. § 44-13-100(a)(1), which provides that a debtor may exempt:

[t]he debtor's aggregate interest, not to exceed \$21,500.00 in value, in real property or personal property *that the debtor or a dependent of the debtor uses as a residence*, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor. In the event title to property used for the exemption provided under this paragraph is in one of two spouses who is a debtor, the amount of the exemption hereunder shall be \$43,000.00.

O.C.G.A. § 44-13-100(a)(1) (emphasis added).

Courts have generally construed exemptions in favor of debtors. See In re Mixon, 2014 WL 28669, at \*4 (Bankr. S.D.Ga. 2014) (Coleman, B.J.) (citing In re McFarland, 481 B.R. 242, 248 (Bankr. S.D.Ga. 2012) (Barrett, B.J.)). Rule 4003 of the Federal Rules of

Bankruptcy Procedure provides that the party objecting to an exemption carries the burden of proving that the exemption is not properly claimed. FED. R. BANKR. P. 4003(c). Additionally, Courts have held that "the objecting party must overcome the *prima facie* effect of the claim of exemption by a preponderance of the evidence. In re Mixon, 2014 WL at \*4 (citing In re Holt, 357 B.R. 917, 921 (Bankr. M.D.Ga. 2006) (Laney, B.J.)).

In a review of case law, the Court found only two Georgia Bankruptcy cases that discussed the method for determining whether property was considered part of the "residence" in accordance with the Georgia homestead exemption. In both cases, the decision ultimately hinged on how the debtors used the property. The two cases that the Court reviewed were In re Holt, 357 B.R. 917 (Bankr. M.D.Ga. 2006) (Laney, B.J.) and In re Mixon, 2014 WL 28669 (Bankr. S.D.Ga. 2014) (Coleman, B.J.)

In Holt, the debtor attempted to use the Georgia homestead exemption to exempt the equity in a contiguous piece of rental property that the debtor owned in addition to the property on which the debtor's house was located. See In re Holt, 357 B.R. at 919. The rental property was subject to a separate security deed than was the property on which the debtor's house was located. See id. Accordingly, Judge Laney found that the adjacent property was "separate and distinct" from the debtor's "homestead[.]" and held that the debtor was not entitled to the residence exemption for adjacent property that the debtor *rented or leased* to a residential tenant. See In re Holt, 357 B.R., at 924 (emphasis added).

As the Trustee pointed out, the facts in the present case differ from those in Holt. The Court believes that the present case more resembles the facts in In re Mixon. See In re Mixon, 2014 WL 28669 (Bankr. S.D.Ga. 2014) (Coleman, B.J.). In Mixon, the debtor exempted the entirety of a thirteen acre tract. See id. Prior to the bankruptcy case, the debtor had a proposed plat prepared, which divided the property into separate tracts for the purpose of selling a piece of the property. However, the proposed plat was never recorded in the county records.

Judge Coleman stated, as an initial matter, that the debtor's proposed plat was merely a proposal, and did not create new tracts of land for the purposes of limiting the property in which a debtor may claim an exemption under Georgia law. Id. at \*4 (citing In re Allman, 286 B.R. 402, 407 (Bankr. D.Ariz. 2002) (interpreting the relevant homestead exemption to "include the entire contiguous parcel of land on which the mobile home sits, regardless of whether it consists of one or more lots as determined by the subdivision plat or assessor's parcel numbers, and regardless of whether all of the land was purchased simultaneously, unless there is evidence that a subdivided portion of the entire parcel is not being used for residential purposes.")). The court highlighted three significant facts: the debtor (1) purchased the property at the same time and subject to a single security deed, (2) lived on the property since it was purchased, and (3) neither rented nor sold any portion of the property. The court stated that "[u]nlike in Holt, the [d]ebtor has not ceased *using* any

portion of the Property as his residence by devoting some portion of it to rental purposes." Id. at 5 (emphasis added).

Judge Coleman added the following: "a review of the case law reveals that much more is required before a bankruptcy court should decide that contiguous land is not part of the debtor's residence for the purposes of claiming a homestead exemption." Id. at \*5-\*6 (citing Lanier v. Beaman, 394 B.R. 382, 384 (E.D.N.C. 2008) ("A reasonable assessment of the law dictates that 'residence' does not include land bought separately from the land on which a home is located; separated by a fence; on which there are no structures; on which no family member parks or stores equipment; and on which activity occurs that is entirely separate from the day to day activities normally expected in a residence.")).

As in Mixon, the Debtors in the current case acquired the 7.5 acres of the Property as one piece of property. Despite the fact that the Debtors separated the property into different parcels for the purposes of using the 2 acre Tract as collateral, the Debtors purchased the entire 7.5 acres to be used as their residence. Many of the Debtors' uses and activities support this conclusion. The Court finds that the Debtors use the entirety of the 7.5 acres of the Property as their residence and, therefore, holds that the Debtors exemptions pursuant to O.C.G.A. § 44-13-100(a)(1) are proper.

### **Conclusion**

The Court concludes that the Debtors' exemption of the 5.5 acre Tract is proper in accordance with O.C.G.A. § 44-13-100(a)(1). The Trustee failed to carry his burden by a



preponderance of the evidence that the Debtors do not use the entirety of the Property and that their use of the property is not consistent with the use of a residence within the definition of the Georgia exemption statute.

It is, therefore, ORDERED and ADJUDGED that the Trustee's Objection to Confirmation is hereby **OVERRULED**;

It is hereby further ORDERED and ADJUDGED that the Trustee's Motion to Dismiss the Debtors' case is hereby **DENIED**;

Additionally, there being no other confirmation issues before the Court, it is hereby ORDERED and ADJUDGED that the Debtors' Chapter 13 Plan is **CONFIRMED**.

The Clerk is DIRECTED to serve a copy of this ORDER on the Debtors, Debtors' counsel, and the Chapter 13 Trustee.