

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

IN RE:	:	CASE NO. G12-20065-REB
	:	
DEBRA JEAN GARNER	:	CHAPTER 7
and JOHN EARL GARNER,	:	
	:	
Debtors.	:	JUDGE BRIZENDINE

ORDER SUSTAINING OBJECTION TO EXEMPTION CLAIM

This matter is before the Court on the Chapter 7 Trustee's Objection to Amount of Inheritance Exemption (Docket Entry No. 32), filed on March 8, 2012, challenging the claimed exemption of Debtors named above in the amount of \$9,840.00 in certain property described as a "1/4 interest in inherited property located at 2094 Highway 53 E, Jasper, GA." Debtors further state in their schedules that this interest is expected to be transformed into cash proceeds following the sale of the underlying property.¹

In her objection, the Trustee contends that the scheduled exemption exceeds the amount to which Debtors are properly entitled under 11 U.S.C. § 522(b) and O.C.G.A. § 44-13-100(a)(6) because the property interest at issue is the sole inheritance of Co-Debtor John Earl Garner and not shared by his wife. Since this interest is not marital property, the Trustee insists that the total amount Debtors can exempt for this property under the "wild card" provision of O.C.G.A. § 44-13-100(a)(6) is limited to \$5,600.00. The Court allowed the parties to submit letter briefs on this question, and based upon a review of the record and the argument and

¹ This case was originally filed under Chapter 13 and later converted to a case under Chapter 7 on January 27, 2012. The exemption claim at issue is set forth in Debtors' Schedule C as filed on said date, and the property interest is also listed on Schedule A.

authority presented, the Court will sustain the objection.

In their response, Debtors first contend that based on the language of this statutory provision, along with its notable absence of the term “of the Debtor” that is found in other subsections of this statute, the “wild card” exemption may be used by joint debtor spouses with respect to *any* property, including those property interests inherited solely by one of the co-debtors.² In addition, Debtors seek to distinguish the recent decision of *In re Malia*, 2012 WL 909738, Chapter 7 Case No. 09-42237-MGD (Bankr. N.D.Ga. Feb. 8, 2012), where the court sustained a trustee’s objection in a case commenced through a jointly-filed petition to the debtors’ claimed exemptions in a promissory note inherited by one spouse. In that case, the court determined that the inheriting co-debtor spouse failed to take sufficient steps to convert the note itself into marital property in support of an asserted intent to do so, even though certain of the proceeds had been shared.

With regard to the Debtors’ first argument, the Trustee counters that Debtors’ construction of the exemption subsection in question would nullify the intended effect of the statute overall in specifying certain types of property and the corresponding exemption amounts concerning same, inasmuch as the phrase “of the debtor” is lacking in several other subsections as well. This Court decides that in any event, even if it accepted Debtors’ construction of the statute, upon which no finding is made herein, Debtors still would not succeed in rebutting the

² This provision states that an exemption includes:

The debtor’s aggregate interest, not to exceed \$600.00 in value plus any unused amount of the exemption, not to exceed \$5,000.00, provided under (1) of this subsection, in any property.

O.C.G.A. § 44-13-100(a)(6).

objection. This conclusion arises in connection with the second argument advanced by Debtors regarding *Malia* and the Trustee's well-taken reminder that ownership rights in property are determined with reference to state law. Consistent with the rationale in *Malia*, this Court believes that the exemption statute must be read in conjunction with other applicable state law authority addressing the respective rights of spouses to property in which only one spouse is the beneficiary or heir.

In Georgia, property inherited by one spouse remains the separate property of that spouse unless and until the inheriting spouse takes action that demonstrates an intent to convert same to shared marital property as in transferring an ownership interest to the other spouse. See *Malia*, 2012 WL 909738, * 1, citing *Bailey v. Bailey*, 250 Ga. 15, 16, 295 S.E.2d 304 (1982); *Shaw v. Shaw*, 290 Ga. 354, 720 S.E.2d 614 (2012); *Miller v. Miller*, 288 Ga. 274, 280, 705 S.E. 2d 839, 845 (2010). In this case, Debtor John Earl Garner asserts that the claimed exemption at issue is supported through his full intention to convert the inheritance in question to shared marital property, but that he cannot take demonstrative action in this regard until he actually receives his distribution of the sale proceeds.

While his stated intent to act in the future to share the sale proceeds with his wife is admirable, this Court concludes, however, that its decision must be based on the inheritance interest at issue as it stood when the Chapter 13 bankruptcy estate was created.³ The record reflects that on that date, Debtor John Earl Garner had not taken sufficient steps to transfer

³ Under 11 U.S.C. § 348(f)(1), the property of Debtors' estate in their case as converted from Chapter 13 to Chapter 7 consists of property as of the petition filing date still in their possession or control. Actually, even though this case is jointly administered, separate bankruptcy estates are created for each spouse in which they may claim exemptions in eligible property. See *Reider v. FDIC (In re Reider)*, 31 F.3d 1102 (11th Cir. 1994).

ownership rights in and to the inheritance to which he was entitled concerning a 1/4 interest in certain real property to his spouse. Similarly, no evidence has been presented that John Earl Garner has directed that his partial interest be deeded to his wife and himself as tenants in common. There is also an issue of how long it will be until the underlying property is actually sold and proceeds distributed, thus requiring the Court, if it followed Debtors' argument, to base its decision on an act that it has no way of confirming. The categories listed in the Georgia exemption statute only provide the basis for exempting certain property from property of the estate of a specific debtor, here Debra Jean Garner, but such a claim will lie only concerning interests that are part of that debtor's bankruptcy estate. *Compare In re Bippert*, 311 B.R. 456, 465-66 (Bankr. W.D.Tex. 2004).

For these reasons, the Court concludes that the exemption claim of Debtors in the subject inherited property must be limited to John Earl Garner alone in the amount of \$5,600.00, as Co-Debtor Debra Jean Garner cannot assert a claim of exemption in the inheritance since she has no demonstrable ownership interest in this particular property consistent with state law.

Accordingly, based on the foregoing discussion, it is

ORDERED that the Objection of the Chapter 7 Trustee to Amount of Inheritance Exemption claimed by Debtors (Docket Entry No. 32) be, and the same hereby is, **sustained**, and Debtors' claim of exemption in the inherited property interest at issue is limited to \$5,600.00.

The Clerk is directed to serve a copy of this Order upon counsel for Debtors, the

Chapter 7 Trustee, and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 23rd day of July, 2012.

A handwritten signature in black ink, appearing to read 'Brizendine', is written over a horizontal line.

ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE