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OF THE NINTH CIRCUIT**

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:)	BAP No.	NC-06-1005-AlMaS
)		
MARLA J. RABIN; NANOSHKA C.)	Bk. Nos.	05-32572
JOHNSON,)		05-32573
)		(Jointly administered)
Debtors.)		
_____)		
)		
MARLA J. RABIN; NANOSHKA C.)		
JOHNSON,)		
)		
Appellants,)		
)	A M E N D E D	
v.)	O P I N I O N	
)		
E. LYNN SCHOENMANN, Chapter 7)		
Trustee,)		
)		
Appellee.)		
_____)		

Argued and Submitted on June 23, 2006
at San Francisco, California

Original Filed - December 8, 2006

Amended - January 24, 2007¹

Appeal from the United States Bankruptcy Court
for the Northern District of California

Honorable Thomas E. Carlson, Bankruptcy Judge, Presiding.

Before: ALLEY,² MARLAR and SMITH, Bankruptcy Judges.

¹ This Amended Opinion contains only minor revisions of our original Opinion issued on December 8, 2005. The revisions concern our general discussion of California exemption law, and they do not affect the outcome of this appeal, nor do they affect the key reasoning on which that outcome is based.

² Hon. Frank R. Alley, III, Bankruptcy Judge for the District of Oregon, sitting by designation.

1 ALLEY, Bankruptcy Judge:
2

3 Appellants are registrants under California's statutory
4 scheme defining the economic rights and liabilities of qualifying
5 domestic partners. At the time their bankruptcy petitions were
6 filed each owned an undivided interest in their home. Each
7 claimed the full homestead exemption accorded to individuals by
8 California law. The trustee objected to the exemptions, arguing
9 that California law requires that the appellants be subject to
10 the same rule as are married persons: that is, that a single
11 exemption must be shared between them. The bankruptcy court
12 sustained the trustee's objection, and we AFFIRM.
13

14 I. FACTS

15 Appellants Marla Rabin and Nanoshka Johnson have been in a
16 committed relationship for a number of years. One has a
17 biological child which the other adopted shortly after the
18 child's birth. Their well-integrated economic lives included the
19 joint ownership and operation of a business. In 1995, they
20 purchased a home together in San Francisco.

21 In 2000, Ms. Rabin and Ms. Johnson registered with the State
22 of California's Domestic Partnership Registry, described below.
23 When California enacted the Domestic Partner Rights and
24 Responsibilities Act of 2003 (hereinafter "DPRRA" or "Act"), they
25 elected to remain as registered partners. The amendments to the
26 DPRRA, codified at Cal. Fam. Code § 297 et. seq., became
27 effective on January 1, 2005.

28 Appellants filed separate petitions for relief under the

1 Bankruptcy Code³ on August 11, 2005. At the time, they lived
2 together in the San Francisco property. Each disclosed a 50%
3 interest in the homestead, and each claimed a full \$75,000
4 homestead exemption. The trustee ("Trustee") filed a motion for
5 joint administration of the two estates, which was allowed.⁴

6 The Trustee took possession of the real property and sold it
7 at auction. From the proceeds of the sale, she paid each debtor
8 one-half of the claimed homestead exemption, or \$37,500. The
9 Trustee had filed a timely objection to the claimed homestead
10 exemptions on the grounds that under the DPRRA, registered
11 domestic partners are to be treated under the applicable state
12 laws as if they were spouses and, as such, can therefore claim
13 only a single homestead exemption.

14 After a hearing, the bankruptcy court entered its opinion
15 and order affirming the Trustee's objection. Debtors timely
16 appealed.

18 II. ISSUE

19 Whether registered domestic partners in California may each
20

21 ³ Unless otherwise indicated, all chapter, section and rule
22 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
23 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as
24 enacted and promulgated prior to the effective date (October 17,
2005) of The Bankruptcy Abuse Prevention and Consumer Protection
Act of 2005, Pub. L. No. 109-8, Apr. 20, 2005, 119 Stat. 23.

25 ⁴ Joint cases under the Bankruptcy Code may be filed by an
26 individual with such individual's spouse. Section 301. Even
27 then, "after the commencement of a joint case, the court shall
28 determine the extent, if any, to which the debtors case shall be
consolidated." Section 302(b). The section is limited to
married partners of the opposite sex by the Defense of Marriage
Act, Pub. L. No. 104-199, Sept. 21, 1996, 110 Stat. 2419.

1 claim a full, separate homestead exemption when both file
2 bankruptcy, or are limited to a single homestead exemption.

4 **III. STANDARD OF REVIEW AND CHOICE OF LAW**

5 Questions of law and statutory interpretation are reviewed
6 de novo by the appellate court. In re Hill, 811 F.2d 484, 485-86
7 (9th Cir. 1987); Torres-Lopez v. May, 111 F.3d 633, 638 (9th Cir.
8 1997) (application of statute). "In bankruptcy actions, 'the
9 federal courts decide the merits of state exemptions, but the
10 validity of the claimed state exemption is controlled by the
11 applicable state law.'" In re Been, 153 F.3d 1034, 1036 (9th
12 Cir. 1998) (citing In re Goldman, 70 F.3d 1028, 1029 (9th Cir.
13 1995)).

15 **IV. DISCUSSION**

16 A. State Waiver of Federal Exemption Scheme

17 The Bankruptcy Code at section 522 provides the framework
18 for debtors who claim exemptions. Section 522(b)(1) allows
19 debtors to claim exemptions listed in the Code at subsection (d),
20 unless the state in which the debtor is domiciled for the 180-day
21 period prior to the bankruptcy filing date does not so authorize.
22 In that case, debtors are limited to the exemptions provided by
23 state and local law and federal exemptions other than those
24 provided in the Bankruptcy Code. Section 522(b)(2). The State
25 of California has not authorized the use of the exemptions
26 provided for in section 522(d). Cal. Civ. Proc. Code § 703.130
27 (West 2006). Consequently, those residents of California
28 who file bankruptcy are limited to the exemptions allowable to

1 California residents under non-bankruptcy law.

2 B. California Domestic Partner Rights and Responsibilities Act
3 (DPRRA)

4 The California legislature enacted Family Code § 297 in
5 1999, with later amendments in 2001. The Act allows same-sex
6 couples who are both 18 years of age or older, and living
7 together, to register as domestic partners.⁵ Family Code
8 § 297.5, added in 2003, became effective on January 1, 2005, and
9 provides:

10 **297.5. Rights, protections and benefits;**
11 **responsibilities; obligations and duties under law;**
12 **date of registration as equivalent of date of marriage**

13 (a) Registered domestic partners shall have the same
14 rights, protections, and benefits, and shall be subject
15 to the same responsibilities, obligations, and duties
16 under law, whether they derive from statutes,
17 administrative regulations, court rules, government
18 policies, common law, or any other provisions or
19 sources of law, as are granted to and imposed upon
20 spouses.

21 * * *

22 (e) To the extent that provisions of California law
23 adopt, refer to, or rely upon, provisions of federal
24 law in a way that otherwise would cause registered
25 domestic partners to be treated differently than
26 spouses, registered domestic partners shall be treated
27 by California law as if federal law recognized a
28 domestic partnership in the same manner as California
law.

* * *

(k) This section does not amend or modify federal laws
or the benefits, protections, and responsibilities
provided by those laws.

⁵ The Act also permits registration of domestic partnerships
between two people of opposite gender who are eligible to receive
social security benefits if one of the partners is at least 62
years old. Cal. Fam. Code § 297(b)(5)(B) (West 2006).

1 (1) Where necessary to implement the rights of
2 registered domestic partners under this act, gender-
3 specific terms referring to spouses shall be construed
4 to include domestic partners.

5 As explained by the California Legislature,

6 the Domestic Partnership Act 'shall be construed
7 liberally in order to secure to eligible couples who
8 register as domestic partners the full range of legal
9 rights, protections and benefits, as well as all of the
10 responsibilities, obligations, and duties to each
11 other, to their children, to third parties and as to
12 the state, as the laws of California extend to and
13 impose upon spouses.'

14 Koebke v. Bernardo Heights Country Club, 36 Cal. 4th 824, 846,
15 115 P.3d 1212, 1223 (2005) (citing Stats. 2003, ch. 421, § 15).

16 The California Supreme Court stated that the Legislature made it
17 clear that an important goal of the DPRRA is to create
18 substantial legal equality between domestic partners and
19 traditional spouses. Id. at 845 and 1223.

20 From the general statement that registrants are to be
21 treated as if they were spouses, several exceptions were made:⁶

22 1) Registrants must use the same filing status for state
23 income tax returns as is used in filing their federal income tax
24 return. Earned income may not be treated as community property

25 ⁶ In legislation filed with the Secretary of State on
26 September 30, 2006, the California legislature amended Family
27 Code § 297.5 and state tax law to allow registered domestic
28 partners to file state income tax returns in the same manner as
do "spouses." The primary change in section 297.5 was to
subsection (g), which was eliminated. However, subsection (k),
which provided that no federal laws would be affected by the
DPRRA, was also eliminated. The elimination of subsection (k),
however, has no practical effect as the supremacy clause of the
U.S. Constitution, U.S. CONST. art. VI, cl. 2, invalidates state
laws to the extent that they interfere with, or are contrary to,
federal law.

1 on the state income tax return. Section 297.5(g).

2 (2) No provisions of the California Constitution or of a
3 state statute adopted by initiative are amended or modified by
4 the DPRRA. Section 297.5(j).⁷

5 (3) No federal laws or the benefits, protections, and
6 responsibilities provided by those laws are amended or modified
7 by the DPRRA. Section 297.5(k).

8 (4) The mechanism for terminating a domestic partnership
9 under the Family Code differs from that for the termination of a
10 marriage. See Knight v. Superior Court, 128 Cal. App. 4th 14,
11 30-31, 26 Cal. Rptr. 3d 687, 699, rev. denied 6/29/05 (2005).

12 C. California Homestead Exemption

13 A California resident is allowed a \$75,000 homestead
14 exemption if the debtor or spouse of the debtor who resides in
15 the homestead is a member of a family unit, and at least one
16 member of the family unit owns no interest in the homestead or
17 has only a community property interest in the homestead with the
18 debtor. Cal. Civ. Proc. Code § 704.730(a)(2) (West 2006).⁸

19 However, "If the judgment debtor is married: . . . Where
20 the property exempt under a particular exemption is limited to a
21 specified maximum dollar amount, unless the exemption provision
22 specifically provides otherwise, the two spouses together are
23 entitled to one exemption limited to the specified maximum dollar
24

25 ⁷ Subsection (i) as amended September 30, 2006.

26 ⁸ It was not disputed by the parties that the applicable
27 exemption amount is \$75,000, rather than the \$50,000 provided in
28 § 704.730(a)(1), as the Debtors' child lives with them as part of
the family unit.

1 amount" Cal. Civ. Proc. Code § 703.110(a) (West 2006).
2 If the exemption claimed is for a homestead and both spouses are
3 entitled to a homestead exemption, the exemption is apportioned
4 between the spouses on the basis of their proportionate interests
5 in the homestead. Cal. Civ. Proc. Code § 704.730(b) (West 2006).

6 The bankruptcy court held that Family Code § 297.5(a)
7 ("Registered domestic partners shall have the same rights,
8 protections, and benefits, and shall be subject to the same
9 responsibilities, obligations, and duties under law . . . as are
10 granted to and imposed upon spouses") required application of
11 Civil Procedure Code § 703.110(a). In so doing, the Court
12 rejected the Debtors' argument that, in this context, "spouse"
13 and "married [person]" are somehow distinguishable.

14 D. Appellants' Arguments

15 The Debtors argue that Cal. Civ. Proc. Code § 703.110 is not
16 applicable because they are not, in fact, married. They assert
17 that the word "married" in this context refers to the status of
18 marriage rather than to the rights and responsibilities of being
19 a spouse. In making this argument, the Debtors state that while
20 the DPRRA makes "spouse" and "domestic partner" legally
21 equivalent in many respects, nowhere in the text of the Act does
22 it equate "domestic partner" with "married person." Debtors
23 dispute the bankruptcy court's contention that Family Code § 11
24 makes the terms "spouse," and "husband" and "wife," synonymous
25 with "married persons." Moreover, they claim, there are
26 differences between registered domestic partners and married
27 spouses under California law that are not enumerated in the Act,
28 which indicates that those differences "inhere in the nature of

1 marriage as a status, rather than as a set of rights and
2 obligations.”

3 The Family Code provides that “[a] reference to ‘husband’
4 and ‘wife,’ ‘spouses,’ or ‘married persons,’ or a comparable
5 term, includes persons who are lawfully married to each other and
6 persons who were previously lawfully married to each other, as is
7 appropriate under the circumstances of the particular case.” Cal.
8 Fam. Code § 11 (West 2006). Debtors assert that the DPRRA
9 creates an additional category of spouse, called a domestic
10 partner, which is distinguishable from “married person.” We do
11 not agree.

12 Family Code § 11 clearly provides that “husband” and “wife,”
13 “spouses,” and “married persons” all refer to the same category
14 of person. If someone is a “husband” or “wife,” or a “spouse,”
15 that person would also be considered a “married person.” As the
16 bankruptcy court stated, “[b]ecause this definition predates the
17 Domestic Partners Act, the Legislature is presumed to have relied
18 upon it in defining the rights and responsibilities of registered
19 domestic partners.”

20 Debtors point to two unenumerated differences between the
21 rights and responsibilities provided in the DPRRA and those of
22 married persons: the inability of a registered domestic partner
23 to be lawfully married, and spousal exemptions from federal gift
24 and estate taxes. Both of these differences are excepted by the
25 terms of the DPRRA, the first by section 297.5(j) which provides
26 that the Act may not modify any provisions of the California
27 Constitution or of a state statute adopted by initiative (i.e.
28 Proposition 22 establishing marriage between a man and woman only

1 as valid in California), and the second by section 297.5(k) which
2 provides that no federal laws or the benefits, protections, and
3 responsibilities provided by those laws may be modified (i.e.
4 federal gift and estate tax laws). The Legislature clearly
5 intended that registered domestic partners have the same rights
6 and responsibilities under California law as spouses, married
7 persons, a wife or a husband, excepting only to the extent
8 explicitly excluded by the Act.

9 Debtors further argue that limiting registered domestic
10 partners to only one combined homestead exemption, while forcing
11 them to file separate bankruptcy petitions, is inequitable and
12 contrary to the intent of the Legislature in passing the DPRRA.⁹
13 Bankruptcy Code section 302 does indeed limit joint filings (and
14 the payment of a single fee) to married people as a matter of
15 federal law; however, the language of the statute suggests that
16 there is no more than a presumption that cases filed by spouses
17 should be jointly administered, which presumption may be overcome
18 if the court determines that joint administration should not take
19 place. Moreover, as occurred here, consolidation of cases
20 brought by individuals who are not spouses may also be ordered.
21 In determining whether cases of individual debtors should be
22 consolidated, there is no reason to suppose that bankruptcy
23 courts would apply different criteria based merely on the gender
24 of the parties. This is especially so where, as here, applicable

25
26 ⁹ That the debtors in this bankruptcy case were required to
27 pay two filing fees rather than one does not create a significant
28 factual or legal underpinning to support their arguments on
appeal. Bankruptcy fees are set by Congress and the Judicial
Conference of the United States pursuant to 28 U.S.C. § 1930.

1 state law actively eliminates distinctions on that basis.¹⁰

2 E. Two Classes of Partner?

3 In Knight v. Superior Court, 128 Cal. App. 4th 14, the
4 California Court of Appeal examined the relationship between the
5 DPRRA and Initiative Proposition 22. The proposition, approved
6 by the voters of California in March 2000, states that “[o]nly
7 marriage between a man and a woman is valid or recognized in
8 California.” Id. at 20. (The provision is codified at Family
9 Code § 308.5). The plaintiff in Knight challenged the DPRRA on
10 the grounds that the Act and the Proposition were incompatible.
11 California’s Constitution provides that an amendment by the
12 Legislature to an initiative statute must itself be ratified by
13 the voters. Calif. Const. Art II, Sec 10(c); Knight, 128 Cal.
14 App. 4th at 18.

15 The appellate court sustained the validity of the DPRRA.
16 Noting that there are a number of differences between the
17 “status” of a married couple and registrants under the DPRRA, the
18 Court held that the two are not identical. Among the disparities
19 are the exclusions set out in the DRRPA itself, denial of
20 “marital benefits” provided under federal law, differing age
21 limits, the requirement that domestic partners reside together as
22 a prerequisite to registration, different forms of solemnization
23 of the relationship, the method of terminating the relationship,
24 and the recognition, or lack thereof, of domestic partnerships in
25 other jurisdictions. It follows, the Court reasoned, that a

26
27 ¹⁰ We acknowledge one difference: that spouses filing
28 jointly are not required to pay separate filing fees. There is
no refund if separately filed cases are consolidated.

1 domestic partnership is not a disguised form of marriage, and
2 that the DPRRA's recognition of domestic partnerships is not
3 incompatible with Proposition 22's restriction of marriage to
4 members of opposite genders: "The numerous dissimilarities
5 between the two types of unions disclose that the Legislature has
6 not created a 'same-sex marriage' under the guise of another
7 name." Id. at 31.

8 The dichotomy observed by the Court in Knight appears to be
9 between the "status" of marriage, and the rights and
10 responsibilities associated with marriage. Id. at 25. Debtors
11 offer no method of distinguishing between the two. They suggest,
12 however, that the allocation of debtors' rights under the
13 homestead statute is a difference in "status," and not subject to
14 the DPRRA. We disagree.

15 The issue at hand is an economic one: the degree of
16 protection from creditors to be accorded to debtors. Wherever
17 the line may be drawn by California's courts between marital
18 status on one hand, and the economic rights and liabilities of
19 couples on the other, we hold that application of the homestead
20 exemption statute clearly falls in the latter category. In so
21 holding, we follow the plain language of the DPRRA, and uphold a
22 result more consonant with the Legislature's stated purpose of
23 equalizing, for purposes of creditor/debtor relations, the status
24 of registered domestic partners and married couples. Koebke, 36
25 Cal. 4th at 839.¹¹

26
27 ¹¹ We are aware of the anomaly that debtors with common
28 interests in homestead property who are neither married nor
(continued...)

1 Under California law, a judgment debtor may claim a
2 homestead exemption to exempt a certain amount of the proceeds of
3 an execution sale of his or her homestead property. See Cal.
4 Civ. Proc. Code § 704.720. The exemption claim is not dependent
5 on whether a debtor files bankruptcy, and can be employed any
6 time a judgment creditor seeks to enforce its money judgment.
7 There is nothing in state law which differentiates between the
8 calculation of a homestead exemption for state-law purposes and
9 for federal bankruptcy purposes. Accordingly, the argument that
10 the interaction of federal bankruptcy law with California
11 exemption law creates a new inequity for domestic partners which
12 should somehow affect the exemption calculation is without merit.
13 The homestead exemption as calculated under California law,
14 without regard to bankruptcy, is the homestead exemption to be
15 used in bankruptcy.

17 V. CONCLUSION

18 Because California has opted out of the federal bankruptcy
19 exemption scheme, residents who file bankruptcy are limited to
20 exemptions allowed under the state's exemption scheme. Under
21 California law, the homestead exemption rights of registrants
22 under the DPRRA are identical to those of people who are married,
23 which is a single combined exemption. The bankruptcy court's
24 decision is, therefore, AFFIRMED.

25 ¹¹ (...continued)
26 registered domestic partners might each be entitled to a \$75,000
27 exemption. However, this does not change the result: Under
28 California law, couples with formally joined economic interests,
whether as spouses or registrants, are limited to a single
homestead exemption.