

AUG 02 2012

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

1 In re: ) BAP No. ID-11-1304-MkHJu  
2 STEVEN A. STEPHENS, )  
3 Debtor. ) Bk. No. 10-41450-JDP  
4 \_\_\_\_\_ )  
5 STEVEN A. STEPHENS, )  
6 Appellant, )  
7 v. ) **MEMORANDUM\***  
8 R. SAM HOPKINS, Chapter 7 )  
9 Trustee, )  
10 Appellee. )  
11 \_\_\_\_\_ )

Argued and Submitted on June 14, 2012  
at Boise, Idaho

Filed - August 2, 2012

Appeal From The United States Bankruptcy Court  
for the District of Idaho

Honorable Jim D. Pappas, Bankruptcy Judge, Presiding

20 Appearances: Dustin W. Manwaring of the Milestone Law Firm  
21 argued on behalf of Appellant Steven A. Stephens;  
22 Brett Cahoon of Racine, Olson, Nye, Budge &  
23 Bailey, Chartered, argued on behalf of Appellee R.  
24 Sam Hopkins, Chapter 7 trustee.

Before: MARKELL, HOLLOWELL and JURY, Bankruptcy Judges.

26 \*This disposition is not appropriate for publication.  
27 Although it may be cited for whatever persuasive value it may  
28 have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.



1 and flooring.<sup>3</sup>

2 Stephens commenced his chapter 7 bankruptcy case in the  
3 United States Bankruptcy Court for the District of Idaho in  
4 August 2010, before his move to Alaska. Stephens had generally  
5 been planning to relocate to Alaska as early as 2006 and had been  
6 making firm plans to relocate there since early 2010. These firm  
7 plans included obtaining professional licensing from the State of  
8 Alaska to practice as a psychologist and seeking employment in  
9 Alaska as a psychologist.<sup>4</sup>

10 In his bankruptcy schedules, Stephens listed both his Idaho  
11 Property and his Alaska Property as assets. The bankruptcy  
12 schedules indicated that the Idaho property was worth \$130,000  
13 but also was fully encumbered. As set forth in the schedules,  
14 the Alaska Property was worth \$54,000, with no encumbrances.  
15 Accordingly, citing Idaho Code § 55-1003,<sup>5</sup> Stephens' Schedule C  
16 claimed the full value of the Alaska Property as exempt.

17 The Trustee timely objected to Stephens' homestead exemption

18 \_\_\_\_\_  
19 <sup>3</sup>While the stipulated facts do not specify why Stephens  
20 halted work on the home, we assume that he lacked sufficient  
21 funds to continue the work, or that he wanted to make sure that  
22 he prevailed in his exemption claim dispute with the Trustee  
23 before continuing the work, or both.

24 <sup>4</sup>The parties do not dispute that Stephens was a domiciliary  
25 of Idaho for bankruptcy venue purposes under 28 U.S.C. § 1408 and  
26 for choice of law purposes under § 522(b)(3).

27 <sup>5</sup>Idaho Code § 55-1003 provides:

28 A homestead exemption amount shall not exceed the  
lesser of (i) the total net value of the lands, mobile  
home, and improvements as described in section 55-1001,  
Idaho Code; or (ii) the sum of one hundred thousand  
dollars (\$100,000).

1 claim, arguing that Idaho's homestead exemption law, Idaho Code  
2 §§ 55-1001, et seq., did not cover real property located outside  
3 the State of Idaho. After the parties briefed the issue and  
4 submitted their stipulated facts, the bankruptcy court decided  
5 the matter without a hearing. In a memorandum decision, the  
6 bankruptcy court relied on its own prior decisions in concluding  
7 as a matter of law that Idaho's homestead exemption law does not  
8 apply to out-of-state real property.<sup>6</sup>

9 The bankruptcy court entered its order sustaining the  
10 Trustee's objection on May 10, 2011, and Stephens timely appealed  
11 on May 27, 2011.<sup>7</sup>

#### 12 JURISDICTION

13 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
14 §§ 1334 and 157(b)(2)(B). We have jurisdiction under 28 U.S.C.  
15 § 158.

#### 16 ISSUE

17 Does Idaho's homestead exemption law cover real property  
18 located outside the State of Idaho?

19 \_\_\_\_\_  
20 <sup>6</sup>The bankruptcy court's prior decisions are: In re Capps,  
21 438 B.R. 668 (Bankr. D. Idaho 2010); In re Harris, 2010 WL  
22 2595294 (Bankr. D. Idaho 2010); In re Kline, 350 B.R. 497 (Bankr.  
23 D. Idaho 2005); In re Halpin, 1994 WL 594199 (Bankr. D. Idaho  
24 1994). In In re Kline, the bankruptcy court ruled, among other  
25 things, that: (1) Utah law explicitly did not permit debtors to  
26 claim a homestead in Idaho property, and (2) either Idaho or Utah  
law would permit the debtors to claim a homestead in their mobile  
home. 350 B.R. at 502, 504 nn. 6 & 9. We express no opinion on  
the extraterritoriality of either Idaho's or Utah's exemptions  
laws as they apply to mobile homes.

27 <sup>7</sup>Pursuant to Rule 8002(c), the bankruptcy court entered an  
28 order on July 28, 2011, granting Stephens an extension of time to  
file his notice of appeal through May 27, 2011.



1 The focus of this appeal is Idaho's homestead exemption  
2 law, Idaho Code §§ 55-1001, et seq. In particular, Stephens  
3 contends that he was entitled to exempt his interest in the  
4 Alaska Property under Idaho's homestead exemption law.<sup>9</sup>  
5 Unfortunately for Stephens, Idaho's homestead exemption law does  
6 not explicitly state that the law applies to out-of-state real  
7 property. Nor does it state that it does not apply to out-of-  
8 state real property. The statute simply doesn't mention or  
9 contemplate extraterritorial effect.

10 Stephens argues that we should construe this silence as  
11 meaning that there is no bar to applying Idaho's homestead  
12 exemption law to out-of-state real property. He claims that the  
13 "plain meaning" of the statutory lacuna is that there is no bar  
14 to giving the statute extraterritorial effect. In short, he  
15 contends that the Idaho legislature's silence should be  
16 interpreted as intent to extend the coverage of Idaho's homestead  
17 exemption law beyond the state's geographical boundaries.

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18  
19 <sup>8</sup>(...continued)  
20 on appeal. All of the arguments Stephens attempted to make for  
21 the first time in his reply brief are deemed waived. See Golden  
22 v. Chicago Title Ins. Co. (In re Choo), 273 B.R. 608, 613 (9th  
23 Cir. BAP 2002); Branam v. Crowder (In re Branam), 226 B.R. 45, 55  
(9th Cir. BAP 1998), aff'd, 205 F.3d 1350 (table) (9th Cir.  
1999).

24 <sup>9</sup>Specifically, Idaho Code § 55-1008 exempts from attachment,  
25 execution or forced sale qualifying homesteads (as defined in  
26 Idaho Code § 55-1001), and the proceeds of qualifying homesteads,  
27 up to the maximum amount specified in Idaho Code § 55-1003. The  
28 parties do not dispute that the value of the Alaska Property does  
not exceed the maximum exemption amount permitted under Idaho  
Code § 55-1003 (the lesser of \$100,000 or the value of the  
homestead).

1 Alternately, he claims that this Panel should construe  
2 Idaho's homestead exemption law liberally, in the same manner as  
3 the Ninth Circuit construed California's homestead exemption law  
4 in Arrol v. Broach (In re Arrol), 170 F.3d 934, 936-37 (9th Cir.  
5 1999). According to Stephens, if we employ the same type of  
6 liberal construction as the Ninth Circuit employed in Arrol, we  
7 necessarily will conclude that Idaho's homestead exemption law  
8 covers real property located outside the State of Idaho.<sup>10</sup>

9 As a threshold matter we note that, whenever this Panel is  
10 called upon to interpret state law, it is bound by the decisions  
11 of that state's supreme court. Kekauoha-Alisa v. Ameriquest  
12 Mortg. Co. (In re Kekauoha-Alisa), 674 F.3d 1083, 1087 (9th Cir.  
13 2012) (citing Sec. Pac. Nat'l Bank v. Kirkland (In re Kirkland),  
14 915 F.2d 1236, 1238 (9th Cir. 1990)). And when there is no  
15 controlling state court decision, we must do our best to predict  
16 how the state supreme court would decide the issue. In re  
17 Kekauoha-Alisa, 674 F.3d at 1087-88.

18 To the best of our knowledge, no Idaho appellate court has  
19 addressed the issue of whether Idaho's homestead exemption law  
20 applies to real property located outside of Idaho. Thus,  
21 Stephens in essence urges this Panel to predict that, if the  
22 Idaho Supreme Court were to consider this issue, it would  
23 conclude that Idaho's homestead exemption law applies to out-of-  
24 state property.

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26 <sup>10</sup>For an overview of how other jurisdictions have dealt with  
27 the issue of the extraterritoriality of their homestead exemption  
28 laws, see In re Capps, 438 B.R. 668, 671-72 (Bankr. D. Idaho  
2010).

1 But we cannot make the prediction Stephens desires. To the  
2 contrary, based on our reading of Idaho Supreme Court precedent,  
3 we predict that the Idaho Supreme Court would limit the  
4 applicability of Idaho's homestead exemption law to real property  
5 located within Idaho. In making this prediction, we particularly  
6 rely upon a line of Idaho Supreme Court cases holding that, "[i]n  
7 the absence of any extraterritorial phraseology contained in the  
8 [statute in question], it cannot be construed to have an  
9 extraterritorial effect, on the theory that the legislature so  
10 intended." Ore-Ida Potato Prods., Inc., v. United Pac. Ins.  
11 Co., 87 Idaho 185, 194, 392 P.2d 191, 1996 (1964) (concluding  
12 that bond issued under Idaho law to a farm produce dealer did not  
13 cover a sales transaction consummated entirely outside the  
14 state). Accord, Phillips v. Consol. Supply Co., 126 Idaho 973,  
15 976, 895 P.2d 574, 577 (1995) (concluding that Idaho magistrate  
16 had no authority under Idaho Vital Statistics Act to order  
17 amendment of Missouri birth certificate); Walbridge v. Robinson,  
18 22 Idaho 236, 125 P. 812, (1912) (concluding that Idaho statutory  
19 water permit did not confer right to divert water from Idaho  
20 stream for irrigation use in Montana).

21 We also rely on Idaho Supreme Court decisions acknowledging  
22 that exemption statutes must be interpreted liberally, but  
23 nonetheless declining to extend the exemption statutes beyond  
24 what they reasonably could be construed to cover. See, e.g.,  
25 Young v. Wright, 77 Idaho 244, 246, 290 P.2d 1086, 1087 (1955);<sup>11</sup>

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26  
27 <sup>11</sup>As Young put it, "[w]hile the [exemption] statute should  
28 be liberally construed, it has been held that construction should  
(continued...)



1 Wright v. Westheimer, 2 Idaho 962, 28 P. 430, 433 (1891).

2 Westheimer is particularly instructive. At the time  
3 Westheimer was decided, Idaho's homestead exemption law required  
4 the filing of a homestead declaration as a prerequisite to the  
5 effectiveness of any homestead exemption. Westheimer, 2 Idaho  
6 962, 28 P. at 432-33. The appellant in Westheimer argued that  
7 the Idaho Supreme Court nonetheless should liberally construe  
8 Idaho homestead exemption law to cover the proceeds from the sale  
9 of his prior homestead, which he had reinvested in his new  
10 residence, even though he did not file the requisite homestead  
11 declaration covering his new residence until after the creditor  
12 had levied his first writ of attachment against the appellant's  
13 new residence. Id. at 432.

14 In rejecting appellant's argument, Westheimer particularly  
15 noted that Idaho's homestead exemption law "contain[s] no  
16 provisions for an exchange of one homestead for another, nor the  
17 purchase of another with the proceeds of the sale of the one  
18 exempt, nor for the exemption of the new homestead so purchased."  
19 Id. at 433. In other words, as Westheimer put it, "[o]ur  
20 statutes are silent upon the question under consideration." Id.  
21 Notwithstanding its acknowledgment that the homestead exemption  
22 law had to be liberally construed, and its recognition that the  
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24 <sup>11</sup>(...continued)

25 not be indulged in to the extent of conferring privileges and  
26 benefits by construction which were not intended to be conferred  
27 by the Legislature, or to the extent of doing violence to the  
28 terms of the statute.'" Young, 77 Idaho at 246, 290 P.2d at 1087  
(quoting Conlin v. Traeger, 84 Cal.App. 730, 734-35, 258 P. 433,  
434 (1927)).

1 law furthered the humane and reasonable purpose of providing "the  
2 unfortunate debtor a place of refuge and a gleam of hope,"  
3 Westheimer refused to expand the homestead exemption law beyond  
4 its explicit scope:

5 . . . we can hardly conceive the necessity or propriety  
6 of strictly construing a statute of mercy or  
7 benevolence. But, as our statutes are silent upon the  
8 question under consideration, this court will not  
9 undertake to supply omissions made by the law-making  
10 power. This court must distinguish between enacting  
11 laws and construing them. . . . We are of the opinion  
12 that an amendment of our homestead laws, exempting the  
13 proceeds from a voluntary sale for a reasonable time,  
14 would be in the interest of humanity. For, however  
15 much such an amendment may be desired, this court will  
16 not assume the power to amend the statutes, and thus  
17 usurp the legislative functions of a co-ordinate branch  
18 of our state government.

13 Id. (Emphasis Added.)

14 Whatever benefit Stephens may be entitled to as a result of  
15 the liberal construction of Idaho's homestead exemption law, the  
16 Idaho Supreme Court has indicated that this benefit does not  
17 permit courts to engage in "judicial legislation" to fill in gaps  
18 in the protections afforded to debtors under Idaho's exemption  
19 laws. See id.; see also Young, 77 Idaho at 246, 290 P.2d at 1087.

20 In sum, in light of the Idaho Supreme Court's presumption  
21 against implied extraterritoriality of its statutes, and its  
22 refusal to judicially expand exemption entitlements beyond the  
23 explicit terms of the exemption statutes, we feel compelled to  
24 construe Idaho's homestead exemption law as not applying to real  
25 property located outside the State of Idaho.

26 Nothing in In re Arrol, 170 F.3d 934, requires us to hold  
27 otherwise. After reviewing California's homestead exemption law,  
28 its legislative history, and the decisions of California's

1 appellate courts interpreting the law, In re Arrol held that it  
2 found "nothing" that would justify limiting the scope of  
3 California's homestead exemption law to real property located in  
4 California. Id. at 937. In contrast, as set forth above, we  
5 have found plenty of support in Idaho law for our holding that  
6 Idaho's homestead exemption law does not apply to out-of-state  
7 real property. In short, the divergent results reached here and  
8 in In re Arrol can be attributed to the distinctive bodies of  
9 state law that control each decision.<sup>12</sup>

10 Stephens has made a handful of other legal and policy  
11 arguments in support of his assertion that Idaho's homestead  
12 exemption law applies to out-of-state real property. However, in  
13 light of the above-cited Idaho Supreme Court precedent, none of  
14 Stephens' other arguments persuade us that the Idaho Supreme  
15 Court would give Idaho's homestead exemption law extraterritorial  
16 effect.

#### 17 CONCLUSION

18 While we do not doubt that our views are a correct reading  
19 of the statutes involved, we acknowledge that the result in this  
20 case could be viewed as harsh and serendipitous. But it is not  
21 our role to attempt to "fix" either federal or state exemption  
22 law by strained or unsupportable interpretations. Either  
23 Congress or the state legislators, not the courts, must act if  
24 they don't like how the laws they enacted actually work. See

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25  
26 <sup>12</sup>While In re Arrol did not explicitly reference its duty to  
27 follow or predict how the California Supreme Court would decide  
28 the issue, see In re Kekauoha-Alisa, 674 F.3d at 1087-88, In re  
Arrol's adherence to that duty is implicit in the manner of its  
analysis.

1 Lamie v. U.S. Trustee, 540 U.S. 526, 542 (2004); Young, 77 Idaho  
2 at 246, 290 P.2d at 1087.

3         For the reasons set forth above, we AFFIRM the bankruptcy  
4 court's order sustaining the Trustee's objection to Stephens'  
5 homestead exemption claim.

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