

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NOT FOR PUBLICATION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.³

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.⁴

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 § 55-1003,⁵ Stephens' Schedule C
16 claimed the full value of the Alaska Property as exempt.

17 The Trustee timely objected to Stephens' homestead exemption

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19 ³While 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 ⁴The 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 ⁵Idaho 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.⁶

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, 2011.⁷

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 ⁶The 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 ⁷Pursuant 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.⁹
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.

18
19 ⁸(...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 ⁹Specifically, 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.¹⁰

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.

26 ¹⁰For 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);¹¹

26
27 ¹¹As 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
23

24 ¹¹(...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.¹²

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

25
26 ¹²While 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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