

JUN 30 2015

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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NOT FOR PUBLICATION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. AZ-14-1503-PaJuKi
2)
3 CHRISTINA M. CLINE and) Bankr. No. 13-19488
4 JASON H. CLINE,)
5)
6 Debtors.)
7)
8)
9)
10 CHRISTINA M. CLINE;)
11 JASON H. CLINE,)
12)
13 Appellants,)
14)
15 v.) **M E M O R A N D U M**¹
16)
17 JILL H. FORD, Chapter 7 Trustee,)
18)
19 Appellee.)
20)

Argued and Submitted on June 19, 2015
at Phoenix, Arizona

Filed - June 30, 2015

Appeal from the United States Bankruptcy Court
for the District of Arizona

Hon. Daniel P. Collins, Chief Bankruptcy Judge, Presiding

21 Appearances: Lawrence D. Hirsch of Parker Schwartz, PLLC argued
22 for appellants Christina and Jason Cline; Steven D.
23 Nemecek of Steve Brown & Associates, LLC argued for
24 appellee Jill H. Ford, Chapter 7 Trustee.

25 Before: PAPPAS, JURY, and KIRSCHER, Bankruptcy Judges.

26
27 ¹ This disposition is not appropriate for publication.
28 Although it may be cited for whatever persuasive value it may have
(see Fed. R. App. P. 32.1), it has no precedential value. See 9th
Cir. BAP Rule 8024-1.

1 Chapter 7² debtors Christina and Jason Cline ("Debtors")
2 appeal the order of the bankruptcy court sustaining the objection
3 filed by chapter 7 trustee, Jill H. Ford ("Trustee"), to Debtors'
4 claim of exemptions. We AFFIRM.

5 **I. FACTS**

6 Debtors lived in Missouri for ten years before moving to
7 Arizona in the summer of 2013. On November 18, 2013, Debtors
8 filed a chapter 7 petition. On schedule C, Debtors claimed some
9 of their property exempt under § 522(d). Trustee objected to
10 Debtors' attempt to use the exemptions provided under § 522(d),
11 arguing that, pursuant to § 522(b)(3)(A), Debtors were limited to
12 claiming those exemptions allowed under Missouri law.

13 The parties agreed that, applying § 522(b)(3)(A) and Mo. Rev.
14 Stat. § 513.427, Debtors were required to look to Missouri state
15 law to determine their exemptions. The parties disputed, however,
16 what Missouri law provided. Debtors argued that the Missouri
17 statutes only allowed that State's exemptions to be used by its
18 residents. Because when they filed their bankruptcy petition they
19 were residents of Arizona, Debtors insisted they were precluded
20 from claiming exemptions under Missouri law. As a result,
21 pursuant to the "hanging paragraph" of § 522(b)(3), Debtors
22 contended they were entitled to claim the federal exemptions.

23 Trustee countered that nothing in the Missouri exemption
24 statutes, nor in the case law interpreting those statutes,
25 required a debtor to be a resident of Missouri in order to claim
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27 ² Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 that State's exemptions. Therefore, Trustee argued, Debtors were
2 compelled to use the Missouri exemptions.

3 The hearing on Trustee's objection occurred on May 8, 2014,
4 at the conclusion of which the bankruptcy court took the issues
5 under advisement. On May 30, 2014, the court entered its order
6 sustaining Trustee's objection to Debtors' claimed exemptions. In
7 the order the bankruptcy court concluded that "there is no
8 language in Missouri's current opt-out statute or exemption
9 statutes indicating that an individual must be a resident of
10 Missouri to claim Missouri exemptions. See Mo. Rev. Stat.
11 §§ 513.427, 513.430, 513.440, [and] 513.475. If Missouri's
12 legislature wanted its exemption statutes to only be available to
13 Missouri residents[] it could have said so."³ In re Cline,
14 2014 WL 2463018, at *2 (Bankr. D. Ariz. May 30, 2014).

15 On June 4, 2014, Debtors' filed a "Motion to Reconsider Order
16 Sustaining Objection to Exemptions." At an October 15, 2014
17 hearing, the bankruptcy court announced it would deny the motion.
18 An order confirming its decision was entered on October 16, 2014.
19 Debtors filed a timely notice of appeal.

20 II. JURISDICTION

21 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
22 and 157(b)(2)(B). We have jurisdiction under 28 U.S.C. § 158.

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25 ³ At the hearing on Trustee's objection the court considered
26 Debtors' proposal to certify this question to the Missouri Supreme
27 Court due to the lack of case law addressing the issue; however,
28 Trustee objected to this course of action. In the court's order
it noted Trustee's objection and declined to certify the question.
The parties did not ask this Panel to certify the question to the
Missouri Supreme Court.

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III. ISSUE

Whether a debtor must be a current resident of Missouri to claim Missouri exemptions.

IV. STANDARD OF REVIEW

We review a bankruptcy court’s interpretation of state exemption law and the Bankruptcy Code de novo. Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 545 (9th Cir. BAP 2009). De novo review requires that “we consider a matter anew, as if no decision had been rendered previously.” Mele v. Mele (In re Mele), 501 B.R. 357, 362 (9th Cir. BAP 2013).

V. DISCUSSION

A. Debtors’ Arguments on Appeal

Debtors argue that Missouri law allows only residents of that State to claim its exemptions. Therefore, they should be entitled to claim the federal exemptions under § 522(d) because they are now residents of Arizona. See § 522(b) (3) (providing “[i]f the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).”). Debtors argue that even though Missouri’s “opt out statute” and its exemption statutes contain no express reference to limiting their use to “residents” of the State, that requirement has been the law in Missouri for over one hundred years.

B. Applicable Law and Disposition

A bankruptcy estate is created upon the filing of a petition that consists of all of the debtor’s interest in property. § 541(a). Section 522(b) (1) allows the debtor to exempt certain

1 interests in property to remove them from the bankruptcy estate,
2 "and hence from the creditors[] for the benefit of the debtor."
3 Owen v. Owen, 500 U.S. 305, 308 (1991). A debtor may elect
4 between the federal exemptions provided in § 522(d) or exemptions
5 provided by the debtor's State, "unless the State law that is
6 applicable to the debtor under paragraph (3)(A) specifically does
7 not so authorize." § 522(b)(2). As mentioned above,
8 § 522(b)(3)(A) provides the means to determine the State law that
9 is "applicable to the debtor" based upon the debtor's domicile
10 during the specified time period before the filing of the
11 petition.⁴ "For purposes of § 522(b) 'domicile' means actual
12 residence coupled with a present intention to stay there."
13 Drummond v. Urban (In re Urban), 375 B.R. 882, 888 n.14 (9th Cir.
14 BAP 2007) (citing Lowenschuss v. Selnick (In re Lowenschuss),
15 171 F.3d 673, 684 (9th Cir. 1999)). However, if the effect of the
16 analysis under § 522(b)(3)(A) is to leave the debtor "ineligible
17 for any exemption, the debtor may elect to exempt property that is
18 specified under [§ 522(d)]." § 522(b)(3).

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20 ⁴ Section 522(b)(3)(A) provides in full:

21 (3) Property listed in this paragraph is

22 (A) subject to subsections (o) and (p), any
23 property that is exempt under Federal law,
24 other than subsection (d) of this section, or
25 State or local law that is applicable on the
26 date of the filing of the petition to the
27 place in which the debtor's domicile has been
28 located for the 730 days immediately preceding
the date of the filing of the petition or if
the debtor's domicile has not been located in
a single State for such 730-day period, the
place in which the debtor's domicile was
located for 180 days immediately preceding the
730-day period or for a longer portion of such
180-day period than in any other place[.]

1 In this case, in applying § 522(b)(3)(A), the parties agree
2 that Missouri is Debtors' domicile and that Missouri provides the
3 applicable law. Missouri has opted out of the Bankruptcy Code's
4 exemption scheme. In re Rosen, 354 B.R. 902, 902-03 (Bankr. E.D.
5 Mo. 2006) (citing MO. REV. STAT. § 513.427 and stating "Missouri has
6 exercised its option under []§ 522(b)(2) to opt out of the
7 Bankruptcy Code's exemption scheme. Thus, a debtor domiciled in
8 Missouri may only exempt property from a bankruptcy estate that is
9 exempt from execution or attachment under Missouri law or federal
10 law outside the Bankruptcy Code."); see also Abdul-Rahim v.
11 LaBarge (In re Abdul-Rahim), 720 F.3d 710, 712 (8th Cir. 2013).

12 In particular, Missouri's opt out statute provides:

13 Every person by or against whom an order is
14 sought for relief under Title 11, United
15 States Code, shall be permitted to exempt from
16 property of the estate any property that is
17 exempt from attachment and execution under the
18 law of the state of Missouri or under federal
law, other than Title 11, United States Code,
Section 522(d), and no such person is
authorized to claim as exempt the property
that is specified under Title 11, United
States Code, Section 522(d).

19 MO. REV. STAT. § 513.427.

20 As relevant here, Missouri's personal property exemption
21 statute contains a list of items that may be exempted by debtors
22 in the State, providing that "[t]he following property shall be
23 exempt from attachment and execution to the extent of any person's
24 interest therein" MO. REV. STAT. § 513.430. Moreover, the
25 Missouri homestead exemption statute, in relevant part, reads:
26 "[t]he homestead of every person . . . not exceeding the value of
27 fifteen thousand dollars . . . shall . . . be exempt from
28 attachment and execution." MO. REV. STAT. § 513.475.

1 The Missouri Supreme Court instructs, in interpreting
2 statutes of that State, the “[c]ourt’s primary rule . . . is to
3 give effect to the legislative intent as reflected in the plain
4 language of the statute at issue.” Ivie v. Smith, 439 S.W.3d
5 189, 202 (Mo. 2014) (en banc) (quoting Parktown Imports, Inc. v.
6 Audi of Am., Inc., 278 S.W.3d 670, 672 (Mo. 2009) (en banc)).
7 That is, “words should be given their plain and ordinary meaning
8 whenever possible.” Ivie, 439 S.W.3d at 202 (quoting State ex
9 rel. Jackson v. Dolan, 398 S.W.3d 472, 479 (Mo. 2013) (en banc)).
10 Further, “[a] court may not add words by implication to a statute
11 that is clear and unambiguous.” Asbury v. Lombardi, 846 S.W.2d
12 196, 202 n.9 (Mo. 1993) (en banc).

13 Interpreting the statutes involved in this appeal according
14 to their plain language, we conclude that Missouri law does not
15 require an individual to be a current resident of the State in
16 order to seek the protection of its real and personal property
17 exemptions. Indeed, a review of the relevant statutes shows that
18 the word “resident” is never used. Instead, the Missouri
19 legislature employs the more inclusive phrases “every person” and
20 “any person[]” to describe to whom the statutes apply. See
21 MO. REV. STAT. §§ 513.427, 513.430, 513.475. Given the plain and
22 ordinary meaning of the words used, and mindful of the Missouri
23 Supreme Court’s admonition that we not add words by implication to
24 these clear and unambiguous statutes, we conclude there is no
25 requirement that an individual domiciled in Missouri, pursuant to
26 § 522(b)(3)(A), must also be a current resident of the State in
27 order to use the State’s exemption laws.

28 Our conclusion is reinforced by looking to the law of other

1 States concerning the beneficiaries of their exemptions. For
2 example, Kansas's personal property exemption statutes clearly
3 identify and require an individual to be a State resident to claim
4 its exemptions. See KAN. STAT. ANN. § 60-2313 (providing "every
5 person **residing in this state** shall have exempt")
6 (emphasis added). "Under the express language of this statute,
7 Kansas personal property exemptions are not available to debtors
8 who are not residents of Kansas." In re Nickerson, 375 B.R. 869,
9 871 (Bankr. W.D. Mo. 2007). In re Nickerson involved a debtor who
10 had moved from Kansas to Missouri before filing for bankruptcy,
11 but who was required to look to Kansas law pursuant to
12 § 522(b)(3)(A) to determine her exemptions in that bankruptcy
13 case. The bankruptcy court in Missouri reviewed the Kansas
14 exemption statute cited above and concluded that it required a
15 debtor to be a Kansas resident in order to utilize that State's
16 exemption laws regardless of the fact that the debtor was
17 domiciled in Kansas pursuant to § 522(b)(3)(A). Id. at 871.
18 Based upon this conclusion, the bankruptcy court held that the
19 debtor could utilize the federal exemptions under § 522(d) because
20 she was not then a resident of Kansas, but rather, a resident of
21 Missouri. Id. at 873.

22 Another example of a State that requires an individual to be
23 a resident in order to utilize its exemptions is Arizona.
24 Arizona's opt out statute provides: "[i]n accordance with []
25 § 522(b), **residents of this state** are not entitled to the federal
26 exemptions provided in [] § 522(d). Nothing in this section
27 affects the exemptions provided to **residents of this state** by the
28 constitution or statutes of this state." ARIZ. REV. STAT. § 33-1133

1 (emphasis added). Interpreting this statute, a bankruptcy court
2 has held that "Arizona's opt-out exemption statute renders the
3 nonresident [d]ebtor ineligible for the state exemptions"
4 In re Rody, 468 B.R. 384, 391 (Bankr. D. Ariz. 2012).

5 In contrast to Kansas and Arizona, Missouri has no express
6 requirement in its statutes that an individual must be a resident
7 of the State in order to utilize its exemptions. We conclude
8 therefore that there is no such requirement.

9 Debtors cite no relevant cases to the Panel that have held
10 that an individual must be a resident of Missouri in order to
11 utilize the State's exemption laws, and our review of the case law
12 has found no such authority.⁵ Instead, Debtors rely on Stotesbury
13 v. Kirtland, 35 Mo. App. 148 (Mo. Ct. App. 1889), Mignogna v.
14 Chiaffarelli, 151 Mo. App. 359 (Mo. Ct. App. 1910), and Ferneau v.
15 Armour & Co., 303 S.W.2d 161 (Mo. Ct. App. 1957) for the
16 conclusion that the residency requirement for Missouri's exemption
17 statutes has been the law for over one hundred years. But, upon
18 close reading, these decisions do not support Debtors' position.
19 Stotesbury and Mignogna interpret Missouri exemption statutes that
20 are no longer in effect. Because of this, the courts' statements
21 of the law as it was in 1889 and 1910 are of no use to Debtors in
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23 ⁵ Admittedly, we also found no cases, and were cited to none
24 by Trustee, that expressly decided that an individual need not be
25 a current resident of Missouri to claim its exemptions. Trustee
26 cites, and the court discussed in its order, In re Thompson,
27 2009 WL 2461027 (Bankr. W.D. Mo. Aug. 10, 2009) because it
28 implicitly supports their conclusion. The court in that case
ordered the debtor, who was a nonresident of Missouri, to utilize
Missouri exemptions over debtor's objection without discussing
whether a nonresident of the State could do so under Missouri law.
Because there was no discussion of this issue in In re Thompson we
find it unpersuasive in resolving this appeal.

1 this contest.

2 Ferneau examines and applies Mo. Rev. Stat. § 525.030,
3 Missouri's garnishment statute. The current statute, in relevant
4 part, provides: "[t]he maximum part of the aggregate earnings of
5 any individual . . . which is subject to garnishment may not
6 exceed (a) twenty five percentum, or, . . . (c) if the employee is
7 the **head of family and a resident of this state**, ten percentum,
8 whichever is less." MO. REV. STAT. § 525.030 (emphasis added). As
9 can be seen, this statute includes an express "resident"
10 requirement. Therefore, it should be no surprise the court in
11 Ferneau noted this requirement that the individual seeking to
12 benefit from the statute actually reside in the State.⁶ However,
13 as the Missouri bankruptcy court observed, the garnishment statute
14 is not an exemption statute. In re Parsons, 437 B.R. 854, 858
15 (Bankr. E.D. Mo. 2010) ("While true . . . [Mo. Rev. Stat.
16 § 525.030] was used as an exemption statute in times past, in the
17 light of the holding in In re Benn, this can no longer be the
18 case. All debtors henceforth must make do with the Missouri
19 exemptions where the Missouri Legislature has explicitly
20 identified property that a judgment debtor can keep away from
21 creditors") (citing Benn v. Cole (In re Benn), 491 F.3d
22 811, 813 (8th Cir. 2007). And, most importantly, the garnishment
23 statute contains a clear indication that the Missouri legislature

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25 ⁶ The court in Ferneau never quotes Mo. Rev. Stat. § 525.030
26 as it was in 1957. However, based on the court's summary of the
27 law in the opinion it appears that it was similar, if not
28 identical, to the current version of the statute. See Ferneau,
303 S.W.2d at 167 ("Defendant, a non-resident of Missouri, cannot
take advantage of the provisions of Section 525.030 . . . under
which wages in excess of 10% of the amount due are exempt.").

1 knew how to limit the applicability of the State's laws to
2 residents when appropriate. The legislature did not do so in
3 adopting the bankruptcy opt out statute or in the specific
4 exemption statutes. We decline to read such a requirement into
5 those laws.⁷

6 Finally, Debtors rely on statements of the law by courts in
7 factually distinguishable cases. For example, Debtors cite to
8 In re Benn, wherein the Eighth Circuit stated that Mo. Rev. Stat.
9 § 513.427 "restrict[s] **Missouri residents** to the exemptions
10 available under Missouri law" 491 F.3d at 813 (emphasis
11 added).⁸ Of course, this statement of the law is correct in that
12 a resident of Missouri is entitled to claim the State's
13 exemptions. But there is nothing in the statutes, or cases
14 interpreting those statutes, that limit the applicability of the
15 laws solely to Missouri residents. A more accurate and complete
16 statement of the law would be that, as provided in § 522(b)(3)(A),
17 individuals **domiciled** in Missouri are entitled to Missouri
18 exemptions, as the bankruptcy court observed in In re Rosen,
19 354 B.R. at 902-03. The cases cited by Debtors, which recite that
20 residents of Missouri may claim Missouri exemptions, simply did

22 ⁷ Exemption statutes in Missouri are to be construed
23 liberally in favor of debtors. Hardy v. Fink (In re Hardy),
24 F.3d ___, 2015 WL 3466015, at *2 (8th Cir. June 2, 2015). But
25 "[e]ven though Missouri exemption statutes are liberally
26 construed, 'a court must be careful not to depart substantially
27 from the express language of the exemption statute or extend the
28 legislative grant.'" In re Shelby, 232 B.R. 746, 765 (Bankr. W.D.
Mo. 1999) (quoting In re Goertz, 202 B.R. 614, 618 (Bankr. W.D.
Mo. 1996)).

27 ⁸ Debtors cite other cases that have quoted this portion of
28 the In re Benn opinion as well. E.g., In re Haines, 528 B.R. 912,
918 (Bankr. W.D. Mo. 2015).

1 not involve nonresident debtors attempting to utilize Missouri
2 exemptions and whether a nonresident could claim Missouri
3 exemptions. Therefore, the cases are distinguishable and of no
4 assistance in this appeal.

5 **VI. CONCLUSION**

6 After de novo review, for the reasons explained above, we
7 conclude that the bankruptcy court did not err in sustaining
8 Trustee's objection to Debtors' claimed exemptions under § 522(d).
9 Instead, Debtors are limited to the exemptions provided in the
10 Missouri exemption statutes even though they were not residents of
11 that State when they filed the bankruptcy petition. We therefore
12 AFFIRM the order of the bankruptcy court.

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