



Opinion 483

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Opinion Title: 10/19/2005 UNPUBLISHED In re Mark R. Scott, 05-26202, Judge Thurman.

Body: In this chapter 7 case, the court considered whether the debtor's involuntary absence from his home barred him from asserting a \$20,000 homestead exemption as his primary personal residence. The Chapter 7 Trustee objected to the Debtor's claimed homestead exemption of \$20,000, arguing that the Debtor had not lived in the home for the past two and a half years and that it wasn't his primary personal residence as of the petition date. The Debtor argued that he did not leave the home wilfully, but was ordered out by a Protective Order of a Utah State Court. The Court held that the Debtor could only claim a homestead exemption of \$5,000 because the home was not his primary personal residence under Utah Code § 78-23-3. The Court determined that a Debtor must reside in a home as of the petition date to assert a homestead exemption of \$20,000. Because the Debtor did not live in the home at the time of filing, he could not claim the home as a primary personal residence. The Court determined that under Utah law, it made no difference that the Debtor left the home involuntarily.

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Judge: [Judge William T. Thurman](#) [2]

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