

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

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Northern Division

COUNTER COPY - DO NOT REMOVE

In re : Bankruptcy Nos. B-79-00744
YELLOW HOUSE RESTAURANT, : B-79-00745
J. J. PLATT, and : B-79-00763
LINDA PLATT, :
Bankrupts. :
JAMES Z. DAVIS, Trustee, : MEMORANDUM DECISION AND
Plaintiff, : ORDER
vs. :
JAMES J. PLATT, LINDA R. :
PLATT, FIRST SECURITY BANK OF :
UTAH, N.A., UTAH STATE :
UNIVERSITY CREDIT UNION, :
WALKER BANK & TRUST COMPANY, :
JAMES L. McMULLEN, SARA L. :
McMULLEN, GLEN S. FIFE, :
CACHE COUNTY TREASURER, :
Defendants. :

James Z. Davis representing the trustee. N. George
Daines representing the debtors.

At the time the debtors filed bankruptcy, as individuals
and as partners in the Yellow House Restaurant, J.J. Platt
and Linda Platt were divorced. Each owned an undivided one-
half interest in the property located at 128 North 100 East,
Logan, Utah, and both were residing there with their son.
Each claimed a homestead exemption in the property. No
objection was made to Linda Platt's request in the amount of
\$6,800.00. The trustee, however, did not allow J.J. Platt
an exemption in his amended report. A hearing was held
before the Court on March 6, 1980, to consider J.J. Platt's
request for proceeds from the sale of the above property.
The question to be examined is whether J.J. Platt is entitled
to a homestead exemption for his interest in the subject

property even though one has been granted to his former spouse in the same dwelling.

Homestead exemptions are creatures of statutory creation. None existed at common law, so each state has formulated its own exemption and qualifying requirements. In Utah, homestead exemptions are guaranteed in the state Constitution, then specifically defined by current statutory provisions. As explained in Zuniga v. Evans, 87 Utah 198, 48 P.2d 513, 524 (1935):

The Constitution says the legislature shall provide by law an exemption to be selected by each head of a family; the statute says who is the head of a family and how much the exemption shall be for the various members thereof. Those who are qualified under the statute are entitled to the benefit of the exemption; while under the maxim that, when a statute enumerates the things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned, those who cannot qualify under the statute are to be excluded from its operation.

UTAH CODE ANN. §28-1-1 (Supp. 1979) provides for a homestead exemption which is available to the head of a family, with additional amounts included for his spouse and other specified members of the family. "Head of family" is defined in UTAH CODE ANN. §28-1-5(2) (1953) as "Every person who has residing with him and under his care and maintenance" certain relatives. Thus, to be entitled to claim an exemption, a person must first have a relative "residing with" him, and second, that relative must be "under his care and maintenance." Where, as in this case, there is only one qualifying relative involved, a son, there can be only one qualifying head of household even though there may be a joint duty of support, there is only one dependant and therefore only one household for purposes of determining entitlement to the exemption.

The facts in this case show that J.J. Platt resided in the same dwelling as his former wife and son. As Linda Platt testified, however, she and the boy lived in a separate apartment from her former husband, although the boy spent as much time as he wished with his father. Linda Platt had legal custody of the boy and assumed the responsibility of caring for him. Some meals were provided from the restaurant, and the only other support of the child came from the operation of the restaurant in which Linda and J.J. are each partners, rather than in the form of a formal support payment. While residing in the house, J.J. Platt and Linda Platt each paid half of the house payment.

This division of responsibility has not been addressed in Utah law in the context of homestead exemptions. Case law clearly indicates, however, that there is no intent to discriminate between husband and wife, married or unmarried persons. The statute expresses no preference for either the mother or the father of a dependant in its designation of a head of household. "Manifestly, the legislature did not intend to lay down one rule governing heads of families consisting of married men, and other heads of families consisting of unmarried men, or other persons entitled to the homestead right, who might have greater responsibilities thrust upon them than the former class." Bunker v. Coons, 21 Utah 164, 60 P.2d 549, 551 (1900).

Even though both J.J. Platt and Linda Platt supported their son, he lived in Linda's section of the house. Linda had legal custody of the boy, and the record reveals that she had generally more responsibility for his care. J.J. Platt's monetary contributions to his support were only indirect. It appears, therefore, that only Linda Platt can meet the requirements of a head of household entitled to a homestead exemption, for the son resided with her and she was the one

primarily responsible for his care and maintenance. As she qualifies as a head of household under UTAH CODE ANN. §28-1-5(2) (1953), it follows that J.J. Platt cannot qualify. A construction allowing both an exemption would impermissibly enlarge the meaning of the statute. As explained in Zuniga v. Evans, supra at 524, "When a statute enumerates the things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned."

It is, accordingly, ORDERED that J.J. Platt's application for a household exemption in the sales proceeds from his residence be denied.

DATED this 4 day of October, 1980.



Ralph R. Mabey
United States Bankruptcy Judge