

#2591

signed 11-21-02

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

**LARRY LEON ELLIS,
CONNIE FAYE ELLIS,**

DEBTORS.

**CASE NO. 02-42070-7
CHAPTER 7**

**ORDER SUSTAINING OBJECTION TO PART OF HOMESTEAD EXEMPTION
AND DIRECTING PARTIES TO CONFER ABOUT PARTITIONING THE LAND**

This matter was before the Court on November 13, 2002, for hearing on the trustee's objection to the debtors' claims that the following property is exempt: (1) three life insurance policies, and (2) two rental homes located on their 160-acre homestead. Chapter 7 Trustee Darcy D. Williamson appeared *pro se*. The debtors appeared personally, but their attorney, Mark W. Works, did not appear. The relevant facts concerning the claimed exemptions were presented to the Court and are not in dispute. The Court has reviewed the relevant materials and is now ready to rule.

When the debtors filed for bankruptcy, they listed certain life insurance policies and their homestead on Schedule C - Property Claimed as Exempt. Though only two life insurance policies seem to be identified, the trustee objected to the exemption of three policies. She indicated she needed documentation to show that the policies qualified as exempt under K.S.A. 40-414. At the hearing, the debtors said that the policies are whole life and term life insurance policies, and that they had given copies of them to their attorney. The trustee announced that if copies of the policies were supplied to

her and supported the debtors' representations, she would withdraw her objection to the exemption of the policies.

Although Schedule C did not indicate this fact, the trustee learned the 160-acre tract that the debtors claimed as their homestead contains not only their home but also two houses that they have rented out. One of the houses is about one city block away from the debtor's home and fronts on the same county road. The other was a hog-farm building but has been converted into a one-bedroom house. It is about one block behind the debtors' home, and can be reached from the county road only by crossing the debtors' land. Because they have rented it out, the debtors must be allowing the tenants to access the house in some way. Both houses are currently occupied by families who are not related to the debtors. Under the circumstances, the Court is convinced that both houses can be partitioned from the debtors' homestead without interfering with the debtors' occupation and use of their homestead. In partitioning the property, an easement over the debtors' land will need to be included with the converted farm building so the current access route to the house will remain intact. If for some reason that is not possible or the easement is inadequate, the buyer of that house may need to invoke K.S.A. 68-117 to get the county to build an access road, but that possibility does not make partition of that property impracticable.

Based on the facts presented and Kansas case law, including *Anderson v. Shannon* 146 Kan. 704, 705-15 (1937); *Morrissey v. Donohue* 32 Kan. 646, 646-49 (1884); and *Ashton v. Ingle* 20 Kan. 670, 677-82 (1878), the Court concludes that the two rental houses and the land appurtenant to them are not exempt as part of the debtors' homestead. In fact, the houses would be the homesteads of the families who are occupying them.

The trustee's objection to the debtors' inclusion of the rental homes in their homestead exemption claim is sustained. The parties are directed to confer about how to partition the 160-acre tract so that an adequate portion of the land is included with each rental house. If they are unable to agree on a partitioning solution, they should contact the Clerk's Office to schedule a status conference about how to proceed to resolve their dispute.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this _____ day of November, 2002.

JAMES A. PUSATERI
BANKRUPTCY JUDGE