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ORDERED PUBLISHED

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	NV-15-1074-JuKiD
)		
PATRICK HEATH CALDWELL,)	Bk. No.	2:14-bk-16024-LED
)		
Debtor.)		
_____)		
)		
PATRICK HEATH CALDWELL,)		
)		
Appellant,)		
)		
v.)	O P I N I O N	
)		
VICTORIA L. NELSON, Chapter 7)		
Trustee,)		
)		
Appellee.)		
_____)		

Argued and Submitted on February 18, 2016
at Las Vegas, Nevada

Filed - February 24, 2016

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

Honorable Laurel E. Davis, Bankruptcy Judge, Presiding

Appearances: A.J. Kung, Kung & Brown, argued for appellant
Patrick Heath Caldwell. Jacob L. Houmand,
Nelson & Houmand, P.C., argued for appellee
Victoria L. Nelson, chapter 7 trustee.

Before: JURY, KIRSCHER, and DUNN, Bankruptcy Judges.

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1 JURY, Bankruptcy Judge:
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3 Chapter 7¹ trustee, Victoria L. Nelson (Trustee), objected
4 to the Nevada homestead exemption in the amount of \$550,000
5 claimed by debtor Patrick Heath Caldwell (Debtor), seeking to
6 limit it to the statutory cap of \$155,675 under § 522(p)(1).
7 Trustee argued that Debtor acquired an interest in the homestead
8 property within the meaning of § 522(p)(1) because the property
9 was conveyed by Caldwell Family Investments II, LLC (LLC) to
10 Debtor and his spouse as trustees of the Caldwell Family 1998
11 Trust (Trust) during the 1215-day period preceding the date of
12 the filing of Debtor's petition. Debtor asserted that the
13 limitation under § 522(p)(1) was not triggered since he retained
14 a beneficial and equitable interest in the property at all times
15 despite transfers of the fee title to the property to and from
16 the Trust and the LLC.

17 The bankruptcy court sustained Trustee's objection.
18 Looking first to the laws of Nevada and Delaware regarding
19 limited liability companies, the court found that Debtor did not
20 have an ownership interest in the property during the time when
21 the LLC was the record title holder. Next, the court relied
22 upon Nevada case law which required a debtor to have some form
23 of equity in the property in order to claim a homestead – the
24 court finding that this equity contemplated ownership. Finally,
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26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure, and "Civil Rule" references are to the Federal Rules
of Civil Procedure.

1 the bankruptcy court followed out-of-jurisdiction case law which
2 rejected a debtor's attempt to claim a homestead exemption in
3 real property held in the name of an LLC. Debtor moved for
4 reconsideration which the bankruptcy court denied. This appeal
5 followed. For the reasons explained below, we REVERSE.

6 I. FACTS

7 A. Prepetition Transfers Of Debtor's Property

8 The facts are undisputed. Debtor and his spouse
9 (Ms. Caldwell) purchased real property located on Eagle Hills
10 Drive, Las Vegas, Nevada (Property) in March 1994. The record
11 shows that Debtor and Ms. Caldwell have continuously resided in
12 the home on the Property since they purchased it and have made
13 all mortgage payments, paid taxes, maintained insurance and
14 assumed all other responsibilities of a real property owner.
15 Since 1994 they have transferred title to the Property seven
16 times to and from the Trust and the LCC. These transfers were
17 for no consideration and, per Debtor's declaration, for estate
18 planning purposes.

19 In June 1998, they transferred the Property to the Trust
20 with Debtor and Ms. Caldwell as the sole trustees via a recorded
21 quitclaim deed. Over five years later, in October 2003, the
22 Property was transferred from the Trust back to Debtor and
23 Ms. Caldwell as joint tenants via a recorded quitclaim deed. In
24 February 2006, Debtor and Ms. Caldwell transferred the Property
25 back to the Trust via a recorded quitclaim deed.

26 On October 14, 2008, Debtor formed the LLC, a Delaware
27 limited liability company, by filing Articles of Organization
28 with the Delaware Secretary of State. Debtor and Ms. Caldwell

1 are the sole members of the LLC. In November 2010, the Property
2 was transferred from the Trust to the LLC via a recorded
3 quitclaim deed. On April 26, 2011, a declaration of homestead
4 was recorded against the Property by the LLC.

5 On October 10, 2011, the Property was transferred from the
6 LLC to the Trust. On the same date, a declaration of homestead
7 was recorded against the Property, this time by the Trust, which
8 stated the following: "This declaration constitutes an
9 abandonment of the former declaration recorded on April 26,
10 2011."

11 **B. Bankruptcy Events**

12 On September 5, 2014, 1061 days after the LLC transferred
13 title to the Property to the Trust, Debtor filed his chapter 7
14 petition (Petition Date). Ms. Nelson was appointed as the
15 chapter 7 trustee.

16 In his schedules, Debtor listed the Property value as
17 \$1,065,000 and total liens of \$516,802, leaving a net equity of
18 \$548,198 in the Property. Debtor claimed the full \$550,000
19 homestead exemption in the Property under Nevada Revised
20 Statutes (NRS) 21.090(1)(1) and 115.050.

21 Trustee objected to Debtor's homestead exemption in the
22 amount of \$550,000, seeking to limit it to \$155,675 under
23 § 522(p)(1) due to the transfer from the LLC to the Trust within
24 the 1215-day period prior to the Petition Date.

25 In response, Debtor argued that the limitation under
26 § 522(p)(1) did not apply because he always retained a
27 beneficial and equitable interest in the Property despite the
28 numerous transfers of legal title to and from the Trust and the

1 LLC. Debtor reasoned that such interests were retained since he
2 and his spouse were the sole trustees of the Trust and the sole
3 members of the LLC and thus Debtor was "merely transferring
4 title from himself to an entity owned by him." He also asserted
5 that although the LLC held the title to the Property, his
6 continuing payment of taxes, the mortgage, and insurance
7 indicated that he and Ms. Caldwell continued to use and consider
8 the Property as their own. Debtor further maintained that
9 neither he nor Ms. Caldwell needed to be vested with legal title
10 to validly declare a homestead under NRS 115.020. For these
11 reasons, Debtor argued anew that he received no "interest" for
12 purposes of § 522(p)(1) or the homestead exemption under Nevada
13 law when the LLC transferred legal title to the Trust. Finally,
14 Debtor pointed out that the purpose behind § 522(p)(1) would not
15 be served under the facts of this case as he never attempted to
16 shield assets or liquidate nonexempt assets to artificially
17 increase the equity in his home.

18 In a supporting declaration, Debtor testified that the
19 transfers of title to the Property were "made for estate
20 planning purposes only, pursuant to advice from [his] financial
21 planners and/or counsel." He also declared:

22 My wife and I have always been the sole trustee and
23 members of the Family Trust and Family Investment LLC;
24 and the Family Trust and Family Investment LLC held
legal title to the Eagle Hills Home at various times,
in trust for my wife and I.

25 After a hearing on January 27, 2015, the bankruptcy court
26 placed its findings of fact and conclusions of law on the record
27 on February 17, 2015. The court ruled that Debtor acquired an
28 interest in the Property on October 10, 2011, the date the LLC

1 transferred the Property to the Trust, and because this date was
2 1061 days prior to the petition date, § 522(p)(1) limited
3 Debtor's homestead exemption to \$155,675. In reaching this
4 conclusion, the court noted that under either Nevada or Delaware
5 limited liability law, Debtor did not hold an interest in the
6 Property while it was titled in the name of the LLC because the
7 LLC was a separate legal entity and a member's interest in a
8 limited liability company is personal property. The court
9 further noted that a requirement for exempting equity in a
10 homestead under Nevada law was an ownership interest rather than
11 a general or possessory interest in the Property, citing Savage
12 v. Pierson, 157 P.3d 697 (Nev. 2007). Finally, relying on out-
13 of-jurisdiction case law which interpreted exemption statutes in
14 other states, the bankruptcy court rejected Debtor's contention
15 that he could claim a homestead exemption in real property held
16 in the name of an LLC. Based on all these authorities, the
17 court found that Debtor acquired his interest in the Property
18 within the meaning of § 522(p)(1)(A) on October 10, 2011, when
19 title to the Property was transferred by the LLC to the Trust.

20 On February 24, 2015, the bankruptcy court entered the
21 order sustaining Trustee's objection (Exemption Order). On the
22 same day, Debtor filed a motion for reconsideration. There,
23 Debtor maintained that the LLC held the Property "in trust" for
24 Debtor and Ms. Caldwell. As a result of this trust-like
25 arrangement, Debtor asserted that he retained a beneficial or
26 equitable interest in the Property and, therefore, he could
27 claim a homestead exemption in the Property under Nevada
28 homestead law even though the LLC was the record titleholder of

1 the Property.

2 On March 3, 2015, Debtor filed a notice of appeal (NOA)
3 from the Exemption Order. Subsequently, the bankruptcy court
4 rejected Debtor's "in trust" theory on the ground that there was
5 no evidence of an express trust between Debtor and the LLC and
6 thus even if such a trust existed, it was a "secret" trust. The
7 court denied his motion for reconsideration by an order entered
8 on March 13, 2015 (Reconsideration Order). Debtor then filed an
9 amended NOA indicating that he was appealing both the Exemption
10 Order and the Reconsideration Order.²

11 II. JURISDICTION

12 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
13 §§ 1334 and 157(b)(2)(B). We have jurisdiction under 28 U.S.C.
14 § 158.

15 III. ISSUE

16 Whether the bankruptcy court erred by finding that
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18 ² Trustee subsequently entered into a compromise with U.S.
19 Bank, N.A. which held a stipulated judgment lien on the
20 Property. The parties disputed whether such lien was perfected.
21 Pursuant to the compromise, the estate would receive 67% of the
22 net proceeds from the sale of the Property and the bank would
23 receive 33% of the proceeds. Trustee then listed the Property
24 for sale. Debtor moved for a stay pending appeal which the
25 bankruptcy court denied. On June 10, 2015, the Panel denied
26 Debtor's request for an emergency stay. On September 4, 2015,
27 the Panel granted Debtor's renewed motion for an emergency stay
28 to prevent the sale of the Property pending resolution of this
appeal, as the sale would not provide enough proceeds to satisfy
Debtor's homestead exemption claimed in the amount of \$550,000
should he prevail. In other words, if Debtor prevails, the
estate will net no money after the homestead is paid, which
would make such sale of no benefit to the estate. The stay was
conditioned upon Debtor's continued payments on the secured debt
and maintenance of insurance on the Property.

1 § 522(p)(1) applied under these circumstances.

2 **IV. STANDARDS OF REVIEW**

3 A bankruptcy court's interpretation of the Bankruptcy Code
4 is a matter of law subject to de novo review. Predovich v.
5 Staffer (In re Staffer), 262 B.R. 80, 82 (9th Cir. BAP 2001),
6 aff'd, 306 F.3d 967 (9th Cir. 2002).

7 We review a bankruptcy court's interpretation of state law
8 de novo in order to determine if it correctly applied the
9 substantive law. Kipperman v. Proulx (In re Burns), 291 B.R.
10 846, 849 (9th Cir. BAP 2003) (citing Astaire v. Best Film &
11 Video Corp., 116 F.3d 1297, 1300 (9th Cir. 1997) (issues of
12 state law are reviewed de novo).

13 Findings of fact are reviewed under a clearly erroneous
14 standard. A court's factual determination is clearly erroneous
15 if it is illogical, implausible, or without support in the
16 record. United States v. Hinkson, 585 F.3d 1247, 1261-62 & n.21
17 (9th Cir. 2009) (en banc).

18 **V. DISCUSSION**

19 Section 522(p)(1) imposes a limitation on the homestead
20 exemption a debtor can claim regardless of the applicable state
21 law exemptions. In re Kane, 336 B.R. 477, 481 (Bankr. D. Nev.
22 2006); In re Virissimo, 332 B.R. 201, 207 (Bankr. D. Nev. 2005).

23 Section 522(p)(1) provides in relevant part:

24 Except as provided in paragraph (2) of this subsection
25 and sections 544 and 548, as a result of electing
26 under subsection (b)(3)(A) to exempt property under
27 State or local law, a debtor may not exempt any amount
28 of interest that was acquired by the debtor during the
1215-day period preceding the date of the filing of
the petition that exceeds in the aggregate \$155,675 in
value in--

1 (A) real or personal property that the debtor or a
2 dependent of the debtor uses as a residence;

3 To determine whether the statutory cap applies, we consider
4 whether Debtor "acquired an interest" within 1215 days of filing
5 for relief.

6 In this regard, Trustee submits that Debtor had no interest
7 in the Property prior to the October 10, 2011 transfer of legal
8 title from the LLC to the Trust because (1) the LLC held legal
9 title to the Property; (2) the LLC was the legal owner of the
10 Property under Delaware and Nevada limited liability laws; and
11 (3) Debtor could not have claimed a homestead exemption while
12 the Property was held in the name of the LLC. According to
13 Trustee, it follows that the upon the transfer of legal title
14 from the LLC to the Trust,³ Debtor "acquired an interest" in the
15 Property within the meaning of § 522(p)(1).

16 In response, Debtor asserts that he retained a beneficial
17 and equitable interest in the Property since 1994 despite the
18 transfers of title to and from the LLC and the Trust over the
19 years. To demonstrate his retained interest, he points out that
20 he and Ms. Caldwell have continuously resided in the dwelling on
21 the Property since 1994 and have paid the mortgage, taxes, and
22 insurance. Debtor further asserts that he could claim a
23 homestead exemption under Nevada law while title was held by the
24 LLC because of his use and continued possession of the Property
25 as a "householder," and there is no requirement that he hold

26 _____
27 ³ Trustee concedes that when title is in a revocable trust
28 where a debtor is the settlor and beneficiary, the debtor may
claim a homestead.

1 legal title to the Property for it to be a homestead under
2 Nevada law. According to Debtor, since he retained an interest
3 in the Property and it was always his homestead, the Property
4 was always an exempt asset under Nevada law despite the transfer
5 of title to the LLC. Based on these premises, Debtor contends
6 that he did not "acquire an interest" when the LLC transferred
7 title to the Property to the Trust within 1061 days before the
8 Petition Date, and thus the limitation of § 522(p)(1) is not
9 applicable. In short, Debtor's position, for purposes of the
10 homestead exemption, is that he retained a sufficient interest
11 in the Property during all the multiple conveyances of legal
12 title to and from the LLC. For the reasons discussed below,
13 Debtor has the better argument.

14 We look to Nevada law to determine whether Debtor held an
15 interest in the Property which would support a claim of
16 homestead while the LLC was the sole titleholder. Butner v.
17 United States, 440 U.S. 48, 54-55 (1979) (determination of
18 property rights is controlled by state law). NRS 21.090(1)(1)
19 exempts homestead property from execution "as provided for by
20 law." Under NRS 115.005(2)(a), the "Homestead" is broadly
21 defined as "the property consisting of . . . [a] quantity of
22 land, together with the dwelling house thereon and its
23 appurtenances;" These statutes do not designate how
24 title to the property is to be held, and they do not limit the
25 estate that must be owned, i.e., fee simple or some lesser
26 interest. Nevada courts have held that the exemption should be
27 liberally and beneficially construed in favor of the debtor and
28 protecting the family home. See In re Norris, 203 B.R. 463, 465

1 (Bankr. D. Nev. 1996) (citing Jackman v. Nance, 857 P.2d 7 (Nev.
2 1993)).

3 In Nevada, to secure the benefits of the statutory
4 provisions exempting the homestead from forced sale, it is
5 necessary that a declaration of homestead be filed for record.⁴
6 NRS 115.020; I.H. Kent Co. v. Busscher, 277 F.2d 901, 905 (9th
7 Cir. 1960). "The declaration must state: (a) When made by a
8 married person or persons, that they or either of them are
9 married, or if not married, that he or she is a householder."
10 NRS 115.020(2)(a). The Nevada Supreme Court has "defined the
11 term householder as 'one who keeps house,' further stating that
12 a householder 'must be in actual possession of the house' and
13 must be 'the occupier of a house.'" Van Meter v. Nilsson (In re
14 Nilsson), 315 P.3d 966, 969 (Nev. 2013) (quoting Goldfield
15 Mohawk Mining Co. v. Frances-Mohawk Mining & Leasing Co., 102 P.
16 963, 965 (Nev. 1909)). In Goldfield, the court stated that
17 "householder" referred "to the civil status of a person, not his
18 property, and a man may be a householder without owning real
19 estate." 102 P. at 966.

20 Debtor maintains that he was the "householder" of the
21 Property since he and his family continuously occupied the
22 Property as their primary residence since 1994. We note that
23 the requirement of "householder" as used in the declaration
24 statute is directed at persons "not married." NRS
25 115.020(2)(a). As we understand the record, Debtor was married.
26

27 ⁴ The declaration may be filed at any time prior to an
28 execution sale.

1 Nonetheless, the "householder" definition is useful for our
2 analysis. Based on the undisputed evidence that Debtor
3 continually resided on the Property since 1994 and was at all
4 times in actual possession of the house, we have no doubt that
5 Debtor meets the definition of a "householder" under Nevada law.
6 Debtor met the possession and occupancy requirements for a
7 "householder" and did not need to hold fee simple title to the
8 Property to achieve that status under Nevada law. Accordingly,
9 Debtor has established that the Property was protected as a
10 homestead even when the LLC was the titleholder.

11 Although Debtor was a "householder," Nevada law requires
12 that a homestead claimant have some type of interest in the
13 property to claim the "equity" exemption up to \$550,000 under
14 NRS 115.010. While Nevada law does not distinguish between the
15 types of interests in property that qualify for the homestead
16 exemption,⁵ the Nevada Supreme Court has held that a claimant
17 must have more than a general interest in or right to possession
18 of the property claimed to be exempt. Savage, 157 P.3d at 701-
19 02. There, the court considered whether a security deposit in a
20 residential lease was exempt from execution under NRS
21 21.090(1)(l) or Nevada's homestead law.⁶ The court first noted
22 that the homestead exemption extended only to the "equity" in
23 the property held by the claimant. "Equity" is defined in NRS

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25 ⁵ Likewise, it is not necessary for us to do so in the
context of this appeal.

26 ⁶ The court also considered the exempt status of the
27 security deposit under NRS 21.090(1)(m) - Nevada's dwelling
28 exemption. In that analysis, the court came to the same
conclusion that it was not exempt.

1 115.005(1) as "the amount that is determined by subtracting from
2 the fair market value of the property the value of any liens
3 excepted from the homestead exemption pursuant to subsection 3
4 of NRS 115.010 or NRS 115.090." In interpreting the statutory
5 language, the court concluded that "the statutory definition of
6 'equity' [under NRS 115.005(1)] contemplates more than a general
7 'interest' in the property or the right to possession, it
8 contemplates ownership." 157 P.3d at 701. Since the security
9 deposit did not qualify as "equity," the court decided that the
10 debtor could not claim it exempt under Nevada's homestead law.

11 Although Savage is factually distinguishable from this
12 case, the Nevada court's interpretation of "equity" in the
13 context of the homestead exemption provides some guidance for
14 our review in this appeal. In contrast to Trustee's position,
15 the holding in Savage does not say that a debtor has to have an
16 ownership interest in the property equivalent to fee simple
17 ownership in order to claim a homestead exemption. Although the
18 court found that the definition of "equity" contemplated
19 "ownership," it did not limit the estate that must be owned
20 beyond saying that the interest had to be more than a "general
21 interest" or right to possession. Read in the context of the
22 definition of a "householder" and the case law we cited above,
23 the "ownership" required by Savage cannot be limited to only fee
24 simple title.

25 The record shows that the interest Debtor retained in the
26 Property after the transfer of legal title to the LLC was more
27 than a general interest or the mere right to exclusive
28 possession. According to the record, he retained all the

1 indicia of ownership by his possession and use of the Property
2 along with the payment of the mortgage, taxes, and insurance.
3 Plainly, the "equity" in the Property which is subject to the
4 exemption was the result of payments made by Debtor over the
5 years. Trustee did not present any evidence to controvert these
6 facts. We thus conclude that Debtor was not divested of all
7 interests in the Property by the transfer of legal title to the
8 Property to the LLC. Accordingly, Debtor's homestead rights in
9 the Property before and after the transfers of title remained
10 unchanged.

11 Finally, it does not matter that a declaration of homestead
12 with respect to the Property was filed on October 10, 2011,
13 within 1061 days of the filing of the petition. The filing of a
14 homestead declaration does not trigger the statutory cap under
15 § 522(p)(1). Greene v. Savage (In re Greene), 583 F.3d 614, 620
16 (9th Cir. 2009). Like the debtor in Greene, Debtor acquired his
17 exemptible interest in the Property in 1994, well outside the
18 statutory period contained in § 522(p)(1), and, as discussed
19 above, that exemptible interest never changed.

20 In enacting § 522(p)(1), we do not believe that Congress
21 envisioned limiting a debtor's homestead exemption where as here
22 (1) debtor purchased the property in 1994, well before the start
23 of the 1215-day period, (2) continuously possessed and occupied
24 the Property as his homestead, and (3) accumulated the "equity"
25 by making regular mortgage payments throughout his occupancy.

26 In sum, we conclude that the transfer of title from the LLC
27 to the Trust did not constitute an "interest" that was
28 "acquired" by Debtor to limit his homestead claim, within the

1 meaning of § 522(p)(1). As discussed above, Nevada law
2 protected Debtor's homestead rights in the Property throughout
3 the various transfers of title. Therefore, the statutory cap
4 does not apply.⁷

5 **VI. CONCLUSION**

6 We REVERSE the bankruptcy court's order limiting Debtor's
7 homestead exemption pursuant to § 522(p)(1).

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27 ⁷ Because we reverse on other grounds, it is not necessary
28 for us to address Debtor's other argument that the LLC held the
Property "in trust."