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United States Bankruptcy Court,
D. Idaho.

In re Sheryl M. **PIXLER** fka Sheryl M. Lopez, Debtor.

No. 01-03131. | April 5, 2002.

(NOTE: Great summary of the law on these points. Emphasis added throughout.)

MEMORANDUM OF DECISION

PAPPAS, Chief Bankruptcy J.

Introduction

*1 Two matters are before the Court for disposition. First, interested party Lois Murphy (“Murphy”) objects to Chapter 7 Debtor Sheryl Pixler’s claim of exemption in a 1998 Subaru. Second, **Pixler** moves for an order directing that her bankruptcy case be jointly administered with the bankruptcy case of her **former spouse**, Carlos **Lopez**. The matters came on for hearing on February 20, 2002, after which they were taken under advisement by the Court. Having duly considered the record and the arguments of the parties, this Memorandum constitutes the Court’s findings of fact and conclusions of law. [Fed. R. Bankr.P. 7052](#); 9014.

Background and Facts

The parties have stipulated the following are the material facts and chronology of events.

Pixler and Lopez, then married, separated in August, 2000. A divorce action was commenced concerning the couple in state court in January, 2001. On August 20, 2001, **Lopez, without consulting Pixler, filed a petition for relief under Chapter 7** of the Bankruptcy Code, thereby commencing Case No. 01-02458. Murphy was appointed to serve as Chapter 7 trustee in the Lopez case. Lopez **listed all the community property** owned by he and Pixler as assets in his bankruptcy schedules, including the 1998 Subaru in Pixler’s possession. **However, Lopez claimed only those household furnishings and the vehicle in his possession, a 1997 Nissan, as exempt. No objections were filed to his claim of exemptions.**

On September 21, 2001, the state court entered its decree divorcing Lopez and Pixler. However, the **state court reserved entry of any order for division of the parties’ community property** pending relief from the automatic stay in effect because of Lopez’s bankruptcy filing.

On October 19, 2001, **Pixler filed a Chapter 7 petition**, commencing this case, No. 01-03131. Richard Crawford was appointed to serve as trustee in the case. Pixler claimed the personal property in her possession, including the Subaru, exempt. Crawford did not object to Pixler’s claim of exemptions. However, Murphy, in her status as **Chapter 7 trustee in the Lopez case, objected to Pixler’s claim of exemption in the Subaru.**¹ Docket No. 10.

In her objection, Murphy **correctly** notes that when Lopez filed for bankruptcy relief in August, 2001, all of the Lopez–Pixler community property became property of the Lopez bankruptcy estate. See [11 U.S.C. § 541\(a\)\(2\)](#). Because the Subaru became property of the Lopez bankruptcy estate, Murphy contends, Pixler had no interest in the vehicle to exempt when she later filed her bankruptcy petition. In other words, in Murphy’s opinion, when two married persons file separate bankruptcy petitions, only the first to file is entitled to claim exemptions in the parties’ community property. Consistent with her view, Murphy has demanded that Pixler deliver the Subaru to Murphy so it can be sold to pay the Lopez creditors.² Pixler has complied, subject to her right to claim up to \$3,000 of the sale proceeds exempt under [Idaho Code § 11–605\(3\)](#).³

***2** In addition to contesting Murphy’s objection to her claim of exemption (see Docket No. 11, Response in Opposition to Objection), Pixler filed a motion for an order directing that her bankruptcy case be jointly administered with the Lopez case. Docket No. 12. Pixler asserts that since the creditors involved in both cases are nearly identical, that joint administration makes sense. Pixler also contends that if the two bankruptcy cases are jointly administered, Pixler will be legally entitled to exempt the Subaru. **Murphy, not surprisingly, objects to Pixler’s joint administration motion.**

Since divorce and bankruptcy often occur in tandem, this case presents important, interesting issues of bankruptcy law. Those issues are discussed below.

Discussion and Disposition of the Issues.

To begin, a review of a few of the established ground rules applicable in this setting is appropriate.

Under the Bankruptcy Code, spouses may, if they choose, file a joint petition for relief. [11 U.S.C. § 302\(a\)](#). If they do, each spouse is allowed a separate claim of exemption to the extent allowed by the law creating such exemptions. [11 U.S.C. § 522\(m\)](#); [§ 522\(b\)\(2\)\(A\)](#) (limiting exempt property in “opt-out” states, including Idaho, to that exempt under “applicable” Federal, state or local law); see also [Idaho Code § 11–605\(3\)](#) (providing that an “individual” may exempt one motor vehicle to the extent of a value of not exceeding \$3,000 from the claims of creditors). When a debtor fails to file an exemption claim in a bankruptcy case, a dependent of the debtor may do so on the debtor’s behalf. [11 U.S.C. § 522\(1\)](#); [Fed. R. Bankr.P. 4003\(a\)](#). In this context, the term “dependent” includes the debtor’s spouse, whether or not the spouse is actually dependent upon the debtor. [11 U.S.C. § 522\(a\)\(1\)](#). As a corollary to this rule, however, this Court recently decided the Bankruptcy Code, as interpreted in Ninth Circuit decisional law, does **not allow a non-filing spouse to claim exemptions on her own behalf in her spouse’s bankruptcy case.** *In re Reece*, Unpublished Memorandum of Decision, Case No. 01–03229 (Bankr.D.Idaho March 26, 2002) (Pappas, C.J.); *In re DeHaan*, __ I.B.C.R. __, [Case No. 01–03124, 2002 WL 471336 \(Bankr.D.Idaho March 20, 2002\)](#) (Myers, J.); see also *Homan v. Homan (In re Homan)* 112 B.R. 356, 359 (9th Cir B.A.P. 1989) (holding debtor spouse has exclusive right to claim exemptions, and nondebtor spouse may not “supplement” debtor’s “incomplete” claim of exemption). Therefore, under the Code and case law, even spouses who are separated at the time may cooperate in the filing of a single, joint bankruptcy petition, and in that bankruptcy case, each spouse may claim a separate motor vehicle exemption. In this fashion, the spouses can insulate the greatest amount of value of their assets from the reach of their creditors’ ever-vigilant representative, the trustee.

As a practical matter, it seems life’s decisions are not always so easily made, especially in the midst of an acrimonious break-up.⁴ It is easy to imagine that during separation, one spouse may need bankruptcy relief, and as a result of strain of the marital relationship, be motivated to protect his or her assets through exemption, but may also lack the desire to protect the property of the soon-to-be former spouse. What then?

***3** The issue is further complicated by the interplay of the bankruptcy statutes law and the law of community property in Idaho. State community property law grants an equal right to manage community property to both spouses. See [Idaho Code § 32–912](#) (providing for equal management of all community property). The Bankruptcy Code vests all of that community property in the bankruptcy estate of either spouse who files a petition. [11 U.S.C. § 541\(a\)\(2\)](#); [Homan, 112 B.R. at 359](#). Consequently, as the Ninth Circuit has acknowledged, “[f]or purposes of [§ 541\(a\)\(2\)](#), all community property not yet divided by a state court at the time of the bankruptcy filing is property of the bankruptcy estate.” [Dumas v. Mantle \(In](#)

[re Mantle](#), 153 F.3d 1082, 1085 (9th Cir.1998).

Given the legal landscape, and the facts of this case, Lopez may have left Pixler in a jam. The parties were **separated, but not divorced**, when Lopez filed for bankruptcy. The Subaru, Pixler's sole means of transportation, became property of the Lopez bankruptcy estate because it **was, and remains, the parties' community property**, when Lopez commenced his bankruptcy case. Pixler, as a nondebtor, can not claim an exemption in Lopez's case. More importantly, **she also can not claim the Subaru exempt in her bankruptcy case because all of her interest in the vehicle passed to the Lopez bankruptcy estate prior to the date she filed her petition.**⁵ In other words, Pixler had no remaining interest in the Subaru to exempt when she filed.

Predictably, Pixler suggests her loss of the right to exempt the Subaru here, a right that would have been assured had Lopez and Pixler filed a joint petition, represents a harsh result. It does, and perhaps, as a matter of public policy, the consequences are too harsh. However, as the spouse of a debtor, she also enjoyed certain protections, and even benefits, when Lopez filed for relief:

First, prior to the consummation of a sale of community property by the estate of a debtor spouse, the nondebtor spouse has a right of first refusal to purchase the property at the proposed sale price. [\[11 U.S.C.\] Section 363\(i\)](#). Moreover, a nondebtor spouse in a community property state typically benefits from the discharge of the debtor spouse. According to [\[11 U.S.C.\] Section 524\(a\)\(3\)](#), after-acquired community property is protected by injunctions against collection efforts by those creditors who held allowable community claims at the time of filing. This is so even if the creditor claim is against only the nonbankruptcy spouse; the after-acquired property is immune.

[Homan](#), 112 B.R. at 360. While Pixler feels she is being treated unfairly, it was for Congress, not the Court, to weigh whether the burdens visited upon a non-filing spouse were proportionate to the benefits when it acted to include community property in the **"first-filer's" bankruptcy estate**. There is no room for the Court to vary the clear meaning of the statutes based on the perceived equities of this case.

*4 As her apparent last line of defense, Pixler suggests that **joint administration** of her bankruptcy estate with that of Lopez would be an appropriate means of balancing the scales and giving her the right to exempt the Subaru.⁶ The Court respectfully disagrees with the notion that the cases can be jointly administered. True enough, there is a Rule that allows the Court to order that two bankruptcy cases involving a husband and a wife, or other related entities, be jointly administered. [Fed. R. Bankr.P. 1015\(b\)](#). In addition, Pixler cites Ninth Circuit case law for the proposition that **joint administration is "a straightforward procedure for permitting belated bankruptcy relief to a non-filing spouse."** [In re Olson](#), 253 B.R. 73, 75 (9th Cir. B.A.P.2000).

The obvious problem with Pixler's suggestion is that Pixler and Lopez are **no longer married, nor were they when Pixler filed her petition**.⁷ Therefore, the Rule which allows joint administration of bankruptcy cases filed by "(1) a husband and wife," or "(2) a partnership and one or more of its partners," or (3) two or more general partners," or "a debtor and an affiliate"⁸ does not apply to these facts. So, too, the facts of *Olson* render the decision distinguishable. In that case, the parties were married when Mrs. Olson filed a bankruptcy petition. She attempted to include her husband in the bankruptcy case by moving under [Fed. R. Bankr.P. 1009\(a\)](#) to amend her voluntary petition. The Panel rejected this approach, and as a possible solution for her problem, suggested that Mr. Olson file a petition, and move for joint administration under [Rule 1015\(b\)\(1\)](#). [253 B.R. at 74](#). The Panel's recommendation, which is *dicta*, would be not be allowed by the Rules under these facts.⁹

Conclusion.

Pixler cannot exempt the Subaru. It became property of the Lopez bankruptcy estate when he filed his petition. There is **no legal basis authorizing the Court to order joint administration** of the Pixler and Lopez bankruptcy estates. For these reasons, Murphy's objection to Pixler's claim of exemption must be sustained and Pixler's motion for joint administration must be denied. A separate order will be entered.

Footnotes

- ¹ None of the parties challenge Murphy's standing as the trustee in the Lopez case to object to Pixler's exemption. Both the Code, [11 U.S.C. § 522\(1\)](#), and the Bankruptcy Rules, [Fed. R. Bankr.P. 4003\(b\)](#), confer standing to object to a debtor's claim of exemption on any "interested party." There is no statutory definition of this term, nor is there case law interpreting these provisions in this context. Since the Lopez bankruptcy estate clearly has a pecuniary stake in the outcome of this dispute, and since no party has raised the issue, the Court will presume Murphy has the requisite standing to pursue her objection.
- ² Murphy has not requested that Pixler turn over all her other allegedly exempt personal property. If Murphy's position is correct, and if Pixler is not entitled to exempt these items, Murphy could, in theory, assert the right to liquidate these items, too.
- ³ Apparently, the Subaru may be worth as much as \$8,000. Therefore, regardless of the outcome of the Pixler exemption claim, there appears to be considerable equity available for the benefit of the creditors.
- ⁴ To be clear, the Court makes no finding concerning the circumstances existing between Lopez and Pixler during the time of their separation and divorce, including whether the parties were communicating and cooperating with one another on matters of mutual financial concern. One of Pixler's pleadings represents that at the time Lopez filed for relief, "the parties were separated ... and subject to a restraining order which made it difficult for them to cooperate." Pixler's Motion for Order Directing Joint Procedural Administration of Cases, Docket No. 12, ¶ 4. It is enough for the Court to find that Pixler and Lopez did not, for whatever reasons, join in the filing of a joint bankruptcy petition prior to their divorce.
- ⁵ The statute is clear that the Lopez bankruptcy estate did not succeed only to Lopez's interest in community property, but included "all interests of the debtor *and the debtor's spouse* in community property." [11 U.S.C. § 541\(a\)\(2\)](#) (emphasis added).
- ⁶ Neither Lopez nor Crawforth objected to Debtor's motion for joint administration. This is no surprise to the Court. Lopez is unconcerned with Pixler's approach. Joint administration will not impact his rights or exemptions in any way. Regardless of the outcome of Pixler's motion, Lopez loses the Subaru. Crawforth indicated on the record at the hearing on Pixler's motion he did not object because he concurs with Murphy that the Lopez bankruptcy estate is entitled to any equity generated upon sale of the Subaru.
- ⁷ The Court expresses no opinion whether joint administration of spouses' separate cases would allow the second petitioner to claim exemptions in property of the first-filer's bankruptcy estate. Notwithstanding the quotation from the decision above, *Olsen* does not seem to answer this question definitively. In addition, since it was not requested, the Court expresses no opinion concerning whether substantive consolidation of the two bankruptcy estates would be appropriate in this or similar cases.
- ⁸ "Affiliate" is a defined term for bankruptcy purposes, and refers to an entity that controls or is closely related to a business entity. [11 U.S.C. § 101\(2\)](#). The statutory definition does not include spouses.
- ⁹ Because the Rules do not allow joint administration in this instance, the Court expresses no opinion concerning whether, when the bankruptcy estates of a husband and wife are ordered jointly administered, the "last-to-file" spouse can claim exempt property of the estate of the first-to-file spouse. When a joint petition is filed, a joint case is commenced, but technically, two bankruptcy estates are created at once. Since the two bankruptcy estates arise simultaneously, neither debtor will be confronted with the argument that potentially exempt property had already passed to the other spouse's bankruptcy estate.