

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE: ) Chapter 7 Case  
) Number 01-10438  
JANNIE C. GILCHRIST )  
)  
Debtor )  
\_\_\_\_\_ )  
)  
EDWARD J. COLEMAN, III, ) FILED  
CHAPTER 7 TRUSTEE ) 2001 DEC -3 A 10:53  
)  
Movant )  
)  
vs. )  
)  
JANNIE C. GILCHRIST )  
)  
Respondent )

**ORDER**

Trustee, Edward J. Coleman III, objects to Jannie C. Gilchrist's (hereinafter "Debtor") claims of exemption of \$65,400.00 for real estate located at 2403 Yates Drive, Augusta, Georgia. The Trustee's objection is sustained and the Debtor is limited to an exemption of \$5,400.00 on that property.

The facts are as follows. The Debtor filed for relief under chapter 7 of Title 11, the Bankruptcy Code on February 12, 2001. Among the Debtor's assets is real estate located at 2403 Yates Drive, Augusta, Georgia with a claimed value of \$28,100.00.

On Schedule C, the Debtor claims a total of \$65,400.00 in exemptions for this property. \$5,400.00 of the exemptions listed are pursuant to Georgia's exemption law O.C.G.A. §44-13-100(a) (1) and (6).<sup>1</sup> The Debtor, however, also claims Richmond County, Georgia ad valorem tax homestead exemptions S1Y of \$10,000 and S-2 and S-4 of \$50,000. The S1Y homestead exemption is a disability exemption for \$10,000.00 that is available to all totally and permanently disabled resident homeowners. Office of the Tax Commissioner, Richmond County, Georgia, "Homestead Exemptions" (revised 4/25/2000). To receive this exemption, the homeowner must provide the Richmond County Tax Commissioner with an affidavit from a certifying agency or doctor stating that the applicant is totally and permanently disabled. Id. The S-2 and S-4 exemptions provide homeowners older than 65 years a full exemption from all school taxes. This exemption has no precise dollar amount. Id. The homeowner must file an application

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<sup>1</sup>O.C.G.A. § 44-13-100 reads in pertinent part:

(a) In lieu of the exemption provided in Code Section 44-13-1, any debtor who is a natural person may exempt, pursuant to this article, for purposes of bankruptcy, the following property:

(1) The debtor's aggregate interest, not to exceed \$5,000.00 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor...

6) The debtor's aggregate interest, not to exceed \$400.00 in value plus any unused amount of the exemption provided under paragraph (1) of this subsection, in any property.

with the Richmond County Tax Commissioner in order to receive these exemptions. Id. Prior to filing for bankruptcy relief, on January 19, 2001, the Debtor applied for exemption S-4. The Debtor has not provided evidence of applications for exemptions S-2 or S1Y.

The Trustee objects to these Richmond County ad valorem tax exemptions and contends that the Debtor's exemptions are limited to \$5,400.00 in accordance with O.C.G.A. § 44-13-100. According to the Debtor, these Richmond County local homestead exemptions apply to both the ad valorem taxes and judgment creditors and that nothing in the Georgia code prohibits a county from passing its own exemptions for purposes of "taxes and/or judgment creditor protection." The issue is whether the Debtor may supplement her state law established bankruptcy exemptions with the local Richmond County ad valorem tax homestead exemptions. The Court has jurisdiction to hear this matter under 28 U.S.C. § 1334 and § 157(b) (1) & (2) (B).

The local homestead exemptions claimed by the Debtor apply to ad valorem taxes only. In Georgia, debtors in bankruptcy are limited to federal non-bankruptcy exemptions and the list of state exemptions under O.C.G.A. §44-13-100.<sup>2</sup> 11 U.S.C. §522(b) (2) (A); In

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<sup>2</sup>O.C.G.A. § 44-13-100(b) reads in pertinent part: Pursuant to 11 U.S.C. Section 522(b) (1), an individual debtor whose domicile is in Georgia is prohibited from applying or utilizing 11 U.S.C. Section 522(d) in connection with exempting property from his or her estate; and such individual debtor may exempt from property of his or her estate only such property as may be exempted from the

the Matter of Ambrose, 179 B.R. 982, 984 n.2 (Bankr. S.D. Ga. 1995) (“a debtor who files bankruptcy while domiciled in Georgia is limited to the list of exemptions found in O.C.G.A. § 44-13-100(a)”); see also In re Boyett, 250 B.R. 822, 824 (Bankr. S.D. Ga. 2000). Local homestead exemptions from ad valorem taxes are not included in the O.C.G.A. § 44-13-100 list of exemptions available to debtors in bankruptcy. The Debtor has provided no case law or statutes showing that these ad valorem homestead exemptions can be used as bankruptcy exemptions nor has the Debtor shown any authority supporting the contention that the local ad valorem tax exemptions are also exemptions from judgment creditors. Georgia House Bill 1764, upon which Richmond County exemptions S-2 and S-4 are based, states that it is a bill “to amend an Act providing a homestead exemption from *all Richmond County ad valorem taxes.*” H.B. 1764 (Act No. 900) (April 9, 1996) (emphasis added). The exemption is specific to ad valorem taxes with no reference whatsoever to judgment creditors.

The Debtor’s contention that the Georgia Code does not prevent local authorities from creating their own exemptions is simply false. While the Georgia Constitution grants county governments the power to create their own local ad valorem tax homestead exemptions, there is no similar grant of power for

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estate pursuant to 11 U.S.C. Section 522(b) (2) (A) and (B).

exemptions from judgment creditors. GA. CONST. of 1983, Art. 7, §2, ¶2(a)(2).<sup>3</sup> The Georgia Constitution Bill of Rights mandates the General Assembly to create homestead exemptions from judgment sales and levies. GA. CONST. of 1983, Art.1, §1, ¶26. Specifically, the General Assembly "shall have authority to define to whom any such additional exemptions [from levy and sale] shall be allowed; to specify the amount of such exemptions; to provide for the manner of exempting such property and for the sale, alienation, and encumbrance thereof; and to provide for the waiver of said exemptions by the Debtor." Id. No similar provision for local governments exists in the Georgia Constitution.

The creation of local county homestead exemptions from judgment creditors would be unconstitutional. The Georgia Constitution grants the governing authority of each county the "legislative power to adopt clearly reasonable ordinances, resolutions, or regulations...*for which no provision has been made by general law.*" GA. CONST. of 1983, Art. 9, §2, ¶1(a) (emphasis added). Counties cannot legislate in "matters which the General

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<sup>3</sup>GA. CONST. of 1983, Art. 7, §2, ¶2(a)(2) reads in pertinent part:

(2) Homestead exemptions from ad valorem taxation levied by local taxing jurisdictions may be granted by local law conditioned upon approval by a majority of the qualified electors residing within the limits of the local taxing jurisdiction voting in a referendum thereon.

Assembly by general law has preempted or may hereafter preempt.” GA. CONST. of 1983, Art. 9, §2, ¶1(c). In Georgia, general law already provides exemptions for debtors in bankruptcy in O.C.G.A. § 44-13-100. The matter of bankruptcy exemptions is preempted by the General Assembly and counties cannot create their own law in this matter.

Furthermore, Georgia counties do not have the power to “take any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power.” GA. CONST. of 1983, Art. 9, §2, ¶1(d). A homestead exemption from sale and levy by a judgment creditor would clearly affect private relationships between the creditor and debtor, and thus cannot be legislated by any county in Georgia. The Richmond County ad valorem tax homestead exemptions have nothing to do with bankruptcy exemptions nor could they under the Georgia Constitution. Debtors in Georgia who have filed for bankruptcy relief are therefore limited to the exemptions of O.C.G.A. § 44-13-100.

It is therefore ORDERED that the trustee’s objection is sustained. The Debtor’s exemptions in her property on 2403 Yates Drive, Augusta, Georgia, is reduced to \$5,400.00 in accordance with O.C.G.A. § 44-13-100.

JOHN S. DALIS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 3rd Day of December, 2001.