



THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

A handwritten signature in black ink, appearing to read "G. Michael Halfenger", written over a horizontal line.

G. Michael Halfenger
Chief United States Bankruptcy Judge

DATED: February 7, 2020

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Michael R. Thompson,

Debtor.

Case No. 18-31417-GMH
Chapter 13

Michael R. Thompson,

Plaintiff,

v.

Adv. Proc. No. 19-02092-GMH

Angela Marie Roberts,

Defendant.

DECISION AND ORDER

Michael Thompson's ex-wife, Angela Roberts, filed a proof of claim in his chapter 13 case seeking payment of more than \$64 thousand that he owes her under their divorce judgment. Roberts contends that, to secure payment of this obligation, the divorce judgment imposed a lien on Thompson's residence and that, as a result, her

claim in his bankruptcy case is fully secured. Thompson asserts, to the contrary, that Roberts's claim is only secured to the extent that the value of his residence exceeds the sum of the higher-priority liens on it and the amount of his homestead exemption.

To resolve their dispute, Thompson brought this adversary proceeding against Roberts. This proceeding is for "allowance or disallowance of claims against the estate or exemptions from property of the estate", so it is a core proceeding, and this court may enter a final judgment. 28 U.S.C. §157(b)(1) & (2)(B). The District Court for the Eastern District of Wisconsin has jurisdiction over this proceeding under 28 U.S.C. §1334 and referred it to this court under §157(a). See Order of Reference (E.D. Wis. July 10, 1984), available at <http://www.wied.uscourts.gov/local-rules-and-orders>.

Both parties seek summary judgment. They do not dispute the material facts, so the court need only determine whether, given those facts, either of the parties "is entitled to judgment as a matter of law." See Fed. R. Civ. P. 56(a) (made applicable in adversary proceedings by Fed. R. Bankr. P. 7056).

I

The undisputed material facts are as follows. In 2017, after years of marriage to Thompson, Roberts filed a petition for divorce. The Wisconsin Circuit Court for Fond du Lac County held a trial and entered a judgment awarding the parties' Fond du Lac residence to Thompson and otherwise dividing their property between them. To "equalize[] the property division", the court ordered Thompson to pay Roberts nearly \$65 thousand, describing "[t]his payment" as "a judgment in favor of [Roberts] against [Thompson]." ECF No. 17-1, at 9. The judgment provides that Thompson's failure to make this payment "is punishable" as contempt of court under Wisconsin Statutes section 785.02 "by commitment to the county jail or house of correction until [the] judgment is complied with and the costs and expenses of the proceedings are paid or until the party committed is otherwise discharged". *Id.* at 9–10.

The divorce judgment was entered on the Fond du Lac County judgment and

lien docket on December 4, 2018. The following week, on December 12, Thompson filed his chapter 13 bankruptcy petition. Several weeks later, in January 2019, Thompson recorded the portion of the judgment affecting title to real property in the office of the register of deeds of Fond du Lac County. See Wis. Stat. §767.61(6). Roberts filed her proof of claim in February, and the present dispute ensued.

II

Thompson selected Wisconsin exemptions, as authorized by 11 U.S.C. §522(b). He exempted his residence under Wisconsin Statutes section 815.20, which allows him to exempt his homestead “from execution, from the lien of every judgment, and from liability for the debts of the owner to the amount of \$75,000, except mortgages, laborers’, mechanics’, and purchase money liens and taxes and except as otherwise provided.”

A

Roberts contends that the divorce judgment granted her a mortgage on Thompson’s residence to which Thompson’s homestead exemption does not apply. But nothing in the judgment’s text or structure supports this contention. The judgment awards Thompson the residence and orders him to make a payment to Roberts to equalize the property division. It then provides that, should Thompson fail to pay, he is subject to sanctions for contempt of court under Wisconsin Statutes chapter 785, the mechanism provided by statute for enforcement of a “financial obligation”, including “an obligation for payment incurred under s. . . . 767.61”, the property-division statute. Wis. Stat. §767.78(2). The judgment does not mention “security” or a “mortgage”, “foreclosure” or “collateral”. It uses “lien” but only in providing a remedy for either party’s failure to maintain required health, dental, and life insurance. ECF No. 17-1, at 8 (“If either party fails for any reason to maintain any of the insurance required under this article, there shall be a valid and provable lien against that party . . .”).

Roberts rejoins that the divorce judgment “impliedly granted” her a mortgage on Thompson’s residence. ECF No. 11, at 2. To infer a mortgage from the divorce judgment

requires construction, and “[a] divorce judgment that is clear on its face”, like this one is, “is not open to construction.” *Washington v. Washington (In re Marriage of Washington)*, 611 N.W.2d 261, 266 (Wis. 2000). Even if it were, the result would be the same. Courts “consider the whole record in construing a divorce judgment”, which “are to be construed as of the time of entry and in the same manner as other written instruments.” *Id.* Here, the circuit court’s oral decision describes the divorce judgment as an ordinary judgment collectible by ordinary means:

The Court’s past practice is to not get in the middle of debt collection. So the divorce judgment has the force of law, it is a legal judgment, and it can be collected upon, and if it doesn’t get paid, the interest accrues by state statutes. And the parties are always free to negotiate between themselves how to pay off a divorce judgment.

....

... So I don’t issue any particular terms or orders regarding how people pay their bills and when they pay their bills or how it’s collected.

ECF No. 12-1, at 26:23–27:8. These remarks render untenable any suggestion that the divorce judgment granted Roberts a mortgage on Thompson’s residence.

Roberts suggests that the divorce judgment must be understood in light of state caselaw, citing two cases in which Wisconsin’s appellate courts have held that a divorce judgment created a mortgage. These cases belie, rather than bolster, Roberts’s position: the divorce judgment at issue in each explicitly placed a lien on real property awarded to one spouse to secure payment of a monetary award to the other. *Wozniak v. Wozniak*, 359 N.W.2d 147, 148 (Wis. 1984) (“As part of the divorce judgment, the trial court awarded Opal [Wozniak] her interest in [a parcel of real estate] ‘[s]ubject to a lien to William J. Wozniak to secure payment to him of the sum of \$8,817.38’” (final alteration in original)); *Klemme v. Schoneman*, 477 N.W.2d 77, 78 (Wis. Ct. App. 1991) (Under the divorce judgment, “Robert [Schoneman] was awarded . . . the couple’s former residence. . . . subject to a cash settlement of \$5800 which remained a lien against

the property until paid off under a prescribed payment.”). These cases discuss other factors bearing on whether a lien in a divorce judgment is a “mortgage” under state law—e.g., whether the judgment contains “‘foreclosure’ language, whether “the debt earns interest”, whether “the debt is due on a particular date”, *Klemme*, 477 N.W.2d at 80—but they stand for the proposition “that a transfer of property as security, regardless of the form thereof, is a mortgage.” *Wozniak*, 359 N.W.2d at 150.

Two corollaries apply here: The first is that, when there is no transfer of property as security, there is no mortgage. The second is that a Wisconsin court imposing a lien in a divorce judgment does so unmistakably.

Roberts also relies on a federal case, *Sarazin v. Sternat*, 563 B.R. 285 (E.D. Wis. 2017). Shawn Sternat and Rebecca Sarazin’s divorce judgment, as the court construed it, awarded “the marital home” to Sternat, “ordered Sternat to make [an] equalization payment [to Sarazin], and in the same breath directed that the [h]ome be sold to create the funds necessary to effectuate the payment.” *Id.* at 286 & 289. The court held that the intent of the divorce judgment was “to use the [h]ome as security for the equalization payment”, so it “created a mortgage lien.” *Id.* at 289 (discussing *Wozniak* and *Klemme*).

No such intent can be inferred here. The only connection that Roberts identifies between Thompson’s residence and the equalization payment he owes her is a superficiality: the amount of the payment is roughly half the value of the residence. Even *Sarazin*, which admits to being “a few steps removed from” the Wisconsin cases discussed above, *id.*, requires a more robust showing of intent to use “property as security”. *Wozniak*, 359 N.W.2d at 150. Because the divorce judgment itself does not expressly or implicitly show an intent to use the residence as security for Thompson’s making the equalization payment, it does not create a lien, “mortgage” or otherwise.

B

Although the divorce judgment did not award Roberts a lien on Thompson’s residence, Wisconsin law imposed a lien in her favor when the judgment was entered

on Fond du Lac County's judgment and lien docket. Under Wisconsin law, a money judgment is a lien on the judgment debtor's real property in the county where the judgment is rendered for 10 years after it is entered on the county's judgment and lien docket. Wis. Stat. §806.15(1). Because Roberts has only this lien, her claim is less-than-fully secured: "An allowed claim of a creditor secured by a lien on property" is only "a secured claim to the extent of the value of such creditor's interest . . . in such property". 11 U.S.C. §506(a). And a docketed judgment is not a lien on "homestead property that is exempt from execution". *Id.* (citing Wis. Stat. §815.20). Here, the value of Thompson's residence is \$123,500; higher-priority liens (a mortgage and a tax lien) on the property secure payment of debts totaling \$20,125.36; and the property is "exempt from execution . . . to the amount of \$75,000", §815.20(1). The result is that Roberts has a secured claim in the amount of only \$28,374.64, and her claim is otherwise unsecured.

III

For these reasons, IT IS ORDERED that the parties' motions for summary judgment are granted in part and denied in part, and Thompson's objection to claim number 2 of Roberts is sustained in part as follows: Claim number 2 is allowed in the total amount of \$64,495.21 and is a secured claim in the amount of \$28,374.64. The remainder of the claim is unsecured.

The court will hold a status conference on **March 9, 2020, at 1:30 p.m.**, in room 133 of the United States Courthouse, 517 East Wisconsin Avenue, Milwaukee, Wisconsin. Participants may appear by telephone by calling the court conference line at 1-888-684-8852 and entering access code 7183566 before the scheduled time. The parties should be prepared to address whether this decision and order effectively disposes of this adversary proceeding in its entirety.

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