



SO ORDERED,

**Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: September 5, 2025**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**GARON O'NEAL WEATHERS,

DEBTOR.**

**CASE NO. 25-01248-JAW

CHAPTER 7**

ORDER OVERRULING OBJECTION TO EXEMPTION

This matter came before the Court for hearing on August 18, 2025 (the “Hearing”), on the Objection to Exemption (the “Objection”) (Dkt. #56) filed by George Guerieri, III (“Guerieri”), Terramark Corporation, and Terramark Holdings, LLC (together, the “Judgment Creditors”). At the Hearing, Garon O’Neal Weathers (the “Debtor”) was represented by Eileen N. Shaffer (“Shaffer”). The Judgment Creditors were represented by Anna Claire Henderson. The Judgment Creditors called the Debtor and Guerieri as witnesses and introduced six exhibits into evidence.¹ The Debtor introduced one composite exhibit.

JURISDICTION

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Notice of the Hearing was proper under the circumstances.

¹ Exhibits 1, 2, 3, 4, 5, C-8, and D-1 (composite) were entered into evidence.

FACTS²

Before December 2022, the Debtor worked for Terramark Management, LLC, owned by Guerieri, who also owned two affiliated real estate companies, Terramark Corporation and Terramark Holdings, LLC. (Hr'g at 1:41 (Aug. 18, 2025)).³ All three companies shared the same principal office in Madison, Mississippi. Guerieri testified that he sold Terramark Management, LLC to the Debtor. (Hr'g at 1:41). Around the same time as the purchase of the business, December 2022, the Debtor also purchased a home located at 222 Trace Harbor Road in Madison, Mississippi, 39110 (the "Property"). (Hr'g at 1:54). The Debtor testified that he purchased the Property to serve as his primary residence because he "had been commuting back and forth and had just gotten tired of [commuting]" for work. (Hr'g at 2:05-2:06).

The Debtor testified that the business was not profitable. (Hr'g at 2:11; 2:17). Guerieri testified that he and Terramark Holdings, LLC litigated with the Debtor over the business, and the Judgment Creditors were awarded a judgment against the Debtor, which was enrolled in Madison County and became a lien against the Property (the "Judgment Liens"). (Hr'g at 1:40-1:41, 1:55).⁴ The business failure ultimately caused the Debtor to file bankruptcy. (Hr'g at 2:07-2:08).

When the Debtor purchased the Property, he did not claim it as his homestead in Madison County by filing a declaration form with the Chancery Court Clerk to reduce his ad valorem property taxes but testified that it was his only residence. MISS. CODE ANN. § 85-3-25. After the purchase, the Debtor built a six to eight-foot wooden privacy fence, which obstructed the view of

² The following findings of fact and conclusions of law are made pursuant to Rules 7052 and 9014(c) of the Federal Rules of Bankruptcy Procedure. To the extent any of the findings of fact herein are considered conclusions of law, they are adopted as such, and vice versa.

³ The Hearing was not transcribed. Citations are to timestamps of the audio recording.

⁴ The Debtor's motions to avoid Judgment Liens list the following Judgment Liens against the Property: Terramark Holdings, LLC, \$200,000 (Dkt. #11); Guerieri, \$766,766.79. (Dkt. #13); and Terramark Corporation and American Contractors Indemnity Company, \$216,069.42. (Dkt. #15). All of the judgments are recorded in the Judgment Rolls of Madison County, Mississippi.

the Property. (Hr’g at 2:21). The Debtor testified that, for the last eight months that he owned the Property, “every now and then” he rented it out for short amounts of time through online services to make enough “money to float the note [and] the utilities.” (Hr’g at 2:11). When the Property was rented, the Debtor would stay with his brother or uncle. (Hr’g at 2:04). He testified the Property was never leased long term and rented for an aggregate “week out of the month” (Hr’g at 1:56, 2:04).

On January 10, 2025, four months before filing his chapter 7 petition for relief (the “Petition”) (Dkt. #1), the Debtor realized that, because of the failed business, he could no longer afford to pay the utilities or mortgage on the Property and wanted to sell it before it was foreclosed. (Hr’g at 2:07-2:08). He listed the Property for sale and signed a Property Condition Disclosure Statement (“PCDS”) form⁵ (Ex. 4 PCDS at 1) which he believed was required in order to list the Property for sale-by-owner on Zillow.⁶ (Hr’g at 2:17-2:18). The Debtor eventually received an offer to purchase the Property, and according to the Contract for the Sale and Purchase of Real Estate (the “Sale Contract”), the buyers’ offer was valid until April 30, 2025. The Debtor accepted the offer that same day. (Ex. 4 Sale Contract at 2, 7).⁷

On May 6, 2025, John Elliott, the closing attorney for the Debtor’s sale of the Property, contacted Guerieri regarding the Judgment Liens on the Property. (Ex. 2; Hr’g at 1:47). When Guerieri became aware of the pending sale, he began investigating the occupancy status of the Property to protect its value and his interest in it. (Hr’g at 1:40, 1:47-1:48). For Guerieri, that meant driving by the Property “about half a dozen” times on different days of the week, mostly before

⁵ Mississippi’s Property Condition Disclosure statutes require a seller of residential property to deliver a PCDS to a prospective buyer before an offer is made with certain exceptions. MISS. CODE ANN. § 89-1-501 *et seq.*

⁶ Within the PCDS, the Debtor attested that he, as the seller, currently owned and occupied the Property. (Ex. 4 PCDS at 2).

⁷ Exhibit 4 contains both the Sale Contract and the PCDS, which were signed on different dates.

the Petition date, to detect whether the Debtor was actively living at the Property. He “saw no vehicles at the Property any time.” (Hr’g at 1:43, 1:48, 1:58). The Debtor takes issue with this part of Guerieri’s testimony because he says that the only way to see the driveway on the Property, due to the Privacy fence, would be to stand on top of a vehicle. (Hr’g at 2:21).

Guerieri also testified that he spoke with the neighbors that lived near the Property, and they told him they had not seen vehicles parked on the driveway on a regular basis and had only seen a car there “every few months.” They also saw a cleaning person at the Property once a month. (Hr’g at 1:51, 2:01). Guerieri also searched “airdna.com,” which he explained was an “analytics [web]site that looks at short term rental properties that are posted on various platforms like Airbnb and VRBO.” (Hr’g at 1:44; Ex. 1). He testified that the website showed the Property had been listed on those platforms within the last year. (Hr’g at 1:45).⁸ However, in June of 2025, he was unable to locate the Property’s rental posting on those platforms himself, suggesting that the listing had been removed from the platforms. (Hr’g at 1:45).

Guerieri last visited the Property on June 9, 2025, when he stood up on the floor of his car to snap a photo “of the front of the house.”⁹ (Hr’g at 1:57). He also noticed that the lawn was overgrown, and “it looked as though the power had been disconnected.” (Hr’g at 1:49, 1:58). The power company “verified that it was” and that the power was schedule to be reconnected. (Hr’g at 1:49). At the time of his last visit, Guerieri understood the Property was under contract and “all but sold.” (Hr’g at 1:56).

Guerieri and the Debtor have not been in contact since June of 2023, and Guerieri admitted he had no direct knowledge of where the Debtor worked or what type of vehicle he drove since

⁸ Specifically, Guerieri said, “I noticed it has the emblems of Airbnb and VRBO on the photos that it pulled from those [web]sites, indicating that it has had an active listing.” (Hr’g at 1:44-1:45).

⁹ The photo was not introduced into evidence.

then. (Hr’g at 1:41, 1:55). He “assumed” that after the business failed the Debtor “went back to work for a family business...his brother’s company out of Brookhaven[, Mississippi]” because he had previously mentioned to Guerieri that he planned to do so. (Hr’g at 1:41-1:42). Guerieri surmised that if the Debtor was working in Brookhaven, then he was no longer living at the Property in Madison.¹⁰ (Hr’g at 1:42). He also testified that he had searched the state court records and the Debtor had never filed a homestead declaration with the Chancery Court Clerk. (Hr’g at 1:53-1:54).¹¹ Guerieri’s findings led him to believe the Debtor had ceased living at the Property and had abandoned his homestead rights.

After the Debtor had accepted the offer to purchase the Property but before the sale closed, the Debtor filed his Petition (Dkt. #1) on May 15, 2025. On Schedule C,¹² the Debtor valued the Property at \$250,000 and claimed a homestead exemption of \$18,469.07. (Dkt. #2; Dkt. #29). On the Petition, the Debtor listed the Property as his “residence” and did not list any other mailing address. (Dkt. #1 at 2; Dkt. #2 at 3). Schedule A/B shows that the Debtor owned no real estate other than the Property. The Property was encumbered by a mortgage held by USDA Rural Development (“USDA”) with an outstanding balance of \$231,530.93. (Dkt. #2 at 13).¹³ On Schedule E/F, the Debtor listed as unsecured creditors Guerieri in the amount of \$766,766.79. (Dkt. #2 at 21) and Terramark Holdings, LLC in the amount of \$200,000 (Dkt. #2 at 31). Schedule E/F does not list Terramark Corporation as an unsecured creditor, although the Debtor identified it elsewhere as the third Judgment Creditor. (Dkt. #15).

¹⁰ Brookhaven is about 72 miles away from Madison, Mississippi.

¹¹ The designation or selection of a homestead is automatic by law. MISS CODE ANN. 85-3-31.

¹² The Debtor originally filed his bankruptcy schedules and statements on the same day as his Petition. (Dkt. #2). The Debtor filed an amended Schedule C on June 6, 2025. (Dkt. #29). The only difference between the two documents is the citation to the Mississippi statute that allows the homestead exemption.

¹³ The Debtor testified that he believed USDA’s mortgages are only available for primary residences and not for investment properties. (Hr’g at 2:08-2:09).

The Debtor filed three motions (one for each Judgment Creditor) asking the Court to avoid the Judgment Lien of each Judgment Creditor “to the extent it is a lien against his homestead and impairs the debtor’s right to claim his homestead exemption pursuant to § 85-3-21, Mississippi Code of 1972.” (Dkt. #11, #13, #15). On June 12, 2025, the Debtor and Judgment Creditors resolved the motions by agreeing that the Debtor could sell the Property free and clear of their Judgment Liens provided that the proceeds would be held in escrow “until further appropriate Court Order determining any lien rights that [they] may have in the sales proceeds.”¹⁴ (Hr’g at 1:34-1:37; Dkt. #40). The Sale Contract specified a closing date of June 2, 2025. (Ex. 4 Sale Contract at 1). The Debtor testified that the sale closed a few days later, on June 17, 2025. (Hr’g at 2:07).¹⁵ The Debtor’s personal property remained on the Property until “a week prior to closing.” (Hr’g at 2:15). The Debtor sold the Property for \$250,000 and paid off the USDA mortgage of \$231,677.74 and other closing costs. (Ex. C-8; Hr’g at 1:33, 1:36). The remaining \$15,367 of sale proceeds are at issue.¹⁶ The Debtor claims that these proceeds are exempt from the Judgment Liens under Mississippi’s homestead statute. The Judgment Creditors argue that the Debtor lost his homestead rights because he had ceased residing on the Property. (Hr’g at 1:33, 1:36).

The Debtor testified that the Property was in fact his residence, he owned no other residential property, and he did not establish a new homestead before the Petition date. (Hr’g at 2:16). Further, the Debtor testified to the authenticity of his driver’s license,¹⁷ internet bill, and phone bills all of which listed the Property as his home address. (Hr’g at 2:15). The Debtor admitted he never filed a declaration for a homestead exemption from ad valorem taxes with the Chancery Court Clerk but only because he had forgotten to do so during the business transition.

¹⁴ These proceeds are currently being held in Shaffer’s trust account. (Hr’g at 1:33).

¹⁵ The closing statement of the sale states that the sale closed on June 13, 2025. (Ex. C-8).

¹⁶ The Judgment Creditors do not dispute that their liens are subordinate to the USDA mortgage.

¹⁷ The Debtor’s driver’s license was issued on June 3, 2024, and lists the Property’s address as his address. (Ex. D-1).

(Hr’g at 2:05, 2:09-2:10, 2:16). The Debtor’s testimony that, as a result of the business failure, he could no longer afford to pay the utilities or mortgage on the Property and had to sell it was credible. (Hr’g at 2:07-2:08).

The question presented by these specific facts and the Objection is whether the Property is the Debtor’s homestead so that the Debtor may exempt and retain the \$15,367 of the proceeds from its sale. (Hr’g at 1:37).

DISCUSSION

A “debtor’s ability to set aside certain property as exempt from the claims of creditors” is a “fundamental component” of the debtor’s fresh start. *In re Harris*, 606 B.R. 271, 274 (Bankr. S.D. Miss. 2019). Once declared, the exemption is presumptively valid. 11 U.S.C. § 522(l). For this reason, the objecting party has “the burden of proving that an exemption was not properly claimed.” FED. R. BANKR. P. 4003(c).

Section 522(d) of the Bankruptcy Code lists potential federal exemptions, but § 522(b) allows for a state to require debtors to use its own exemptions – which Mississippi has done. 11 U.S.C. § 522(b), (d); *In re Freeman*, 627 B.R. 640, 641 (Bankr. N.D. Miss. 2021). Mississippi debtors, therefore, must use the exemptions under Mississippi state law, including its homestead exemption, which is at issue here. Mississippi law permits a citizen “to hold exempt...land and buildings *owned and occupied* as a residence” to a limit of “160 acres and \$75,000.”¹⁸ MISS. CODE ANN. § 85-3-21 (emphasis added). Proceeds from the sale of a homestead are likewise exempt. MISS. CODE ANN. § 85-3-49. To determine whether a debtor is entitled to a homestead exemption, courts look to the debtor’s ownership and occupancy of the homestead as of the petition date. *In*

¹⁸ The \$75,000 limit is a net value; “existing encumbrances” are deducted from the “actual value of such land and buildings.” MISS. CODE ANN. § 85-3-21.

re Fernandes, 605 B.R. 733, 736 (Bankr. N.D. Miss. 2019).¹⁹ In Mississippi, “[m]inimal... case law exists defining how to determine homestead.” *Harris*, 606 B.R. at 274 (citing *Carpenter v. First State Bank (In re Carpenter)*, 278 B.R. 102, 106 (Bankr. N.D. Miss 2002)). The homestead exemption is to be interpreted broadly and can include properties other than the “‘typical’ residence.” *Id.* at 274-75. If there is serious doubt about whether property is a homestead, the doubt should be resolved in the claimant’s favor. *Id.* at 275 (citing *Daily v. City of Gulfport*, 54 So. 2d 485, 488 (Miss. 1951)).

The Judgment Creditors argue that the Judgment Liens attached to the proceeds of the sale of the Property in excess of the mortgage because the Property was not the Debtor’s homestead. (Hr’g at 1:33). They dispute the “occupancy” element of the homestead exemption. In support of their argument, they point to the Debtor’s temporary absences from the Property during random rental periods. They also contend that his failure to declare the Property as his homestead, and the steps he took to sell the Property show that the Debtor had no intention to live there. For these reasons, they argue that he cannot claim a homestead exemption in the sale proceeds. The Debtor counters that he did physically occupy the Property as his homestead, he rented the Property only for short periods of time to generate funds to afford the mortgage and utilities, his financial situation forced him to sell the Property, which is common practice for chapter 7 debtors, and he never abandoned his homestead rights.

A. Debtor’s Occupancy and Necessary Temporary Absences

The conditions under which an owner may cease to reside on his homestead without abandoning his homestead rights are set forth in the following statute:

¹⁹ “The Fifth Circuit has been clear that ‘whether the particular property or interest in property of a debtor’s bankruptcy estate is eligible for exemption is...determined strictly as of the date on which the petition in bankruptcy is filed.’” *Fernandes*, 605 B.R. at 736.

Whenever the debtor shall cease to reside on his homestead, it shall be liable to his debts, unless his removal be temporary, by reason of some casualty or necessity, and with the purpose of speedily reoccupying it as soon as the cause of his absence can be removed.

MISS. CODE. ANN. § 85-3-43. A debtor may be temporarily absent from the homestead and still claim the exemption if his absence is “by reason of some casualty or necessity” and he intends “to speedily reoccupy as soon as the cause of absence can be removed.” *Freeman*, 627 B.R. at 643 (quotation omitted). The parties did not dispute whether the Debtor owned the Property at the Hearing. Instead, the Judgment Creditors assert that the Debtor did not continuously occupy the Property, and his absences were not necessary or for cause as required by statute to maintain a homestead exemption. (Hr’g at 2:23-2:24, 2:31). The Debtor argues that his absences were necessary as he left the Property only for short periods of time to obtain funds to pay the mortgage and utilities. (Hr’g at 2:32). He also testified that he only rented out the Property during the last eight months of the total two and a half years he owned the Property. (Hr’g at 2:11). It does not appear that the Debtor ever rented the Property out for longer than a week at a time. (Hr’g at 2:17). Also, the Debtor did not purchase another residence during this time or establish a new homestead but stayed with relatives when the Property was occupied. (Hr’g at 2:15-2:16). The Debtor also argues that Mississippi law does not require a homeowner to file a declaration in order to claim the homestead exemption. (Hr’g at 2:31-2:32).

Further, debtors are allowed to claim the homestead exemption for property that is also “a means of making a living.” *Harris*, 606 B.R. at 275-76. In *Harris*, the Court allowed the debtor to claim the homestead exemption for a duplex where the debtor lived in one side and rented out the other side. The Court found the claimed exemption to be consistent with Mississippi law, which “allows the use of a homestead to include business activities” and prefers a “liberal construction of the homestead exemption in favor of the claimant.” *Id.* at 276; *In re Shove*, 585 B.R. 250, 255

(Bankr. D. Mass. 2018). Here, the Debtor rented the Property in an attempt to keep the mortgage, utilities, and taxes “afloat.” (Hr’g at 2:11, 2:17). He did not rent the Property as his sole source of income; and renting the Property was his secondary use of it, which Mississippi’s homestead laws permit. (Hr’g at 2:16). The Court finds that these temporary absences were for cause and do not constitute a reason to find that less than continuous occupation should bar him from claiming his homestead exemption.

B. Debtor’s Intent to Reside on the Property & His Post-Petition Sale of the Property

The Judgment Creditors next raise the issue of intent. They argue that the Debtor did not occupy the Property with the intent to claim it as a homestead. As evidence, they point to his failure to claim the Property as his homestead for forced sale and tax purposes, the PCDS, and his eventual sale of the Property.

Homestead owners may sell their exempt property while maintaining the exemption. MISS CODE. ANN. § 85-3-49. If a debtor enters a contract to sell his homestead before he files bankruptcy, he does not lose his right to claim the homestead exemption in the proceeds of the sale. *Stinson v. Williamson (In re Williamson)*, 844 F.2d 1166, 1168 (5th Cir. 1988). The Judgment Creditors argue that the Debtor abandoned the property with no intent to return because he signed the PCDS and then later sold the Property. (Ex. 4 PCDS; Hr’g at 2:25-2:27). The Judgment Creditors cite *Freeman* in support of this argument. 627 B.R. at 640. However, *Freeman* involved a debtor who – at the time of his bankruptcy petition – had left his home in California where his estranged wife and adult children lived, had taken up residence in Mississippi, and did not intend to return to California. *Id.* at 643. The *Freeman* Court sustained an objection to the debtor’s claim of homestead exemption in his California home. The *Freeman* facts and the present facts are clearly distinguishable.

Also, exemptions are determined at the time of the Petition, so the validity of the homestead depends on the Debtor's intent as of May 15, 2025. The Judgment Creditors argue that the Debtor's signature on the PCDS is proof that he intended to abandon the Property. However, the Debtor testified that just to list the Property for sale by owner, he had to fill out a PCDS form and sign it. There was no evidence that the Debtor did not intend to return to the Property if it did not sell or that he established a full-time residence elsewhere before the Petition date. The Debtor entered into the Sale Contract on April 30, filed his Petition on May 15, and closed on the sale of the Property in June. He is entitled to claim his homestead exemption in the proceeds because on the date of the Petition, he owned and occupied the Property as his residence.

Even if the Judgment Creditors had met their initial burden of proof, the Debtor's testimony exhibited his intent to treat the Property as his homestead as of the Petition date. The Debtor showed that he occupied the Property and that it was his homestead at the time of the sale. As the Debtor pointed out, it is not uncommon for debtors to sell their homes in chapter 7 bankruptcies and any sale of a homestead will require the owner to make certain preparations and eventually vacate the residence. (Hr'g at 2:33). The homestead exemption attaches to the proceeds of the sale. *In re Howse*, Case No. 17-51655-KMS, 2021 WL 2932675 at *4 (Bankr. S.D. Miss. 2021) (where the Court held that "[u]nder Mississippi law, proceeds of the sale of exempt property" were "exempt from claims of all except joint creditors"). An attempt to sell the household before filing bankruptcy does not invalidate the Debtor's homestead exemption. *In re Williamson*, 49 B.R. 675 (Bankr. S.D. Miss. 1985);²⁰ *Davis v. Lammons*, 151 So. 2d 907, 909 (Miss. 1963) (judgment

²⁰ The Court held that "an agreement by a bankrupt prior to bankruptcy to sell his homestead is not effective to deprive the bankrupt of his homestead exemption" and the debtor rightfully claimed his homestead exemption claim. *Id.* at 678. In its second opinion on the case, the Fifth Circuit summarized the case's procedural history as follows: the district court reversed the bankruptcy court, the Fifth Circuit reversed and remanded the case, the district court affirmed the bankruptcy court's decision that the homestead exemption was validly claimed, then the Fifth Circuit affirmed the district court's decision that the debtor was entitled to the homestead exemption but modified the amount of the exemption. *In re Williamson*, 844 F.2d at 1168.

creditors were unable to garnish the proceeds of the sale of exempt homestead property and such proceeds were exempt in all circumstances). Mississippi law protects the Debtor's exemption in the sale proceeds, and the sporadic short-term rentals of the Property did not alter its status as his homestead. The Debtor's testimony that he "speedily reoccupied" the Property when it was not rented, did not purchase a new property or establish a new homestead elsewhere, and kept his personal property there until the sale closed was convincing evidence and shows that the Property was "devoted to homestead purposes." *Harris*, 606 B.R. at 275.

CONCLUSION

Ultimately, the Judgment Creditors did not offer sufficient evidence to overcome the presumption that the Property was the Debtor's homestead when he filed his Petition. FED. R. BANKR. P. 4003(c). There was no proof that the Debtor abandoned the Property or his homestead rights. Neither Guerieri's speculations about where the Debtor was working, the Debtor's failure to declare the Property as his homestead, nor the Debtor's short-term renting out and later sale of the Property successfully rebutted the homestead exemption's presumed validity. Even if the Judgment Creditors created doubt as to the Debtor's intent to use the Property as his residence, that doubt must be resolved in the Debtor's favor pursuant to Mississippi case law and the general purpose of the homestead exemption. The Debtor's reasoning to occasionally rent out and subsequently sell the Property, the lack of any evidence that the Debtor intended to abandon the Property, as well as his candor regarding his financial situation that led to bankruptcy support the Court's finding that the proceeds of the sale are subject to the homestead exemption. Therefore, the Court finds that the Objection should be overruled.

IT IS, THEREFORE, ORDERED that the Objection is overruled.

##END OF ORDER##