

In re Graff

No. 10–21820–BM; 2011 WL 3702382; (Bkrcty. W. D. Pa., 2011)

(September 26, 2011)

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Decided: August 23, 2011

In March 2010, Cloyd J. and Wanda Graff, "debtors", filed for Chapter 7 bankruptcy protection. The debtors exempted certain property under U.S.C. s 522(d)(1), which provides an exemption for "the debtor's aggregate interest... in real property or personal property that the debtor... uses as a residence." The debtors claimed a personal residence exemption that was made up of two parts; \$35,395.44 was assigned to their residence and \$1,500.00 was assigned to oil and gas rights separate from the realty. A trustee, Charles Zebley, filed a motion to clarify the exemption and claimed the only property that could be exempted as a personal residence under 522(d)(1) was the debtors' mobile home.

The court noted that the term "residence" is not defined anywhere in the Bankruptcy Code. Relying on two other areas of the Code, 11 U.S. C. s 101(13A) and 11 U.S.C. s 101 (27B), the court concluded, as a matter of law, that a debtor's residence can include: "a) a mobile home; b) the underlying land upon which the mobile home is situated, regardless of the whether such home is attached to such land; c) the land that surrounds such mobile home, which land can be

many acres thereof if it is located in a rural rather than urban area, which legal conclusion is warranted given that (i) such surrounding land would commonly be conveyed with a structure located thereon, and (ii) the language of 522(d)(1) limits only the value of a debtor's interest in a residence that can thereby be exempted, not the size of such residence; and d) oil and gas rights that accompany such realty.



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