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**U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

**CHRISTINA CLINE and
JASON CLINE,**

Debtors.

)
) In Chapter 7 proceedings
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) Case No. 2:13-bk-19488-DPC
)
) **ORDER SUSTAINING OBJECTION
TO EXEMPTIONS**
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10 Christina and Jason Cline (the “Debtors”) claimed the federal exemptions under
11 § 522(d).¹ The chapter 7 Trustee (the “Trustee”) objected to these exemptions, arguing
12 that the Debtors must use Missouri exemptions under § 522(b)(3)(A). The Court now
13 sustains the Trustee’s objection.

14 **I. Background and Procedure**

15 The Debtors lived in Missouri for ten years before moving to Arizona in the
16 summer of 2013. On November 8, 2013, the Debtors filed bankruptcy in Arizona and
17 claimed the federal exemptions set out in § 522(d).

18 The Trustee objected to the Debtors’ use of the federal exemptions and argued the
19 Debtors were limited to exemptions provided under Missouri law. The Trustee claims
20 the Debtors, who are domiciled in Missouri under § 522(b)(3)(A) for exemption
21 purposes, must use Missouri exemptions because Missouri has (“opted-out”) of the
22 federal exemption scheme.

23 Under § 522(b)(3)(A), debtors may claim exemptions in “any property that is
24 exempt under Federal law . . . or State or local law that is applicable on the date of filing
25 of the petition at the place in which the debtor’s domicile has been located for the 730
26 days immediately preceding the date of the filing of the petition or if the debtor’s
27 domicile has not been located at a single State for such 730–day period, the place in

28 ¹ Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 which the debtor’s domicile was located for the 180 days immediately preceding the
2 730-day period or for a longer portion of such 180-day period than in any other place.”

3 Both parties agree that the Debtors were not domiciled in Arizona for more than
4 730 days prior to the date they filed bankruptcy and, therefore, cannot claim Arizona
5 exemptions. Missouri’s exemption laws instead apply under § 522(b)(3)(A) because the
6 Debtors were domiciled in Missouri for the greater part of the 180-day period preceding
7 the 730-day period.

8 It is also undisputed that Missouri has opted out of the federal exemption scheme:
9 “Every person by or against whom an order is sought for relief under Title 11, United
10 States Code, shall be permitted to exempt from property of the estate any property that is
11 exempt from attachment and execution under the law of the state of Missouri or under
12 federal law, other than Title 11, United States Code, Section 522(d), and no such person
13 is authorized to claim as exempt the property that is specified under Title 11, United
14 States Code, Section 522(d).” Mo. Rev. Stat. § 513.427.

15 **II. Issue**

16 The question in this case is whether the Debtors, who are deemed to be domiciled
17 in Missouri under § 522(b)(3)(A) for purposes of bankruptcy exemptions but are not
18 currently residing in Missouri, may claim Missouri exemptions in bankruptcy. If
19 Missouri law prohibits non-Missouri resident debtors from claiming Missouri
20 exemptions, the Debtors may then elect the federal exemptions.^{2 3}

21 **III. Discussion**

22 The Debtors argue that only residents of Missouri may claim Missouri
23 exemptions, and because they did not reside in Missouri when they filed bankruptcy, they
24 have no choice but to claim the federal exemptions under § 522(b)(3). The Debtors rely
25 on “over 100 years of consistent case law” to support their position, citing *Stotesbury v.*

26 ² “If the effect of the domiciliary requirement . . . is to render the debtor ineligible for any exemption, the
27 debtor may elect to exempt property that is specified in [§ 522(d)].” 11 U.S.C. § 522(b)(3).

28 ³ During oral argument, the Court asked the parties whether it would be more expeditious to certify this
question to the Supreme Court of Missouri, supposing there would be an appeal. The Trustee refused to
consent to certification because it would be more costly to litigate. The Court, accordingly, will not certify
this issue to the Supreme Court of Missouri without unanimous consent of the parties.

1 *Kirtland*, 35 Mo. App. 148 (Mo. Ct. App. 1889); *Ferneau v. Admour and Company*, 303
2 S.W.2d 161 (Mo. Ct. App. 1957); *Mignogna v. Chiaffarelli*, 131 S.W. 769, 770 (Mo. Ct.
3 App. 1910).

4 The Court disagrees with the Debtors' interpretation of Missouri law. The state
5 court cases relied upon by the Debtors interpreting obsolete or outdated irrelevant
6 garnishment statutes which are not considered exemption statutes in bankruptcy.⁴
7 Moreover, there is no language in Missouri's current opt-out statute or exemption statutes
8 indicating that an individual must be a resident of Missouri to claim Missouri
9 exemptions. *See* Mo. Rev. Stat. §§ 513.427, 513.430, 513.440, 513.475. If Missouri's
10 legislature wanted its exemption statutes only to be available to Missouri residents, it
11 could have said so. Other states' opt-out statutes specifically mention that only residents
12 are entitled to their state's exemptions. *See, e.g., In re Rody*, 468 B.R. 384, 388 (Bankr.
13 D. Ariz. 2012) (Arizona's opt-out statute provides "[I]n accordance with 11 U.S.C.
14 § 522(b), residents of this state are not entitled to the federal exemptions provided in
15 11 U.S.C. 522(d). Nothing in this section affects the exemptions provided to residents of
16 this state by the constitution or statutes of this state.") (emphasis added); *In re Nickerson*,
17 375 B.R. 869, 871-72 (Bankr. W.D. Mo. 2007) (Kansas personal property statute reads,
18 "[e]very person residing in this state shall have exempt ... the following articles of
19 personal property."); *In re Battle*, 366 B.R. 635, 636 (Bankr. W.D. Tex. 2006) (Florida's
20 opt-out statute provides that "residents of this state shall not be entitled to the federal
21 exemptions...."). Missouri's exemption statutes, however, contain no such references to
22 residents of the state.

23 The facts of *In re Thompson*, 2009 WL 2461027 (Bankr. W.D. Mo. 2009) closely
24 resemble those of this case and support the Court's conclusion that Missouri exemptions
25 are not restricted to Missouri residents. Similar to this case, the debtor in *Thompson* was

26 ⁴ "While true, the Missouri Garnishment Statute was used as an exemption statute in times past, in light of
27 the holding in *In re Benn*, this can no longer be the case. All debtors henceforth must make do with the
28 Missouri exemptions where the Missouri Legislature has explicitly identified property that a judgment
debtor can keep away from creditors" *In re Parsons*, 437 B.R. 854, 858 (Bankr. E.D. Mo. 2010)
(citing *Benn v. Cole (In re Benn)*, 491 F.3d 811, 813 (8th Cir. 2007)).

1 domiciled in Missouri but resided out of state at the time the debtor filed bankruptcy.⁵
2 The debtor attempted to claim her Kansas residence as exempt under Kansas law because
3 Kansas had a more favorable homestead exemption than Missouri. The bankruptcy court,
4 however, found that because "the Debtor was not domiciled in Kansas for 730 days prior
5 to the date she filed her bankruptcy petition, and . . . she resided in Missouri for the
6 greater part of the 180-day period preceding the 730-day period . . . the Debtor is limited
7 to the exemptions provided by Missouri law. . ." *Thompson*, 2009 WL 2461027 at *1.
8 Nothing in *Thompson* indicates that the debtor had to be a current resident of Missouri to
9 claim Missouri exemptions or that the federal exemptions were available to the debtor
10 who had moved from Missouri but was still a Missouri domiciliary for purposes of
11 Section 522(b)(3)(A).

12 The Debtors attempt to distinguish *Thompson* by pointing out that the debtor in
13 that case filed bankruptcy in Missouri. This is irrelevant. The debtor in *Thompson*, like
14 the Debtors in this case, was domiciled in Missouri but was a non-resident at the time of
15 filing. Thus, the *Thompson* decision is instructive to the issue in this case. The Debtors,
16 like the debtor in *Thompson*, are required to claim the Missouri exemptions.

17 **IV. Conclusion**

18 The Court finds that Missouri's exemptions are not restricted to residents of
19 Missouri so long as they are domiciled in Missouri for purposes of Section 522(b)(3)(A).
20 Because the Debtors are domiciled in Missouri and because Missouri has opted-out of the
21 federal exemption scheme, the Debtors must use the exemptions provided under Missouri
22 law. Accordingly,
23

24 ⁵ The Debtors contended at oral argument that it was unclear in *Thompson* whether the debtor resided in
25 Kansas or simply purchased a house in Kansas. The Court, however, finds that the *Thompson* opinion
clearly states that the debtor resided in Kansas at the time she filed bankruptcy:

26 The facts are uncontested. The Debtor, Barbara Thompson, lived in Joplin, Missouri from
27 2001–2007. In July 2007, she sold her house in Joplin and used the proceeds to purchase
her *current residence* in Galena, Kansas. Less than two years later, in February 2009, the
28 Debtor filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for
the Western District of Missouri. On Schedule C of her bankruptcy petition, the Debtor
claimed her *Kansas residence* as exempt under Kansas state law.

In re Thompson, 2009 WL 2461027 at *1 (emphasis added).

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IT IS ORDERED sustaining the Trustee's objection to the Debtors' claimed federal exemptions and ordering Debtors to amend their schedules to claim exemptions based on Missouri law.

Dated: May 30, 2014.



DANIEL P. COLLINS
CHIEF UNITED STATES BANKRUPTCY JUDGE

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Interested parties