

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
SAN ANGELO DIVISION

IN RE: §  
EARL DOUGLAS JONES AND §  
ALICE KAY JONES, § CASE NO. 00-60326-13  
DEBTORS. §

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Findings of Fact**

1. Donald and Elizabeth Jones object to the Debtors claiming their San Angelo house as their exempt homestead because the Debtors purchased and reside in a house located in Burleson, Texas. Donald Jones and Earl Douglas Jones are brothers.

2. The Debtors, Earl Douglas Jones and Alice Kay Jones, filed their voluntary petition under Chapter 13 of the Bankruptcy Code on July 12, 2000.

3. On Schedule A (Real Property) the Debtors identify two homes, one referred to as their “homestead” and described as follows:

6925 N. Grape Creek Road, San Angelo, Texas; Tract Number 134 of the revised North Concho Lake Estates Subdivision, as shown on the plat thereof recorded in Volume 4, Page 190, Plat Records of Tom Green County, Texas (the San Angelo home);

the other referred to as their “future homestead” and described as follows:

2529 Brandon Lane, Burleson, Texas; being Lot 8, in Block 4 of Saddle Hills Estates, Phase II, an Addition in Johnson County, according to the plat thereof recorded in Volume 6, Page 96 of the Plat Records of Johnson County, Texas (the Burleson home).

4. According to Schedule A, the San Angelo home is unencumbered and is valued at \$65,000 while the Burleson home is valued at \$136,000, but is encumbered by a mortgage of \$122,400.

5. On Schedule C (Property Claimed as Exempt), the Debtors claim the San Angelo home as exempt under the Texas Constitution and the Texas Property Code.

6. From the time the Debtors built the San Angelo home in 1979, until they purchased the Burleson home in May, 2000, the San Angelo home was apparently the only residence owned by the Debtors.

7. Earl Douglas Jones was a truck driver, and he and his wife, Alice Kay Jones, were “on the road” on several occasions for extended periods of time. They lived temporarily in California on one occasion. While in California, they lived in a home they rented and leased out the San Angelo home. There is no evidence that they ever attempted to sell the San Angelo home while they lived in California. When they left California and returned to San Angelo, they moved back to the San Angelo home.

8. In January, 2000, Earl Douglas Jones began a new job, described as an office job, in or near Burleson, Texas. He would return on the weekends to San Angelo, as Alice Kay Jones was still living in San Angelo and working at Texas Bank. During the work week, he stayed with his son in Alvarado, Texas.

9. The Debtors purchased the Burleson home in May, 2000, and, in doing so, made a \$13,000 down payment and apparently financed the balance of the purchase price as evidenced by the \$122,400 secured claim reflected on the Debtors’ Schedule A (Real Property).

10. Earl Douglas Jones’s new job is considered a better job because it is an office job and provides him with better insurance and retirement benefits.

11. The objecting parties, Donald Jones and Elizabeth Jones, hold a judgment against the Debtors which, according to Earl Douglas Jones, forced the Debtors to file their bankruptcy proceeding.

12. The Debtors moved into the Burluson home sometime in July. The Debtors moved themselves, and it took several weeks to complete the move. At the time the bankruptcy was filed, they still had some furniture at the San Angelo home.

13. Alice Kay Jones testified that they receive mail at the Burluson home but still receive some mail in San Angelo. She further testified that they no longer have a phone at the San Angelo home.

14. Both Debtors testified that they did not, and do not, intend to abandon the San Angelo home as their homestead, but admitted that their return to San Angelo is uncertain and that they, in fact, may never return to San Angelo.

15. Since purchasing the Burluson home, the Debtors have listed the San Angelo home for sale. It is not presently on the market, however.

16. On June 28, 2000, the Debtors filed a homestead designation in Tom Green County, Texas, claiming the San Angelo home as their exempt homestead.

17. If appropriate, these findings of fact shall be considered conclusions of law.

#### **Conclusions of Law**

18. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding. 28 U.S.C. § 157(b).

19. A homestead exemption “may be lost or abandoned by a removal from the premises under circumstances clearly indicating that the removal is not merely temporary.” *Coury v. Prot*, 85 F.3d 244, 253 (5th Cir. 1996).

20. Donald and Elizabeth Jones, the objecting parties, have the burden of pleading and proving by competent evidence that the Debtors have abandoned their homestead rights to the San Angelo home. *In re Leonard*, 194 B.R. 807, 810 (Bankr. N.D. Tex. 1996); *In re Moore*, 110

B.R. 255, 257 (Bankr. N.D. Tex. 1990); *Norman v. First Bank & Trust, Bryan*, 557 S.W.2d 797 (Tex.Civ.App.–Houston [1<sup>st</sup> Dist.] 1977, *writ ref'd n.r.e.*).

21. This court must consider all the pertinent facts and circumstances in determining whether the Debtors abandoned the San Angelo home as their homestead. *Coury v. Prot*, at 253.

22. A temporary absence from the homestead will not cause a homestead claimant to lose, forfeit or abandon his homestead rights. *Id.* “[T]he removal must be accompanied by the intent never to return to occupy the premises as a homestead. A removal from a property constituting a homestead does not cause an abandonment of the homestead where the owner has an unqualified, fixed, and abiding intention to return to the property and occupy it as a homestead, where such intentions remain at all times, and no other homestead is acquired.” *Id.*

23. The Debtors’ intent is better manifested by their conduct than their words. *Id.* at 253. The best evidence of abandonment is the acquisition and use of a new home. *Id.* at 254.

24. The Debtors abandoned the San Angelo home as their homestead as evidenced by the following: (i) their purchase and occupancy of the Burleson home, (ii) their attempt to sell the San Angelo home, (iii) their failure to maintain the San Angelo home as their residence, (iv) their present and stable employment near the Burleson home, (v) their claim on their Schedules that the Burleson home is their “future homestead”, and (vi) their lack of manifested intent to return to the San Angelo home at a definite time or for any definite purpose.

25. The Burleson home is the Debtors’ homestead which establishes abandonment of the San Angelo home as their homestead. *Id.* at 254. Their homestead designation is self-serving; it was signed and filed after purchase of the Burleson home and immediately prior to the bankruptcy.

26. The objection by Donald Jones and Elizabeth Jones is sustained. The court will enter its order in accordance with these findings of fact and conclusions of law.

27. If appropriate, these conclusions of law shall be findings of fact.

Signed December 7, 2000.

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Robert L. Jones  
UNITED STATES BANKRUPTCY JUDGE