IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

IN RE: JOHN RANDOLPH WOOD, Debtor **No. 5:19-bk-70223**
Chapter 11- Subchapter V

ORDER OVERRULING OBJECTIONS TO EXEMPTIONS ON CONDITION

Before the Court are objections to the debtor's amended exemptions filed by Dawn Hill Townhouse & Condominium Property Owners Association, Inc. [POA] on August 25, 2020; Ladimer Alkhaseh [Alkhaseh] on August 28, 2020; and the United States Trustee [UST] on August 31, 2020.[1] The Court held a telephonic hearing on September 15, 2020. Stanley V. Bond and Emily J. Henson appeared on behalf of the debtor. Carla S. Wasson appeared on behalf of the POA. William R. Mayo appeared on behalf of Alkhaseh. Patricia J. Stanley appeared on behalf of the UST.[2] At the conclusion of the hearing, the Court took the matter under advisement. For the reasons stated below, the Court conditionally overrules the objections to the debtor's exemptions as amended on August 11, 2020.

Jurisdiction

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(B). This order contains findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

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[1] The POA, Alkahseh, and the UST are collectively referenced in this order as the objecting parties.

[2] The subchapter V trustee in this case, Beverly I. Brister, observed but did not participate in the hearing.

EOD: November 10, 2020

Background

The debtor commenced this case on January 25, 2019, by filing a chapter 13 petition.[3] In his initial Statement of Financial Affairs [SOFA], filed on February 8, 2019, the debtor represented that he owned 49.5% of Tara Capital, LLC, [Tara Capital or the LLC]. He valued his interest in Tara Capital at $175,000 and stated parenthetically that Tara Capital was "administratively dissolved July 2017." In his first set of schedules, also filed on February 8, 2019, the debtor stated on Schedule A/B that 13890 Turnberry Lane, Siloam Springs, Arkansas [Dawn Hill] consisted of 39 parcels and was owned by "Tara Capital which is administratively dissolved."[4] The debtor represented that he owned Dawn Hill as a joint tenant and he valued both the entire property and his share of the property at $800,000. On his petition, the debtor listed Dawn Hill as his residence but he claimed no exemption in the Dawn Hill property in his first set of schedules. On June 11, 2019, Holly Wood–the debtor's wife and Tara Capital's president–executed a quitclaim deed transferring Dawn Hill from Tara Capital to "John Wood and Holly Wood, a married couple, residing at 13890 Turnberry Lane, Siloam Springs, Arkansas, 72761 . . . as tenants in common."

The debtor filed a motion to convert his chapter 13 case to a case under subchapter V of chapter 11 on February 25, 2020. The POA and Alkhaseh filed objections to the debtor's motion to convert, on March 12, 2020, and March 13, 2020, respectively. The Court held a hearing on May 12, 2020 [May 12 hearing]. In its ruling at the conclusion of the May 12 hearing, the Court found that there was no evidence of bad faith on the debtor's part and granted the debtor's motion. The debtor's case was converted to a case under

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[3] Attorney Eric W. Soller represented the debtor from the inception of the case until the debtor's current counsel entered an appearance on February 16, 2020. Although an order allowing Mr. Soller to withdraw as the debtor's counsel was not entered until May 6, 2020, Mr. Soller did not actively participate in the debtor's representation after February 16, 2020.

[4] Dawn Hill's 39 parcels total approximately 226 acres.

subchapter V of chapter 11 on May 13, 2020. The debtor amended his schedules on June 10, 2020 [June 10 schedules]. In his June 10 schedules, the debtor stated on Schedule A/B that he owned Dawn Hill as a tenant in common–a deviation from his previous schedules that had stated that Tara Capital was Dawn Hill's owner of record. The debtor valued the entire property at $1,547,000 and his share of the property at $773,500. On Schedule C, the debtor claimed a homestead exemption in the Dawn Hill property under the Arkansas Constitution, Article 9, sections 3 and 4, and described the property as "[t]hirty nine (39) parcels of real estate incluiding [sic] Debtor's residence, both developed and undeveloped, partially zoned and assessed as agricultural real estate."[5]

On July 2, 2020, the POA filed an objection to the debtor's June 10 exemptions, alleging that the debtor was not entitled to claim the Arkansas constitutional homestead exemption.[6] On July 6, 2020, Alkhaseh also objected to the debtor's June 10 exemptions, arguing that the debtor's claimed homestead exemption was improper because, on the date the debtor filed his petition, the debtor did not own Dawn Hill. Rather, title to Dawn Hill was held by Tara Capital, which Alkhaseh characterized as "a Wyoming Limited Liability Company administratively dissolved by the State of Wyoming." According to Alkhaseh, the quitclaim deed that purported to transfer Dawn Hill from Tara Capital to the debtor and his wife on June 11, 2019, was "void and a nullity" because Tara Capital had failed to wind up its affairs pursuant to Wyoming law after being administratively dissolved. On July 10, 2020, the UST filed a more comprehensive objection to the debtor's claimed homestead exemption, arguing that the debtor's description of the property was insufficient because "no mention is made regarding the portion or parcel of

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[5] The debtor also filed amended schedules on June 17, 2020 [June 17 schedules]. However, because the June 17 schedules did not include an amendment to the debtor's exemptions, they are not relevant to the issue currently before the Court and need not be discussed.

[6] The POA did not give a reason for its contention that the debtor was not entitled to the exemption he had claimed.

the property that is actually (a) the Debtor's homestead, (b) developed and undeveloped, (c) zoned, and (d) assessed as agricultural real estate." The UST next pointed out that the debtor had no interest in Dawn Hill on the date he filed his petition because title to the property was held by Tara Capital and "the debtor did not have an interest in the property until, at the earliest, on or about June 2019, depending on whether the transfer of the property was conducted in accordance with Wyoming law." Alternatively, the UST argued that if the Court found that the debtor did possess an interest in Dawn Hill sufficient to allow him to claim it as his homestead, then the Dawn Hill property is urban rather than rural and, as a result, the exemption should be limited to no more than a quarter of a acre. Finally, the UST argued that

> a portion of the Debtor's property is separate from any personal residential space and is used for business purposes that include permanent residences used and occupied by other families that are rented on a weekly basis. Without a clear designation, it cannot be determined whether the Debtor is including any portion of this business enterprise as a part of the homestead exemption and whether the portion should actually be encompassed by the homestead exemption.

Presumably in an effort to address the myriad objections filed in response to his June 10 exemptions, the debtor filed another set of amended schedules on August 11, 2020 [August 11 schedules].[7] In his August 11 Schedule C, the debtor again stated that he owned Dawn Hill as a tenant in common and continued to claim a homestead exemption in the Dawn Hill property under the Arkansas Constitution. However, this time, he attempted to delineate his homestead property in more definite terms, amending the property description as follows: "13890 Turnberry Lane Siloam Springs, AR 72761

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[7] Also on August 11, 2020, the debtor filed his chapter 11 plan of reorganization [plan], which states that the debtor owns 226 acres in Benton County [Dawn Hill] and provides for the liquidation of some of the property to fund the plan. The debtor's plan has drawn objections to confirmation from JP Morgan Chase, N.A., the POA, Alkhaseh, and the UST. The POA, Alkhaseh, and the UST have each alleged in their respective objections that the feasibility of the debtor's plan cannot be determined until the Court rules on the objections to the debtor's exemptions. The objections are currently scheduled for hearing on November 19, 2020.

Benton County 80 of 92.12 acres of one parcel (18-13823-000) commonly known as 'Dawn Hill', which includes Debtor's residence. Please see attached map."[8] The debtor valued the entire 80-acre carve-out of the Dawn Hill property at $1,123,491.10 and valued his portion of the 80 acres at $561,745.55.

The POA objected to the debtor's August 11 exemptions on August 25, 2020, asserting that the debtor "is precluded from claiming a homestead exemption in the real property because he did not own such property on January 25, 2019, the date that the original bankruptcy petition was filed, having first acquired [the property] on June 19, 2019 [sic]." Alkasheh objected on August 28, 2020, also arguing that the debtor is not entitled to claim Dawn Hill as his homestead because he was not the owner of the property on the date he filed his bankruptcy petition on January 25, 2019. The UST objected on August 31, 2020, reiterating the objections previously lodged in response to the debtor's June 11 exemptions–namely, that the debtor's description of the property was insufficient and the debtor had no interest in Dawn Hill on the date he filed his petition because title to the property was held by Tara Capital. The UST argued in the alternative that if the Court were to find that the debtor is entitled to claim a homestead exemption in Dawn Hill, the debtor should be required to furnish a metes and bounds description of the property claimed as his residence and provide the source of his valuation. Regarding the map attached to the debtor's August 11 schedules, the UST pointed out that the map did not denote the location of the debtor's residence on the Dawn Hill property and alleged that neither the map nor the debtor's description of the property provided a means of determining whether Dawn Hill is urban or rural. As before, the UST contended that Dawn Hill should be considered urban and maintained that portions of Dawn Hill should not be included in the debtor's homestead because certain parts of the property are entirely separate from the debtor's personal residence and are used only for business purposes, including several rental units that are occupied as residences by people other

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[8] The map attached to the debtor's August 11 Schedule C was a simplistic black and white sketch of the 92.12-acre parcel with certain areas outlined in black marker.

than the debtor.

September 15 Hearing

The Court held a telephonic hearing on the parties' objections to the debtor's August 11 exemptions on September 15, 2020 [September 15 hearing]. At the outset of the hearing, the UST stated that the threshold issue before the Court was whether the debtor possessed a sufficient interest in Dawn Hill on the date he filed his petition for the property to be property of the estate. According to the UST, the POA, and Alkahseh, if Dawn Hill was not property of the debtor's bankruptcy estate on the date the debtor filed his petition on January 25, 2019, then the debtor cannot claim an exemption in the property.

At the September 15 hearing, the debtor testified that he has lived in Arkansas and resided on the Dawn Hill property since 2015. Although the debtor's background and education are in nuclear medicine, he has been in the business of managing rental properties at and near Dawn Hill since moving to Arkansas in 2015. He has been married to Holly Wood for approximately 31 years.[9]

When the debtor filed his petition on January 25, 2019, Tara Capital was Dawn Hill's owner of record. According to the debtor, on the date he filed his petition, he believed that he owned 49.5% of Tara Capital, a Wyoming limited liability company that the debtor said had been administratively dissolved in 2015.[10] The debtor testified that it was

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[9] No evidence was introduced at the September 15 hearing regarding how long the debtor and Holly Wood have been married, but the Court takes judicial notice of its March 18, 2019 *Order Denying Motion to Dismiss*, in which the Court noted that the debtor and Holly Wood had, at that time, been married for 30 years. *See* Fed. R. Evid. 201; *In re Penny*, 243 B.R. 720, 723 n.2 (Bankr. W.D. Ark. 2000) ("a [c]ourt may take judicial notice of its own orders . . . .").

[10] The Wyoming Secretary of State's records show Tara Capital's status as "inactive- administratively dissolved (tax)" with an "inactive date" of July 9, 2015. (UST Ex. 7.)

his understanding that because Tara Capital was not reinstated within two years of being administratively dissolved, the entity no longer existed by mid-2017.[11] The debtor said that he believed that once Tara Capital no longer existed, the ownership of its assets reverted back to its members–which, until recently, the debtor had believed were he and his wife.[12] The debtor said that after he retained his current counsel, he learned that he has never owned any part of Tara Capital and that his wife, Holly Wood, has always been its sole member. The debtor testified that Tara Capital did not notify any creditors of its dissolution and that Tara Capital transferred its real estate–Dawn Hill–to the debtor and Holly Wood on June 11, 2019, based upon the advice of the debtor's former counsel, Mr. Soller.

When questioned about the characteristics of Dawn Hill, the debtor testified that Dawn Hill used to be a golf course with a clubhouse, restaurant, bar, and golf shop–none of which have been operational since 2010. The debtor said that Dawn Hill is in a "country-like setting" and has a "rural feeling." The debtor also said that Dawn Hill "is basically pastureland . . . that we hay out." The debtor later clarified that he does not "hay" the property himself but instead has an arrangement with a gentleman that mows the area of

[11] Although it is not overtly clear from the record, based on the time frames referenced by the debtor when testifying about Tara Capital being "administratively dissolved," it appears that the debtor was referring to the process set forth in Wyoming Statutes Annotated § 17-29-705, which provides that if an LLC fails to pay the required fees, it is "deemed to be transacting business within this state without authority and to have forfeited any franchises, rights or privileges acquired under the laws thereof . . . [u]nless compliance is made within sixty (60) days . . . the limited liability company shall be deemed defunct and to have forfeited its articles of organization or certificate of authority acquired under the laws of this state." Wyo. Stat. Ann. § 17-29-705. The statute also provides that "any defunct limited liability company may at any time within two (2) years after the forfeiture of its articles of organization of [sic] certificate of authority, be revived and reinstated by paying the amount of the delinquent fees." *Id*.

[12] The debtor's belief that the assets of a dissolved Wyoming LLC revert to the LLC's members was misguided. *See In re Jorgensen*, No. 11-20046, 2011 WL 6000871, at *5 (Bankr. D. Wyo. Nov. 30, 2011) (members of a dissolved LLC do not automatically retain the LLC's assets as their own).

Dawn Hill that used to be the golf course two to three times per year and, as payment, takes hay from Dawn Hill for his own animals. The debtor said that the person that mows for him also leaves enough hay for the debtor's animals–two llamas, two donkeys, and one horse–that live on the Dawn Hill property. The debtor testified that there is a creek running through the Dawn Hill property and the area is surrounded by "open grasslands" and "wooded areas." The debtor said that horses and cattle graze near some of the homes close to Dawn Hill. He also said there are poultry farms near Dawn Hill. The debtor testified that some of the roads leading to and from Dawn Hill are paved county roads while others are gravel. The debtor also testified that the "immediate area" surrounding Dawn Hill has no commercial buildings. Benton County provides emergency services to Dawn Hill and the Siloam Springs' fire department has installed several fire hydrants along Dawn Hill road. The debtor testified that all of the properties around Dawn Hill have septic systems because no municipality provides sewer services to the Dawn Hill area. Dawn Hill is two miles from the city limits of Siloam Springs, three and a half miles from the debtor's bank, and a little over three miles from the closest hospital, gas station, and grocery store.

The debtor testified that he resides in a "converted farmhouse" on the Dawn Hill property that is situated in the west end of a building that used to be Dawn Hill's golf shop. According to the debtor, the farmhouse–his residence–consists of bedrooms, bathrooms, and a living room area. In addition to the farmhouse building where the debtor lives, the debtor claims as part of his homestead an additional five buildings that contain a total of 19 rental units. The debtor testified that he rents out the units for $275 per week, a price that includes water (furnished by the city of Siloam Springs), DirecTV, internet, and electricity. The units do not have telephone service.[13]

[13] There are privately-owned condominiums on the 92.12-acre parcel of Dawn Hill from which the debtor has carved his 80-acre homestead and, in addition, there are privately-owned homes built along the fairways of what was previously Dawn Hill's golf course. The debtor has included neither the condominiums nor the homes in his homestead.

Findings of Fact and Conclusions of Law

Arkansas residents with "the right to claim exemptions in a bankruptcy proceeding pursuant to 11 U.S.C. § 522 shall have the right to elect either: (i) The property exemptions provided by the Constitution and the laws of the State of Arkansas; or (ii) The property exemptions provided by 11 U.S.C. § 522(d)." Ark. Code. Ann. § 16-66-217. In this case, the debtor filed his petition on January 25, 2019, and in his first set of amended schedules, changed from federal exemptions to the Arkansas state exemptions. *See In re Freeman*, No. 5:19-bk-72568 (Bankr. W.D. Ark. March 18, 2020) (debtors may amend schedules to elect state exemptions after choosing federal exemptions in prior schedules). Three elements are required to establish a homestead under the Arkansas Constitution: (1) the claimant must be married or the head of a family; (2) the property must be occupied as a home; and (3) the claimant must be a resident of Arkansas. *Smith v. Webb* (*In re Webb*), 121 B.R. 827, 829 (Bankr. E.D. Ark. 1990). Here, there is no dispute that on the petition date and ever since, the debtor has met these three requirements: he is married and an Arkansas resident and, although the parties may disagree about how much of Dawn Hill the debtor occupies as his residence, none of the objecting parties have taken the position that the debtor does not occupy some portion of Dawn Hill as his home. Rather, the primary–or at least, initial–issue before the Court is whether the debtor may claim Dawn Hill as his homestead when Tara Capital held title to the property on the date the debtor filed his petition and transferred it to the debtor five months later. Stated differently, the issue is whether the debtor may claim an exemption in property that was not property of the estate on the date he filed his petition. The objecting parties have the burden of proving that the debtor is not entitled to the exemption that he has claimed. *See* Fed. R. Bankr. P. 4003(c).

It is well-settled that a debtor may not claim an exemption in property that is not property of the estate. *See Owen v. Owen*, 500 U.S. 305, 308 (1991) ("[s]ection 522(b) provides that the debtor may exempt certain property 'from property of the estate'; obviously, then, an interest that is not possessed by the estate cannot be exempted."). Therefore, before

reaching the propriety of the debtor's claimed exemption in Dawn Hill, the Court must first determine whether Dawn Hill is property of the debtor's bankruptcy estate. Property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). As of the commencement of the debtor's chapter 13 case on January 25, 2019, Tara Capital–an LLC wholly owned by the debtor's wife–held the title to Dawn Hill. However,

> [i]n addition to the property described in § 541(a), in a chapter 13 case property of the estate includes "all property of the kind specified in such section [§ 541] that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, 12 of this title, whichever occurs first." 11 U.S.C. § 1306(a)(1). In other words, property of the estate in a chapter 13 case includes not only the § 541 definition of property, but also any property acquired during the pendency of the chapter 13 case. *Educ. Assistance Corp. v. Zellner*, 827 F.2d 1222, 1224 (8th Cir. 1987); *see also In re Guentert*, 206 B.R. 958, 962 (Bankr. W.D. Mo.1997).

In re Brinkley, 323 B.R. 685, 689-90 (Bankr. W.D. Ark. 2005).[14] In the instant case, Tara Capital transferred Dawn Hill to the debtor and his wife by quitclaim deed on June 11, 2019. Although the transfer occurred five months after the debtor filed his petition, on its face, the quitclaim deed from Tara Capital brought Dawn Hill into the debtor's bankruptcy estate under § 1306(a)(1).[15] However, the objecting parties have questioned

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[14] Although the debtor subsequently converted his case to a case under subchapter V of chapter 11, he was still in a chapter 13 on June 11, 2019, when Tara Capital conveyed Dawn Hill to the debtor and his wife.

[15] The UST cited *In re Hess*, 618 B.R. 13 (Bankr. D. N.M. 2020), to support the objecting parties' position that a homestead exemption should be denied if an LLC was the title owner of the property in question on the date the debtor filed his petition. The Court finds that *Hess* is distinguishable from the case now before this Court because the debtor in *Hess* was in a chapter 7 case, meaning that property of the estate was determined under § 541 (rather than under both § 541 and § 1306), the property in *Hess* remained in the LLC's name at the time the bankruptcy court heard the trustee's objection to the debtor's homestead exemption, and the New Mexico homestead exemption at issue in *Hess* requires the homestead dwelling to be "owned, leased, or being purchased by the person claiming the exemption." *See In re Hess*, 618 B.R. at 15-16, 18 (internal citation omitted).

the validity of Tara Capital's purported transfer, based on their collective allegation that Tara Capital did not wind up its affairs in accordance with the applicable Wyoming statutes.[16]

As the Court referenced in footnote eleven, Wyoming Statutes Annotated § 17-29-705 provides that a limited liability company that fails to pay its statutorily required fees is deemed defunct if, after sixty days, the company remains out of compliance. Tara Capital failed to pay its fees in mid-2015 and was deemed defunct under the statute sixty days later. While the statute provides that within two years, a defunct LLC may be "revived and reinstated by paying the amount of the delinquent fees," Tara Capital did not take the steps necessary to be reinstated during the specified two-year period. *See* Wyo. Stat. Ann. § 17-29-705. Although Wyoming Statutes Annotated § 17-29-705 provides that in such circumstances an LLC would be deemed "defunct," the parties repeatedly referred to Tara Capital as "administratively dissolved," rather than "defunct" during the September 15 hearing.

Whether Tara Capital was administratively dissolved or defunct as of June 11, 2019–the date that Tara Capital transferred Dawn Hill to the debtor and his wife by quitclaim deed–is more than a matter of semantics. Tara Capital's status on June 11, 2019, is relevant to the validity of the transfer to the debtor and his wife because an administratively dissolved entity has the power to transfer property under Wyoming law. Wyoming Statutes Annotated § 17-29-702 states in relevant part:

> (a) A dissolved limited liability company shall wind up its activities and the company continues after dissolution only for the purpose of winding up.
>
> (b) In winding up its activities, a limited liability company:

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[16] To be clear, questioning the validity of the transfer was all the objecting parties did–neither the POA, Alkhaseh, or the UST cited any authority supporting the proposition that the deed from Tara Capital to the debtor and his wife was void because Tara Capital had failed to first wind up its affairs in accordance with Wyoming law.

> (i) Shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities and marshal and distribute the assets of the company; and
>
> (ii) May:
>
> > (A) Deliver to the secretary of state for filing articles of dissolution stating the name of the company and that the company is dissolved;
> >
> > (B) Preserve the company activities and property as a going concern for a reasonable time;
> >
> > (C) Prosecute and defend actions and proceedings, whether civil, criminal or administrative;
> >
> > *(D) Transfer the company's property*;
> >
> > (E) Settle disputes by mediation or arbitration;
> >
> > (F) Reserved; and
> >
> > (G) Perform other acts necessary or appropriate to the winding up.

Wyo. Stat. Ann. § 17-29-702 (emphasis added).

The question, then, is whether Tara Capital was truly defunct on June 11, 2019–and ostensibly without the ability to effectuate a transfer of property titled in its name–or whether Tara Capital was, instead, administratively dissolved on June 11, 2019–and remained in existence for specific purposes including the transfer of its property. Despite an exhaustive search, the Court was unable to locate a case decided by a Wyoming court that answered this precise question. However, in *Universitas Education, LLC v. Nova Group, Inc.*, the United States District Court for the Western District of Oklahoma interpreted the relevant Wyoming law and concluded that a Wyoming LLC that had been deemed defunct under Wyoming Statutes Annotated § 17-29-705(b) for its failure to pay fees and file an annual report should be treated as administratively dissolved–not defunct–despite being beyond the two-year reinstatement period. *See Universitas Educ.,*

LLC v. Nova Group, Inc., No. FJ-14-0005-HE, 2017 WL 4038411 (D. Okla. Sept. 13, 2017). The *Universitas* court stated that "[u]nder Wyoming statutes, LLCs which are rendered defunct are not explicitly labeled as 'dissolved,' and the enumerated events that cause dissolution do not include administrative default." *Id.*, at *2 (citing Wyo. Stat. Ann. § 17-29-701). Because Wyoming courts have treated defunct corporations as administratively dissolved, the *Universitas* court took a consistent approach in relation to defunct Wyoming LLCs, finding that to do otherwise "would put defunct LLCs in some undefined category of entity (or non-entity), with no statutory guidance as to what happens to its assets." *Id.,* at *2 (citing *Ridgerunner, LLC v. Meisinger*, 297 P.3d 110, 116 (Wyo. 2013) and *RDG Oil & Gas, LLC v. Jayne Morton Living Trust*, 331 P.3d 1199, 1204 (Wyo. 2014)). This Court agrees with the *Universitas* court's reasoning and finds that Tara Capital should be treated as administratively dissolved rather than defunct.

As the Court stated above, under Wyoming Statutes Annotated § 17-29-702, a dissolved LLC "[s]hall discharge the company's debts, obligations, and other liabilities" and "may . . . [t]ransfer the company's property." Wyo. Stat. Ann. § 17-29-702(b). Therefore, the Court finds that, as a dissolved LLC, Tara Capital had the authority to transfer Dawn Hill to the debtor and his wife on June 11, 2019. The Court also finds that the fact that Tara Capital did not first discharge the company's debts[17] or "wind up" makes the transfer to the debtor and his wife potentially voidable–but not void ab initio. *See Jessen v. Jessen*, 41 P.3d 543, 546 (Wyo. 2002) ("[c]ourts have generally held that a fraudulent conveyance is valid as between the parties and that the conveyance is voidable only at the option of creditors or others within the protection of the statutes to the extent that is necessary to satisfy any debts.") (internal citation omitted).[18] As a result, the Court finds

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[17] The parties introduced no evidence during the September 15 hearing to establish the extent of Tara Capital's indebtedness.

[18] Whether Tara Capital's transfer to the debtor and his wife was fraudulent is not before the Court and nothing in this order should be construed to be a finding of fact or conclusion of law on that issue.

that the June 11, 2019 quitclaim deed from Tara Capital to the debtor and his wife brought Dawn Hill into the debtor's bankruptcy estate under § 1306(a)(1). *See* 11 U.S.C. § 1306(a)(1) ("[p]roperty of the estate includes, in addition to the property specified in section 541 of this title . . . all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first[.]").

The debtor's case was converted from a case under chapter 13 to a case under subchapter V of chapter 11 on May 13, 2020. Despite the conversion, the date of the commencement of the debtor's case–January 25, 2019–did not change. *See* 11 U.S.C. § 348(a) ("[c]onversion of a case from a case under one chapter of this title to a case under another chapter of this title . . . does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.").

Under 11 U.S.C. § 1115(a), property of the estate includes "all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted . . . ." Hence, had the debtor converted his case from a chapter 13 to a traditional chapter 11 case, the Court would be positioned to make an unequivocal determination at this point in the debtor's case that Dawn Hill is property of the debtor's bankruptcy estate under § 1115(a). However, because the debtor converted his case to one under subchapter V of chapter 11, § 1115 does not apply in this instance. *See* 11 U.S.C. § 1181(a) (enumerating code sections inapplicable to subchapter V cases, including § 1115).

Rather, in a subchapter V case, property of the estate is governed by § 1186(a), which provides in relevant part:

> (a) Inclusions.–If a plan is confirmed under section 1191(b) of this title, property of the estate includes, in addition to the property specified in section 541 of this title–

> (1) all property of the kind specified in that section that the debtor acquires after the date of the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first[.][19]

11 U.S.C. § 1186(a)(1). Here, the POA, Alkhaseh, and the UST have all objected to confirmation of the debtor's plan–in part due to their alleged inability to determine the feasibility of the debtor's plan without first obtaining the Court's ruling on the propriety of the debtor's exemptions. Based upon the parties' joint request that the Court render a decision on the pending exemption issue prior to holding a confirmation hearing, the Court continued the confirmation hearing from its original setting of September 23, 2020, to October 20, 2020, and based on the parties' second joint request, the Court continued the confirmation hearing once more to its current setting of November 19, 2020.[20] In the light of the fact that the confirmation hearing has yet to occur in this case, the Court is currently unable to determine, and unwilling to speculate about, whether the debtor's plan will be confirmed under § 1191(a), § 1191(b)–or, for that matter, whether the plan will be confirmed at all. Because § 1186(a)(1) makes plan confirmation a prerequisite to determining the composition of property of the estate, the Court is precluded from

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[19] Section 1191 provides in pertinent part:

> (a) Terms.–The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title are met.
>
> (b) Exception.–Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1191.

[20] The objecting parties and the debtor jointly requested the continuances of the debtor's confirmation hearing by electronic communications with the Court's staff.

making a definitive finding at this juncture regarding whether Dawn Hill, which was acquired by the debtor after the commencement of his case, is included in property of the debtor's bankruptcy estate.[21] However, in the interest of moving this case forward, and because the viability of the debtor's proposed plan hinges largely upon whether the Court determines that Dawn Hill is property of the debtor's bankruptcy estate and the debtor's claimed exemption is proper, the Court finds that Dawn Hill is included in property of the

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[21] Section 348 addresses what comprises property of the estate in a case converted from a chapter 13 to a case under another chapter, providing, in relevant part:

> (f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title–
> (A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;
> ...
> (2) If the debtor converts a case under chapter 13 of this title to a case under another chapter of this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

11 U.S.C. § 348(f). Here, when the Court granted the debtor's motion to convert his case from a chapter 13 to a case under subchapter V of chapter 11, the Court did not find that the debtor's conversion was in bad faith. Therefore, under § 348 (f)(1)(A), it would appear at first blush that property of the debtor's estate in his converted case would consist only of "property of the estate, as of the date of the filing of the petition" that the debtor still possessed or controlled on the date of conversion. However, "i]t is a familiar principle of statutory construction that a general statute must yield when there is a specific statute involving the same subject matter." *Craighead Elec. Coop. Corp. v. City Water & Light Plant of Jonesboro, Ark.*, 278 F.3d 859, 861 (8th Cir. 2002) (citation omitted). In addition,"[c]ourts generally adhere to the principle that statutes relating to the same subject matter should be construed harmoniously if possible, and if not, that more recent or specific statutes should prevail over older or more general ones." *Tug Allie-B, Inc. v. United States*, 273 F.3d 936, 941 (11th Cir. 2001) (citing *Southern Natural Gas Co. v. Land*, *Cullman County*, 197 F.3d 1368, 1373 (11th Cir.1999)). With those long-standing canons of statutory construction in mind, the Court finds that, to the extent § 348(f) conflicts with § 1186(a) regarding what constitutes property of the estate in a case converted from chapter 13 to a case under subchapter V of chapter 11, § 1186 controls as the more recently enacted and more specific statute.

debtor's estate pursuant to § 1186(a)(1), on the condition that the debtor's plan is later confirmed under §1191(b).[22]

Because the Court has determined that Dawn Hill became property of the debtor's chapter 13 bankruptcy estate when Tara Capital transferred its interest in the property to the debtor and his wife on June 11, 2019–and has further determined that it remains property of the debtor's estate contingent upon the subsequent confirmation of the debtor's plan under § 1191(b)–the Court will now turn to the propriety of the exemption that the debtor has claimed in the property. Although several courts, including this one, have stated that exemptions must be determined based on the circumstances as they existed on the date the debtor's petition was filed, those statements were made "in situations where the property at issue was property of the estate at the time the petition was filed." *In re Walz*, 546 B.R. 836, 838 (Bankr. D. Minn. 2016); *see also In re Long,* No. 6:20-bk-70427 (Bankr. W.D. Ark. Sept. 4, 2020). Although exemptions are determined as of the petition date "[w]hen a debtor's interest in property constitutes property of the estate as of the petition date," the bankruptcy code also "recognizes exemptions in postpetition-acquired property interests." *In re Walz*, 546 B.R. at 837-38 (citing 11 U.S.C. § 522(a)(2)); *see also In re Cruz,* 585 B.R. 255 (Bankr. D. P.R. 2018) and *In re Walley*, 525 B.R. 320 (Bankr. E.D. Va. 2015).

The Federal Rules of Bankruptcy Procedure provide the procedural framework under which a debtor may claim an exemption in property acquired post-petition. Specifically, Rule 1009(a) states that a "voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed." Fed. R. Bankr. P. 1009(a). In addition, Federal Rule of Bankruptcy Procedure 4003(b)(1)

[22] Section 1186 does not specifically state what comprises property of the estate if the debtor's plan is not confirmed under § 1191(b)–and there is currently no case law on this issue. However, based upon the wording of § 1186(a), the Court presumes that if the plan is not confirmed under § 1191(b), property of the estate would include only the property specified in § 541–which, in this case, would exclude Dawn Hill.

specifically addresses "a debtor's possible post-petition amendments" to exemptions and any resulting objections. *See In re Cruz*, 585 B.R. at 265 (citing Fed. R. Bankr. P. 4003(b)(1), which states that a party in interest may object to an exemption "within 30 days after any amendment . . . is filed[.]"). Here, the Court finds no statutory basis to summarily deny the debtor's right to amend his schedules for the purpose of claiming an exemption in property that he acquired post-petition–specifically, Dawn Hill. *See Law v. Siegel*, 571 U.S. 415 (2014) (prohibiting a debtor from amending his schedules is tantamount to denying his exemption, which the court may do only if the denial is founded upon a ground specified in the bankruptcy code); *see also Rucker v. Belew* (*In re Belew*), 943 F.3d 395, 396 (8th Cir. 2019).

Although the Court found above that Dawn Hill is property of the debtor's bankruptcy estate and that the debtor is not barred from amending his schedules to claim an exemption in the property, the Court must still determine whether the scope of the debtor's claimed exemption exceeds what the debtor is entitled to claim as his homestead under the Arkansas Constitution. As the Court stated previously, there is no dispute that the debtor is a married Arkansas resident occupying some portion of the Dawn Hill property as his home and, as a result, he meets the requirements for claiming a homestead under Arkansas law. *See In re Webb*, 121 B.R. at 829. However, the size of the homestead that the debtor is entitled to claim depends upon whether the property is rural or urban and whether, as the UST contends, Dawn Hill's rental units have been permanently abandoned to a business use and cannot be claimed as part of the debtor's homestead. The Court will discuss each of the remaining two issues in turn.

The debtor has claimed that Dawn Hill is rural and the burden is on the objecting party–in this instance, the UST–to prove otherwise. The Arkansas Constitution describes a rural homestead as:

> [t]he homestead outside any city, town or village, owned and occupied as a residence, shall consist of not exceeding one hundred and sixty acres of land with the improvements thereon, to be selected by the owner, provided

> the same shall not exceed in value the sum of twenty-five hundred dollars, and in no event shall the homestead be reduced to less than eighty acres, without regard to value.

Ark. Const. art. 9, § 4. The UST contends that Dawn Hill is urban. The Arkansas Constitution describes an urban homestead as:

> [t]he homestead in any city, town or village, owned and occupied as a residence, shall consist of not exceeding one acre of land, with the improvements thereon, to be selected by the owner, provided the same shall not exceed in value the sum of two thousand five hundred dollars, and in no event shall such homestead be reduced to less than one-quarter of an acre of land, without regard to value.

Ark. Const. art. 9, § 5. Whether a homestead is rural or urban "must be determined based on the facts of each case." *In re Evans*, 190 B.R. 1015, 1022 (Bankr. E.D. Ark. 1995) (citing *King v. Sweatt*, 115 F. Supp. 215, 220 (W.D. Ark.1953)); *Farmers Coop. Ass'n v. Stevens*, 543 S.W.2d 920, 921 (Ark. 1976)). Courts concentrate "on the characteristics of the property and surrounding area in determining whether the homestead should be considered rural or urban." *Id*. In addition, the "use made of the property is 'very much pertinent' to the determination of the rural or urban character of a debtor's homestead." *Id.* (citing *Farmers Coop. Ass'n v. Stevens*, 543 S.W.2d at 921).

> Use of the property for exclusively agricultural purposes generally indicates a rural homestead; however, property used for another purpose may still be determined rural. *See Bank of Sun Prairie v. Hovig*, 218 F.Supp. 769, 783–84 (W.D. Ark. 1963) (tourist court and resort area); *King v. Sweatt*, 115 F.Supp. at 218–19 (tourist court); *George v. George*, 267 Ark. 823, 826, 591 S.W.2d 655, 657 (Ct. App. 1979) (rental property). Since neither the location within corporate limits nor the use of the property is controlling, courts have focused on the characteristics of the community itself in determining whether it should be considered rural or urban. If the community does not contain the common attributes and conveniences of a city, then the property will be determined to be rural. *Bank of Sun Prairie v. Hovig*, 218 F.Supp. at 785; *King v. Sweatt*, 115 F.Supp. at 221; *Farmers Coop. Ass'n v. Stevens*, 543 S.W.2d at 923; *see also Southeast Arkansas Levee Dist. v. Turner*, 184 Ark. 1147, 1152, 45 S.W.2d 512, 514 (1932).

In re Weaver, 128 B.R. 224, 227 (Bankr. W.D. Ark. 1991).

In the case before the Court, Dawn Hill is not located in any "city, town or village" but is instead situated approximately two miles outside the city limits of Siloam Springs.[23] Dawn Hill has a creek running through it and is surrounded by wooded areas and grasslands. There are cattle, horses, and poultry farms on properties near Dawn Hill. The debtor's llamas, donkeys, and horse reside on the Dawn Hill property itself. The debtor has someone that "hays out" the Dawn Hill property for him two to three times per year. There are rental units, condominiums, and homes on and near the Dawn Hill property. However, the immediate area around Dawn Hill is devoid of grocery stores, gas stations, and banks to service the residents of the area–the closest amenities of that nature are more than three miles away. Although some of the roads surrounding Dawn Hill have been paved by the county, others are gravel. No municipality provides sewer services to Dawn Hill. All of these characteristics weigh in favor of finding that Dawn Hill is rural.

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[23] There are "no precise legal definitions[s] for the terms 'city, town or village' as used in the Arkansas Constitution with regards to the homestead exemption. The Arkansas Supreme Court presumes that the words were used in their popular sense." *In re Kelley*, 455 B.R. 710, 715 (Bankr. E.D. Ark. 2011) (citing *Farmers Coop. Ass'n. v. Stevens*, 543 S.W.2d at 922–23). "District Judge John Miller stated in the often cited case of *Bank of Sun Prairie v. Hovig*, '[a] city is a town and a village is a town and ordinarily the word city or village indicates the size of the town. Therefore, the word town seems to be the key word in the Constitutional provision under consideration.'" *Id.* (citing *Bank of Sun Prairie v. Hovig*, 218 F.Supp. at 784.) The Arkansas Supreme Court has said

> [g]enerally, in speaking of a town as a mere place of geographical location, we have no reference whatsoever to the corporate limits, but simply use the name of the town as designating the aggregate body of people living in such considerable collection of dwelling houses, and in such proximity as to constitute a town, as distinguished from the country.

Id. (citing *Rogers v. Galloway Female Coll.*, 64 Ark. 627, 635, 44 S.W. 454, 456 (1898)). Therefore, "the fact that the property in question falls inside or outside the city limits is not dispositive" and the Court must consider additional factors. *See id.* (citations omitted).

The Court also acknowledges that Dawn Hill possesses some characteristics that lean toward a finding that the property is urban, such as the property's relatively close proximity to Siloam Springs, and the availability of electricity and internet services to Dawn Hill. However, there is simply more evidence that the property is rural. *See In re Kelley*, 455 B.R. at 717 (although the evidence was "evenly balanced" regarding whether property was rural or urban, the court determined that the property was rural because the trustee had failed to carry his burden of proof). As a result, the Court finds that Dawn Hill is rural.

Finally, the Court will address the UST's argument that the debtor has abandoned from his homestead the 19 rental units at Dawn Hill. Whether a debtor has abandoned all or part of his homestead is "'almost, if not entirely, a question of intent.'" *In re Giles*, 443 B.R. 524, 528 (Bankr. W.D. Ark. 2011) (quoting *In re Jones*, 193 B.R. 503, 507 (Bankr. E.D. Ark. 1995)). Here, the Court has no evidence that the debtor intended to abandon any portion of the 80 acres that he has claimed as his homestead–and, in fact, the debtor expressly included the rental units in the 80 acres that he carved out of the 92.12-acre parcel. Further, the mere fact that a portion of the debtor's homestead generates rental income does not destroy the homestead. *See Simpson v. Biffle*, 38 S.W. 345, 348 (Ark. 1896) (using a portion of homestead property as a hotel did not divest the claimant of his homestead); *see also In re Giles*, 443 B.R. at 531 ("Arkansas case law . . . supports a person's right to use a portion of the homestead for business purposes in order to contribute to household income."). As the Arkansas Supreme Court stated more than 135 years ago,

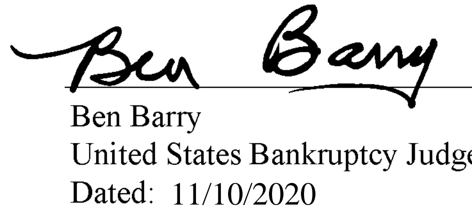
> [i]t is a strange and irrational idea, sometimes advanced, that a man ought to lose his homestead as soon as he attempts to make any part of it subservient to a trade or occupation, or to make it helpful in family expenses. Homestead laws are liberally construed . . . . It is the policy of the State to encourage . . . the exercise of industry, thrift, and good management of his resources; and within a limited area to make it as valuable as possible. It makes better citizens, and increases the taxable wealth of the body politic.

Id. (quoting *Gainus v. Cannon*, 42 Ark. 503, 515 (1884)). Absent clear proof that the debtor intended to abandon the 19 rental units from his homestead, the Court finds that he is entitled to include the units in his 80-acre homestead.

Conclusion

For all of the above-stated reasons, the Court conditionally overrules the objections to the debtor's August 11 exemptions and finds that, subject to the debtor's plan ultimately being confirmed under 11 U.S.C. § 1191(b), Dawn Hill is property of the debtor's bankruptcy estate pursuant to 11 U.S.C. § 1186(a)(1) and the debtor is entitled to claim up to 80 acres of the Dawn Hill property as his rural homestead under the Arkansas Constitution. The Court orders the debtor to file amended schedules within forty-five (45) days from the date of the entry of this order for the purpose of describing the debtor's homestead using the appropriate metes and bounds.

IT IS SO ORDERED.



Ben Barry
United States Bankruptcy Judge
Dated: 11/10/2020

cc: John Randolph Wood
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