

90PR1979 (8/13/99)

Case No. 90PR1979

IN THE MATTER OF

The Estate of JUANITA M. FOSTER,

Deceased.

ORDER

THIS MATTER comes before the Court on the Claim of Homestead Exemption, filed by John S. Dent. The Claim is DENIED.

Pursuant to CRS §38-41-201 John S. Dent is absolutely entitled to the exemption claimed if he establishes by a preponderance of the evidence that the property levied upon is "occupied as [his] home." In this case, there is an affidavit questioning the residence of the debtor. Therefore, the issue of whether 4745 Picutis is occupied by John Dent as his home is in dispute. Initially, Mr. Dent provided no evidence at the hearing that 4745 Picutis is occupied by him as his home other than his own testimony. Credible testimony by the owner/occupant thereof could be considered sufficient evidence that property is occupied as a home. In this case, however, there is a problem with the credibility and the sufficiency of that testimony.

The Court took judicial notice of all of the pleadings in this file which reflect litigation spanning nearly a decade. Mr. Dent has been involved in the case since its commencement in 1990 and, of all the addresses listed as his address for any purpose, none has been 4745 Picutis. This casts doubt on Mr. Dent's credibility and reduces the weight given to his testimony. The Court, therefore, looks to other, documentary evidence. The Court regards the Colorado Drivers License address as persuasive evidence of residence. Mr. Dent's drivers license does not list 4745 Picutis as his home. The only documentary evidence of Mr. Dent's association with 4745 Picutis is a registration of a vehicle in his name at that address. This may establish that he owns the property at 4745 Picutis; however, it does not establish that 4745 Picutis is occupied by him as his home as required by CRS §38-41-201.

Based upon the uncertainty of the evidence provided as to Mr. Dent's home, the Court FINDS that the burden of proof has not been met. Accordingly, the Court cannot allow the homestead exemption. The Claim is DENIED.

November 30, 1999
C. Jean Stewart
Judge, Probate Court