UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

---

No. 94-60190
Summary Calendar

---

IN THE MATTER OF: MANUEL J. GONZALEZ, M.D., P.A. and KAREN GONZALEZ,

Debtor.

INTERNATIONAL BANK OF COMMERCE,

Appellant-Cross Appellee,

versus

MANUEL J. GONZALEZ, M.D., P.A., KAREN GONZALEZ and GARY J. KNOSTMAN, Trustee,

Appellees-Cross Appellants.

---

Appeals from the United States District Court for the Southern District of Texas
(CA-L92-140)

---

(January 3, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.[*]

PER CURIAM:

Plaintiff-appellant International Bank of Commerce of Laredo

---

[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

(IBC) sought to foreclose a lien granted it by defendants-appellees Manuel and Karen Gonzalez (Dr. Gonzalez[1]). Dr. Gonzalez subsequently filed bankruptcy and declared the property covered by the lien as his business homestead. The bankruptcy court held that the portion of the premises Dr. Gonzalez actually used to practice his profession was his business homestead but that the remainder, which was leased to third parties, did not qualify for the business homestead exemption. The district court affirmed. IBC appeals, and Dr. Gonzalez cross-appeals. Finding no error, we affirm.

**Facts and Proceedings Below**

This suit concerns the proper characterization, under Texas homestead law, of three contiguous parcels of land: 1101, 1103, and 1105 Corpus Christi, located in Laredo, Texas. Dr. Gonzalez purchased the three parcels in 1981 with the intent of using the property as an office for his medical practice. Dr. Gonzalez actually began such use in 1984, after improvements were completed.

From 1984 until 1990, Dr. Gonzalez practiced medicine as a professional association (the PA). He was the sole member of the PA's board of directors, its sole shareholder, its President, and apparently the only doctor associated with the PA. Dr. Gonzalez leased the 1101 parcel to the PA; parcels 1103 and 1105 were leased to two other doctors, who conducted their own medical practices from these offices.

---

[1] Dr. Gonzalez's wife, Karen Gonzalez, was also named as a defendant in this suit. Because our resolution of this suit focuses on the characterization of Dr. Gonzalez's medical practice, we will refer to defendants in the singular for simplicity.

Beginning in 1984, Dr. Gonzalez executed a number of promissory notes and deeds of trust giving IBC a security interest in, among other property, the three parcels. He used this money to pay off the purchase price of the parcels, the costs of improvements, and other associated expenses. On September 26, 1986, Dr. and Mrs. Gonzalez executed a deed of trust in favor of IBC in which they disclaimed the three parcels as their homestead. At the time Dr. Gonzalez filed his bankruptcy petition, he was in default on his obligations to IBC and owed it a total of more than $1.1 million.

On January 17, 1989, Dr. Gonzalez filed a voluntary petition for bankruptcy under Chapter 7 of the Bankruptcy Code. He claimed the three parcels as his business homestead. IBC objected to the claimed exemption. It contended that the parcels could not be Dr. Gonzalez's business homestead because they were leased to the PA and the other doctors. In the alternative, IBC argued that Dr. Gonzalez was estopped from claiming the parcels as a business homestead because of the disclaimer in the 1986 deed of trust.

The bankruptcy court entered findings of fact and conclusions of law on November 6, 1991. It held that Dr. Gonzalez could claim 1101 Corpus Christi as his business homestead because he actually used those premises to practice his profession. Relying on this Court's holding in *In re John Taylor Co.*, 935 F.2d 75 (5th Cir. 1991) (per curiam), the bankruptcy court held that the fact that Dr. Gonzalez leased 1101 Corpus Christi to the PA did not affect his ability to claim the property as his business homestead. As to 1103 and 1105 Corpus Christi, however, the bankruptcy court held

that these parcels could not be claimed as part of the business homestead because Dr. Gonzalez had never actually used them to practice his profession. Finally, the bankruptcy court held that the purported disclaimer in the 1986 deed of trust did not estop Dr. Gonzalez from claiming the business homestead exemption because, at the time the deed of trust was executed, Dr. Gonzalez was in actual, open use and possession of the 1101 Corpus Christi property, personally practicing medicine there, and therefore its status was not dubious.

The district court affirmed on all grounds, employing the same reasoning as the bankruptcy court. IBC now appeals to this Court, and Dr. Gonzalez cross-appeals.

**Discussion**

In reviewing a decision of the bankruptcy court, we apply the same standards as did the district court. *Matter of Kennard*, 970 F.2d 1455, 1457 (5th Cir. 1992). That is, we review the bankruptcy court's findings of fact for clear error and its conclusions of law *de novo*. *Id.* at 1457-58.

Under Texas law, a business homestead "consist[s] of not more than one acre of land which may be in one or more lots, together with any improvements thereon" that the claimant uses "as a place to exercise a calling or business." TEX. PROP. CODE § 41.002 (West Supp. 1994). A claimant may claim both a business and a residential homestead (assuming that the combined acreage is less than one acre). *Mays v. Mays*, 43 S.W.2d 148, 152 (Tex. Civ. App. SQBeaumont 1931, writ ref'd). To establish a place of business that is separate from the residence as a business homestead,

however, a claimant must show that the property is adapted, reasonably necessary, and used for the practice of his calling or business. *Haynes v. Vermillion*, 242 S.W.2d 444, 446 (Tex. Civ. App.SQFort Worth 1951, writ ref'd n.r.e.). A claimant establishes homestead rights by showing both an intention to use and actual use of the claimed property as a homestead. *Matter of Kennard*, 970 F.2d at 1458; *Lifemark Corp. v. Merritt*, 655 S.W.2d 310, 314 (Tex. App.SQHouston [14th Dist.] 1983, writ ref'd n.r.e.). The initial burden of establishing entitlement to the homestead exemption is on the claimant. *Lifemark Corp.*, 655 S.W.2d at 314.

IBC contends that the bankruptcy court erred in finding that 1101 Corpus Christi was Dr. Gonzalez's business homestead because Dr. Gonzalez leased that property to the PA. It directs us to Texas case law holding that the development and maintenance of property for the purpose of collecting rental income does not constitute a calling or business within the meaning of the statute. *See Mays*, 43 S.W. 2d at 152. However, as this Court held in *In re John Taylor Co.*, 935 F.2d 75 (5th Cir. 1991) (per curiam), the essential facts of which are identical to the present case, leasing to a claimant-owned corporate entity through which the claimant conducts his business on the premises does not preclude characterizing the property as a business homestead. *Id.* at 77.

IBC argues strenuously that *Taylor* misinterpreted Texas law and should be overruled. It is well-settled law in this Circuit, however, that "one panel may not overrule the decisionSQright or wrongSQof a prior panel, absent en banc reconsideration or a superseding contrary decision of the Supreme Court." *In re Dyke*,

943 F.2d 1435, 1442 (5th Cir. 1991). We are therefore in no position to consider the validity of IBC's arguments that the *Taylor* Court misinterpreted precedents on which it relied and ignored other cases in reaching its conclusions.[2]

Moreover, we are unconvinced by IBC's argument that the Texas Supreme Court's decision in *Laster v. First Huntsville Properties*, 826 S.W.2d 125 (Tex. 1991), decided a few months after *Taylor*, undermines our reasoning in that case. The *Laster* court was not asked to decide the issue we face here.[3] Nor did *Laster* announce new law with respect to the principles on which IBC seeks to rely; the court relied on precedents that were available when the *Taylor* decision was rendered. *See id.* at 130. We are therefore bound by the precedent in *Taylor*, under which the district court correctly found that Dr. Gonzalez had established a business homestead in 1101 Corpus Christi. For essentially the same reasons, we deny IBC's motion to certify this question to the Texas Supreme Court.

In the alternative, IBC argues that Dr. Gonzalez is estopped from claiming 1101 Corpus Christi as his business homestead because he disclaimed the exemption in documents submitted to IBC. Such disclaimers can estop a claimant from raising the homestead

---

[2] We think IBC's reliance on *Texas Commerce Bank*SQ*Irving v. McCreary*, 677 S.W.2d 643 (Tex. App.SQDallas 1984, no writ), misplaced because the claimant in that case *abandoned* his claim of business homestead on appeal. *Id.* at 645.

[3] *Laster* held that after divorce, the former husband, who had a 26% interest in the property, in 1979 no longer had a residence homestead interest in it, as the 1976 divorce decree awarded the former wife, who owned a 74% interest, the exclusive right to live there with their children until 1988, and thus the former husband's 1979 mortgage (when he was not living on the property) of his interest was not void.

exemption, but only if at the time of the disclaimer the claimant was not in actual, open use and possession of the property. *In re Niland*, 825 F.2d 801, 808 (5th Cir. 1987). IBC argues that Dr. Gonzalez's status vis-a-vis the property was ambiguous, *see id.* at 809, and that therefore it was not required to inquire further as to whether the disclaimer was false. *See Matter of Bradley*, 960 F.2d 502, 510 (5th Cir. 1992), *cert. denied*, 113 S.Ct. 1412 (1993). We reject this contention. Dr. Gonzalez's actual use of the 1101 Corpus Christi property to personally there engage in the practice of medicine was open and obvious; *Taylor* forestalls any argument that the lease to Gonzalez's PA rendered the property nonhomestead. We affirm the district court's holding that no estoppel arose here.

Lastly, we turn to Dr. Gonzalez's cross-appeal concerning the district court's decision that 1103 and 1105 Corpus Christi were not Dr. Gonzalez's business homestead. We believe the district court reached the correct result on this issue as well. Dr. Gonzalez never actually used either of these parcels; at all times relevant to this case, these parcels were rented out to third parties. Under Texas law, it is clear that maintaining property for the derivation of rental income does not qualify as a homestead use. *Mays*, 43 S.W.2d at 152. Because Dr. Gonzalez never actually used this part of the property, either himself or through the PA, we disagree with him that his use of those parcels comes under the temporary leasing provisions of the statute. *See* TEX. PROP. CODE § 41.003 (West Supp. 1994).

**Conclusion**

The judgment of the district court is therefore

AFFIRMED.