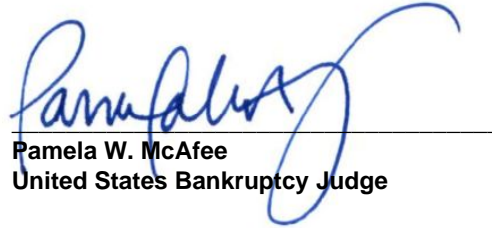




SO ORDERED

SIGNED this 7 day of July, 2025.


Pamela W. McAfee
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:

**NATOYA ERMALENA ROSS-DESANTOS,

DEBTOR**

**CASE NO.
25-00510-5-PWM
CHAPTER 7**

ORDER OVERRULING OBJECTION TO EXEMPTION

The matter before the court is the chapter 7 trustee's objection to the debtor's claim of exemption, D.E. 15, to which the debtor filed a response in opposition, D.E. 22. A hearing took place in Raleigh, North Carolina on June 17, 2025, after which the court took the matter under advisement. For the reasons that follow, the objection is overruled.

Natoya Ermalena Ross-DeSantos filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code on February 12, 2025, D.E. 1. John C. Bircher, III was appointed chapter 7 trustee on February 14, 2025, D.E. 6, and Ms. Ross-DeSantos's 341 meeting was conducted on March 12, 2025. In her petition, the debtor claimed a \$30,000 exemption in real property under North Carolina General Statutes § 1C-1601(a)(1), which provides that "[e]ach Individual, resident of this State, who is a debtor is entitled to retain free of the claims of creditors" certain exempt property, including the debtor's "aggregate interest, not to exceed thirty-five thousand dollars (\$35,000) in value, in real or personal property that the debtor or a dependent of the debtor uses as

a residence.” This statute describes North Carolina’s homestead exemption, which applies in this bankruptcy case as a result of the opt-out provisions of 11 U.S.C. § 522(b)(2) and North Carolina General Statutes § 1C-1601(f).

Ms. Ross-DeSantos claims the homestead exemption in a residence located at 1189 Kilcoy Chesney Corentyne Berbice, Guyana County, 27526 in the country of Guyana (the Property), which she owns with her non-filing spouse. Mr. Ross-DeSantos resides in the Property with the debtor’s mother and her nephew, whom she described in testimony as a minor child who has lived with her family since birth. The debtor’s schedules indicate that the Property has a fair market value of \$55,865.74, that she holds her interest as a tenant in common, and that the Property is subject to a lien in the amount of \$68,525 in favor of the Republic Bank of Guyana.¹ D.E. 1 at 10, 16.

The trustee opposes Ms. Ross-DeSantos’s claimed exemption on two bases. First, Ms. Ross-DeSantos did not live in the Property at the time the petition was filed, and he contends that her spouse, who did reside there at the time and continues to do so, does not qualify as her dependent. Second, the trustee maintains that even if Mr. Ross-DeSantos is a dependent and the exemption is otherwise properly claimed, § 1C-1601(a)(1) should not be given extraterritorial application to property outside North Carolina. Ms. Ross-DeSantos notes that North Carolina’s exemption statute lacks any language limiting its application to property within the state and represents that she has found no precedent requiring the interpretation advanced by the trustee. In this context, she contends, the court should prioritize North Carolina’s robust policy of construing

¹ At the hearing, the trustee indicated that it is unclear whether the debt owed to the Republic Bank of Guyana is secured by a perfected lien. If it is, then there is most likely no equity for the estate regardless of the claimed exemption, but if it is not, then the requested disallowance of the objection would result in value for the estate. Whether that value could be realized is also unknown, but the trustee in his judgment first sought a determination of the exemption issue before pursuing the other questions.

exemptions liberally and in favor of a debtor. For the reasons that follow, the court agrees with Ms. Ross-DeSantos on both counts.

DISCUSSION

The court turns first to the fundamentals of the trustee's objection, including the applicable burden of proof. "Unless a party in interest objects, the property claimed as exempt . . . is exempt." 11 U.S.C. § 522(l). Here, the trustee's objection is timely, and under Federal Rule of Bankruptcy Procedure 4003(c), "the objecting party has the burden of proving [by a preponderance of the evidence] that the exemptions are not properly claimed." *In re Gregory*, 487 B.R. 444, 447 (Bankr. E.D.N.C. 2013) (quoting *In re Britt*, 368 B.R. 471, 474 (Bankr. E.D.N.C. 2007)).

There are competing analytical approaches² to the inquiry of whether that burden shifts in some way; however, with respect to both the burden of production and that of persuasion, the apparently predominant view among courts construing North Carolina's exemptions is set forth in *In re Quevedo*, wherein Judge James concluded that under Rule 4003(c), even after applying a burden shifting analysis, it still is ultimately "the Trustee [who] bears the burden of proving the exemption is wrongfully claimed by a preponderance of the evidence." *Quevedo*, Case No. 23-80195, 2024 WL 3754884, at *4 (Bankr. M.D.N.C. Aug. 9, 2024) (citing *In re McLain*,

² These analyses recently were reviewed by the United States Bankruptcy Court for the District of Maryland in *In re Walker-Lightfoot*, 660 B.R. 118 (Bankr. D. Md. 2024). That court ultimately applied a shifting approach to the burden of production after observing that

[b]ankruptcy courts have developed at least three different approaches to the analysis of objections to claims of exemption under Bankruptcy Rule 4003. First, some courts hold that the burden of proof (both the burden of production and persuasion) rest fully on the objecting party. Second, other courts have found that Bankruptcy Rule 4003(c) offends the Rules Enabling Act, and the burden of proof provided therein is invalid. Last, some courts posit that [the rule] creates a burden shifting framework, in which an objector need only make an initial showing that an exemption is not properly claimed, after which the burden shifts to the debtor to establish that the property was properly exempted.

Id. at 123.

Case No. 19-51262, 2022 WL 880239, at *2 (Bankr. M.D.N.C. Feb. 9, 2022)). The *Quevedo* court acknowledged that a burden-shifting analysis applies under the statute but emphasized that “[e]ven with this burden-shifting framework,” the trustee “retains the burden of *persuasion*.” *Id.* at *4 (emphasis added) (citing *Walker-Lightfoot*, 660 B.R. 118, and its survey of varying approaches); *see also In re Gonzales*, No. 13-01001-8-JRL, 2013 WL 3185534, at *2 (Bankr. E.D.N.C. June 24, 2013), *aff’d*, No. 5:13-CV-00545-BR, 2014 WL 1056985 (E.D.N.C. Mar. 13, 2014) (objecting party bears burden of proving by a preponderance of evidence that claim of exemption is improper).

Finally, it is well established that North Carolina law requires that exemptions be liberally construed in favor of the debtor. *See, e.g., Summerlin v Turnage*, 648 B.R. 793, 797 (W.D.N.C. 2023) (“North Carolina law construes exemptions liberally with an eye in favor of exemption.”); *Taylor v. Caillaud*, Case No. 15-CV-00206, 2015 WL 7738391, at *4 (W.D.N.C. Dec. 1, 2015) (“The North Carolina Supreme Court has cautioned that ‘provisions which restrict a debtor’s access to his exemptions should be construed narrowly.’ Thus, debtors have long been ‘allowed a great deal of flexibility in claiming and maintaining their exemptions’ under the state’s law.” (citations omitted)).

I. Dependency of Mr. Ross-DeSantos

It is undisputed that Ms. Ross-DeSantos’s spouse resides in the Property, but the trustee contends it is less clear that Mr. Ross-DeSantos is the debtor’s “dependent.” The trustee also questions whether Mr. Ross-DeSantos intends to remain in the residence. At the hearing, Ms. Ross-DeSantos testified that she and her husband purchased the land on which their home is located from the government of Guyana in 2013 or 2014, then obtained a series of government-backed bank loans to construct the home, as is the protocol in that area. They began construction of their

home in 2015, obtained an additional loan in 2020 due to flooding, and refinanced in 2021 to complete the cabinetry.

Ms. Ross-DeSantos moved to North Carolina in June 2022 to teach in Wake County Public Schools on a J-1 visa, which permits employment for three years and can be extended for an additional two.³ Her spouse and children moved to Wake County with her as her J-2 dependents, but Mr. Ross-DeSantos subsequently was compelled to return to Guyana for health reasons. Since that time, and at present, Mr. Ross-DeSantos's health precludes him from working; he is not earning an income. Ms. Ross-DeSantos testified that she sends "some funds" back to Guyana "when she can," and that her mother, who resides in the Property with Mr. Ross-DeSantos and the nephew, is paying the mortgage using her pension funds.

Section 1C-1601(a) does not include a definition of "dependent," but the North Carolina statutes do include one elsewhere, defining a dependent spouse as "a spouse, whether husband or wife, who is actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse." N.C. Gen. Stat. § 50-16.1A(2); *see also In re Preston*, 428 B.R. 340, 343 (Bankr. W.D.N.C. 2009) (debtor's estranged husband not a dependent where parties separated well before petition date and had separate finances); *In re Suggs*, Case No. 19-00232-5-SWH, 2019 WL 3365876 (Bankr. E.D.N.C. July 25, 2019). In this district, in *Suggs*, both the trustee and the debtor's ex-wife objected to the chapter 13 debtor's claim of a homestead exemption in property he still owned jointly with his ex-wife, who resided there. The debtor argued that because the parties' separation agreement stipulated that Ms. Suggs was a dependent spouse and she still lived in the residence, he could

³ Ms. Ross-DeSantos testified that her additional two years of visa eligibility should start in July 2025, and further that if she ultimately is denied citizenship when that extension expires in 2027, she and her children would return to Guyana and would resume residence in the Property.

claim the exemption on grounds that his dependent spouse resided there on the petition date. The court disagreed and held that regardless of any legal definition in the parties' separation agreement, "the inquiry under the homestead exemption remains the same: the court must look to whether *actual* dependency on the debtor existed on the petition date." 2019 WL 3365876, at *3 (emphasis added). The *Suggs* court found it clear that as of the petition date, Ms. Suggs had been independently supporting herself and was not "actually substantially dependent" on the debtor: she was employed, had made all payments on the property since refinancing it in 2010, and had received no monetary support from the debtor for approximately four years prior to the petition date. *Id.*

In this case, the facts before the court are sparse. The evidence offered during the hearing unfortunately did not address the full nature and extent of Mr. Ross-DeSantos's other costs of living, or how those additional costs are paid, beyond Ms. Ross-DeSantos's uncontradicted testimony that she sends funds as she is able and that her mother is currently paying the mortgage. Any family's plans can go awry, and the health of a family member is one of the most prevalent reasons for that. Here, the debtor's family appears to be adjusting to Mr. Ross-DeSantos's health condition by making changes that are necessary and presumably quite difficult. That Ms. Ross-DeSantos continues to support both her spouse and her extended family household (her mother and her nephew) by facilitating an arrangement wherein she sends some funds and her mother pays the Property mortgage using pension funds does not fall short of constituting "support" for Mr. Ross-DeSantos; rather, it appears to be the most practical way this debtor *could* support and maintain her homestead for the benefit of her entire family unit, including Mr. Ross-DeSantos. Based on those facts, the court finds that the trustee has not met his burden of persuasion to show that the exemption is improperly claimed.

Further, with respect to the trustee's concern about whether Mr. Ross-DeSantos intended and intends to remain at the Property, that issue is somewhat beside the point. The statute has been interpreted to require use of the property as a residence *on the petition date*. The court is persuaded that Mr. Ross-DeSantos had a current intent to continue his use of the Property at the time the petition was filed; based on Ms. Ross-DeSantos's testimony, there are no indications at this time that his intent has changed. The fact that Mr. Ross-DeSantos had – and likely still has – hopes of achieving the level of health necessary to rejoin his family in North Carolina does not negate that finding. Ultimately, there is no dispute that Mr. Ross-DeSantos resided in the Property as of the petition date, and the court finds that he was the debtor's dependent at that time. "An inquiry that looks past or before the petition date to determine dependency does not promote the purposes of the homestead exemption;" instead, "[a]ctual dependency on the petition date is the appropriate inquiry." *Suggs*, 2019 WL 3365876, at *3.⁴

The objectives of the homestead exemption are broad. "The purpose of the North Carolina homestead exemption is 'to secure debtors and their families the shelter of a homestead.'" *Id.* (quoting *In re Regenhardt*, Case No. 17-1225-5-JNC, 2017 WL 3701217, at *3 (Bankr. E.D.N.C. Aug. 24, 2017); *see also In re Cook*, Case No. 02-11321, 2003 WL 21790296, at *2 (Bankr. W.D.N.C. Mar. 4, 2023)). Here, that purpose is best achieved by approving Ms. Ross-DeSantos's claim of exemption by acknowledging the home is used by one or more of her dependents.

II. Extraterritorial Application

The court turns next to the trustee's second argument, which is that the North Carolina homestead exemption may not be applied to property located outside the state. The trustee points

⁴ Because the court grounds its analysis in Mr. Ross-DeSantos's residency in the Property, the court does not reach the trustee's arguments pertaining to Ms. Ross-DeSantos's intent, or lack thereof, to return to the Property.

out that the statute “contains no language allowing its application to real property outside of North Carolina” and observes that in other states, “[g]enerally, state exemptions are territorial unless expressly stated otherwise.” D.E. 35 at 3. The trustee contends that in North Carolina, “the use of the phrase ‘uses as a residence’ implies current residential occupancy or intent to return, and North Carolina courts require both ownership and use to sustain the exemption.” *Id.* On this latter point, the court notes again that while the statute specifically requires that *the debtor* be resident in this state, it extends the exemption to property used as a residence by the debtor *or a dependent of the debtor* without any corresponding North Carolina residency requirement imposed upon that debtor’s dependent or imposed in connection with the location of the homestead.

“Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must construe the statute using its plain meaning.” *Burgess v. Your House of Raleigh, Inc.*, 326 N.C. 205, 209, 388 S.E.2d 134, 136 (1990) (citing *State ex rel. Utils. Comm’n. v. Edmisten*, 291 N.C. 451, 465, 232 S.E.2d 184, 192 (1977)). Here, where the statute includes geographically restrictive language applicable to the *debtor*, yet omits that language with respect to the debtor’s dependent or the property, this court sees no solid ground on which to presume or infer such a requirement on the residence itself.

There is a split in authority among other courts addressing “whether a state law residential exemption can be given extraterritorial effect to claim a property in another state.” *See, e.g., In re Crawford*, 511 B.R. 385, 399 (Bankr. W.D.N.C. 2024), *citing In re Adams*, 375 B.R. 532 (Bankr. W.D. Mo. 2007) (finding that Florida homestead exemption may not be given extraterritorial effect), and *In re Camp*, 396 B.R. 194 (Bankr. W.D. Tex. 2008) (finding that Florida exemption could be given extraterritorial effect). In North Carolina’s bankruptcy courts, however, the question of whether an exemption can be applied extraterritorially appears to ruffle few feathers.

In the *Crawford* case, the court began its analysis by noting what was *not* in contention: “First, both sides assume that the North Carolina residential exemption statute may be given extraterritorial effect, such that Crawford may claim an exemption in property located in another state.” *Crawford*, 511 B.R. at 399. And in *In re Davila*, Case No. 13-03246-8-RDD, 2014 WL 335393 (Bankr E.D.N.C. Jan. 30, 2014), the chapter 7 trustee objected to the debtor’s claim of a homestead exemption in property located in Queretaro, Mexico on grounds that the debtor did not use the property as a residence on the petition date: The fact of the property’s location outside the state of North Carolina was not even at issue, and instead, the focus was on the nature and extent of the debtor’s residency. The *Davila* court ultimately allowed the exemption, holding that while the debtor was not physically in residence in Mexico when she filed the petition, the property still qualified as property the debtor “uses” as her residence. *Id.* at *2.

Here, where the parties agree that there is no clear indication from North Carolina state courts as to whether the statute may or may not have extraterritorial effect, and where the statute itself is silent on that issue while being explicit in its requirement that *the debtor* be resident in this state, the court will permit the debtor’s claim of exemption. Ultimately, it is the in-state debtor who is claiming the exemption, not the out-of-state dependent, and the fact that the homestead itself is outside this state in no way diminishes the usual operation and effect of the exemption.⁵

CONCLUSION

For the foregoing reasons, the trustee’s objection to Ms. Ross-DeSantos’s claim of exemption is OVERRULED, and the exemption is ALLOWED.

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⁵ Most cases addressing questions of extraterritorial application of a homestead exemption arise where the debtor has relocated shortly before filing, putting the domicile requirements of 11 U.S.C. § 522(c)(3)(A), and therefore the applicable exemption law, in play. In those cases, the question before the court went to whether a debtor in one state could use the homestead exemption of another state. That is not the issue before this court.