

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 30, 2024*
Decided October 31, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1400

In re JERROLD BRUCE CARRINGTON,
Debtor-Appellee,

Appeal from the United States District
Court for the Northern District of
Indiana, Hammond Division.

Appeal of ALBERT DAVIS and A. F.
DAVIS LAW,
Creditors-Appellants.

No. 2:23cv129-PPS

Philip P. Simon,
Judge.

ORDER

A bankruptcy court ruled that a creditor could not enforce its judgment lien against the debtor, Jerrold Carrington, on a home that Carrington owned with his spouse as tenants by the entirety. It reasoned that Indiana law exempts from the bankruptcy estate any interest held as a tenant by the entirety, unless—as is not the case

* Debtor-appellee Jerrold Bruce Carrington has notified us that he is not filing a brief in this appeal. After examining the creditors'-appellants' brief and the record, we have concluded that the case is appropriate for summary disposition. FED. R. APP. P. 34(a)(2)(C).

here—the spouses are jointly liable for the debt. The district court affirmed. Because the creditor (the appellant here) cannot reach Carrington’s exempted interest, we affirm.

This dispute arose after two creditors (Albert Davis and his law firm; together we call them Davis) obtained a judgment against Carrington in California. Carrington failed to pay that judgment, and Davis recorded it in Lake County, Indiana, against Carrington’s interest in his marital home. Four years later, in 2017, Carrington filed for bankruptcy. Davis filed a creditor’s claim in the bankruptcy court, listing the claim as secured by the judgment lien recorded in Indiana against the marital home.

Carrington objected to the claim with two arguments. First, he asserted that the lien was unsecured because the property was held in a tenancy by the entirety, and Davis had recorded the lien against only Carrington. Under common law, “the marriage” held title to that property, and one spouse cannot individually encumber such property. *See, e.g., United States v. Craft*, 535 U.S. 274, 279–281 (2002). Without recording the lien against both spouses, Carrington continued, Davis could not encumber the property based on Carrington’s debt alone. (Carrington did not say whether Davis even could have recorded the lien against both spouses, given that Davis sued Carrington alone.) Moreover, Carrington added, he had only a contingent future interest in the home that vested only if his wife died or divorced him, and a creditor cannot secure a lien on a future interest. Second, he argued that, even if the lien were secured against his interest in the home, he could avoid it under Indiana’s bankruptcy exemption law, which exempts “any interest” held as a tenant by the entirety.

These two arguments have been contested vigorously. The bankruptcy court accepted Carrington’s first argument that the claim was unsecured because the lien had not been recorded against both spouses and a creditor cannot enforce a lien on a future contingent interest. Davis appealed, 28 U.S.C. § 158(a)(1), and District Judge Brady reversed. She reasoned that by recording the lien, Davis secured it against Carrington’s future interest; thus, the bankruptcy court had to address Carrington’s second argument about Indiana’s exemption statute. On remand, Carrington moved to avoid the lien under Indiana Code § 34-55-10-2(c)(5). This provision exempts from the bankruptcy estate “any interest” a debtor has in real estate held as a tenant by the entirety, except debts for which the debtor and the debtor’s spouse are jointly liable. (Many states provide such exemptions to protect both spouses, debtor and non-debtor, from losing their home during bankruptcy proceedings, except when both spouses are jointly liable for the debt. *See, e.g., Matter of Hunter*, 122 B.R. 349, 352–54 (Bankr. N.D. Ind. 1990).) The bankruptcy court granted Carrington’s motion. Davis

again appealed to the district court, and this time District Judge Simon affirmed. He disagreed with Judge Brady's rejection of Carrington's first argument that the lien was unsecured. Regardless, he agreed with the bankruptcy court's ruling that even if secured, Carrington could avoid the lien based on the exemption under § 34-55-10-2(c)(5).

On appeal, Davis maintains that, first, he secured a judicial lien on Carrington's contingent future interest in the marital property and, second, the lien is not exempt from the bankruptcy estate. On the first point, Davis insists that Judge Simon abused his discretion under the law-of-the-case doctrine by deciding, in reviewing Judge Brady's ruling, that the lien was unsecured.

We need not decide whether Judge Simon abused his discretion because, under Indiana's exemption statute, Davis cannot prevail. Relying on *In re Marino*, 27 B.R. 282 (Bankr. N.D. Ind. 1983), Davis contends that Carrington's interest is not exempt from the bankruptcy estate. *Marino* rejected the argument that a bankruptcy debtor may avoid a judicial lien against a tenancy by the entirety when, as here, the debtor's spouse has not jointly filed for bankruptcy. *See id.* at 283. But courts have largely disregarded this viewpoint ever since we decided *Matter of Paepflow*, 972 F.2d 730, 736–37 (7th Cir. 1992). In *Paepflow*, we clarified that the Indiana exemption statute provides “a blanket exemption for entirety property in the bankruptcy context,” *id.* at 737, protecting such property from creditors (like Davis) who hold debts against just one spouse as well as creditors to whom both spouses are jointly indebted. Thus, even if the lien is secured and regardless of the absence of Carrington's spouse from bankruptcy, the bankruptcy court properly avoided the lien under § 34-55-10-2(c)(5).

Davis replies that he is pursuing only Carrington's individual future interest in the property, not the “whole of that property itself.” But *Paepflow* rejects the notion that Indiana's exemption law does not reach a spouse's individual interest in entirety property: “Under current Indiana law, a debtor in bankruptcy has a sufficient individual interest in entirety property to bring that property into the bankruptcy estate.” *Paepflow*, 972 F.2d at 736–37. With the “entirety property” in the bankruptcy estate, Carrington's individual interest in it is also exempt from the estate. *Id.* at 737; IND. CODE § 34-55-10-2(c)(5) (2021).

AFFIRMED