

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
ALLEN FISHER,) CASE NO. BK94-80908
)
DEBTOR) CH. 7

ORDER

Background

The debtor, Allen D. Fisher, filed for Chapter 7 bankruptcy on June 7, 1994. The debtor listed "Tractor & Misc. Equipment" as personal property (the equipment), but declared the equipment as exempt under the Nebraska Revised Statutes. Filing no. 10, Schedule B & Schedule C.

The Chapter 7 trustee objected to the exemption in the property claimed by the debtors. Filing no. 17. The debtor resisted the trustee's objection. Filing no. 23.

Findings of Fact

Before this bankruptcy case, the debtor operated a farm in Scottsbluff County, Nebraska. Exhibit 2. The debtor was involved with custom cattle feeding up until 1988, but the debtor's main operation was raising crops. In 1992, the debtor's crop land was sold at a foreclosure sale, and the debtor stopped farming. The debtor sold a few pieces of his farm equipment at this time, but he retained the equipment at issue in this case for the purpose of someday returning to farming.

In 1992, the debtor began working erecting irrigation equipment, but after he was laid off in 1994, he began working at Sargeant Irrigation, where he installs and maintains irrigation equipment. The debtor also contracted snow removal jobs for certain businesses in the Scottsbluff/Gering area during 1992-93. The debtor used some of the equipment to complete snow removal jobs, and he intends to continue performing snow removal jobs this winter. The debtor also uses the equipment to perform custom work for other farmers and ranchers, but he has not had the time, due to his regular job with Sargeant Irrigation, to perform this task very often.

The debtor's schedules do not list any income that is derived from performing custom farming or snow removal. Exhibit 10, Statement of Financial Affairs. The debtor testified at the

Section 341 hearing that he does not use the tractor or the other equipment for his livelihood and that most of the equipment was "pretty well run down and stuff." Exhibit 1, Transcript § 341: July 15, 94, p. 10-11. In response the trustee's request to enumerate the types of equipment that the debtor is claiming as exempt, the debtor filed a Second Amendment to Schedules that states that the equipment claimed as exempt is as follows: 706 International Harvester tractor (not running); John Deere mower; bean cutter, manure spreader, bean planter, blade and bar. Filing no. 22. In the amended Schedule C, the debtor values the equipment at and claims an exemption in the amount of \$1,215 and he states that the equipment is jointly owned with his wife. Filing no. 22.

Decision and Discussion

The debtor's claim of exemption is denied without prejudice. The exemption claimed by the debtor is pursuant to Section 25-1556 of the Nebraska Revised Statutes, which states:

No property hereinafter mentioned shall be liable to attachment, execution or sale on any final process issued from any court in this state, against any person being a resident of this state: ... (2) ... all equipment or tools used by the debtor or his family for their own support not exceeding fifteen hundred dollars in value.

NEB. REV. STAT. § 25-1556 (Reissue 1989).

In Nebraska, exemptions are construed liberally in favor of the person claiming the exemption. In re Vass, Neb. Bkr. 94:501, 503 (D. Neb. 1994). Even though the primary purpose of exempting property is to protect the debtor from impoverishment, it is recognized that some property exemptions are intended to enable the debtor to rehabilitate himself or herself financially. Id. (quoting In re Welborne, 63 B.R. 23, 26 (Bankr. D. Neb. 1986)). For this reason, property that is not used in or essential to the debtor's principal occupation, but is used before and after the filing the bankruptcy petition to help support the debtor and his family has been found to be exempt. In re Vass, Neb. Bkr. 94: at 503. "The fact that the property was not being used on the date of the petition is not conclusive as to whether the property is exempt as a tool of the trade under Nebraska law." In re Vass, Neb. Bkr. 94:499, 499-500 (Bankr. D. Neb. 1994), aff'd, Neb. Bkr. 94:501.

The debtor has not demonstrated that the equipment is being used to contribute to the support of his family. The debtor's schedules do not list any income derived from the use of the equipment. See Filing no. 10. Failure to disclose the income from the use of such farm machinery is not, alone, enough to preclude the debtor from receiving the exemption. See In re Vass, Neb. Bkr. 94: at 500. However, at the Section 341 hearing, the debtor testified that the equipment was not being used to support the

debtor's livelihood. Therefore, as evidence in support of the exempt status of the equipment, the debtor should have submitted any evidence that his current situation has changed from that which he previously represented to the trustee at the Section 341 meeting.

The debtor does not state which piece of equipment is being used for the snow removal. Since the debtor lists the tractor as not operating, the Court questions whether any of the equipment is truly suitable for this job, and therefore, questions whether any of the equipment may be used for snow removal. The same problem exists for the debtor's statement that he performs custom work. Bean cutters and manure spreaders appear more suitable for custom farm work than for snow removal, but the debtor should have specified which equipment is necessary for which task.

The debtor should have made a stronger showing that he requires this equipment to support his family. For example, if the tractor does not run, what use is it to the support of the family? The debtor should show that there actually is some income from the use of some of this equipment and that such income is being used to contribute to the family's support. Even though the tool of the trade exemption may be used to help debtor's rehabilitation, the exemption may not be used to keep assets from the creditors until the debtor has enough money to return to farming at some point in the future. There must be some ongoing necessary use for the equipment over the course of the bankruptcy.

The debtor's motion is denied without prejudice. The debtor has not submitted sufficient evidence for the Court to find that the equipment is being used for the debtor's family's support as required pursuant to Section 25-1556(2).

DATED: October 27, 1994

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

*KELLY, PHILIP	8-308-635-1387
WOOD, W. ERIC	392-1011

Copies mailed by the Court to:

United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.