

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
MICHAEL & KRISTINA GRACE,) CASE NO. BK03-80152
)
Debtor(s).) CH. 7

MEMORANDUM

Hearing was held in Omaha, Nebraska, on September 29, 2003, on the Chapter 7 trustee's motion to compel and motion for turnover of property (Fil. #21) and the debtors' objection thereto (Fil. #22). John Hahn appeared for the debtors, and Thomas Stalnaker appeared as the Chapter 7 trustee. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(E).

The trustee seeks turnover of the debtors' 2002 federal and state income tax refunds totaling \$8,064. The debtors object, asserting that at least a portion of the refunds are exempt under Neb. Rev. Stat. § 25-1558, which limits the amount of disposable earnings subject to garnishment.

The Eighth Circuit Court of Appeals and the United States Supreme Court have made clear that tax refunds are not "earnings" and are not exempt from creditors of the bankruptcy estate. The Supreme Court addressed the issue in Kokoszka v. Belford, 417 U.S. 642 (1974), ruling that "earnings" as defined in the Consumer Credit Protection Act did not include tax refunds. The court looked to congressional intent in passing that Act, noting that

[t]here is every indication that Congress, in an effort to avoid the necessity of bankruptcy, sought to regulate garnishment in its usual sense as a levy on periodic payments of compensation needed to support the wage earner and his family on a week-to-week, month-to-month basis. There is no indication, however, that Congress intended drastically to alter the delicate balance of a debtor's protections and obligations during the bankruptcy procedure. We

therefore agree with the Court of Appeals that the Consumer Credit Protection Act does not restrict the right of the trustee to treat the income tax refund as property of the bankrupt's estate.

417 U.S. at 651-52 (footnote omitted).

The Eighth Circuit followed this authority in holding that a debtor's tax refunds were not earnings and could not be exempted under the Missouri garnishment statute. Wallerstedt v. Sosne (In re Wallerstedt), 930 F.2d 630, 632 (8th Cir. 1991). The relevant portions of the Missouri and Nebraska wage exemption statutes are essentially the same,¹ so the reasoning

¹The Missouri statute discussed in Wallerstedt exempts:

[t]he maximum part of the aggregate earnings of any individual for any workweek, after the deduction from those earnings of any amounts required by law to be withheld, which is subjected to garnishment may not exceed (a) twenty-five percentum, or (b) the amount by which his aggregate earnings for that week, after the deduction from those earnings of any amounts required to be withheld by law, exceed thirty times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable, or (c) if the employee is the head of a family and a resident of this state, ten percentum, whichever is less. . . .

Mo. Rev. Stat. § 525.030(2).

The Nebraska statute exempts:

the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment shall not exceed the lesser of the following amounts:

- (a) Twenty-five percent of his or her disposable earnings for that week;
- (b) The amount by which his or her disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time earnings are payable; or

(continued...)

of Wallerstedt applies in this case as well. Income tax refunds are not disposable earnings and are not subject to exemption under the Nebraska garnishment statute.

Separate order granting the trustee's motion will be entered.

DATED: October 6, 2003

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

John Hahn
*Thomas Stalnaker
United States Trustee

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

¹(...continued)

(c) Fifteen percent of his or her disposable earnings for that week, if the individual is a head of a family.

Neb. Rev. Stat. § 25-1558(1).

"Disposable earnings" means "that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." Neb. Rev. Stat. § 25-1558(4)(b).

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ORDER

Hearing was held in Omaha, Nebraska, on September 29, 2003, on the Chapter 7 trustee's motion to compel and motion for turnover of property (Fil. #21) and the debtors' objection thereto (Fil. #22). John Hahn appeared for the debtors, and Thomas Stalnaker appeared as the Chapter 7 trustee.

IT IS ORDERED the Chapter 7 trustee's motion to compel and motion for turnover of property (Fil. #21) is granted. See Memorandum entered this date.

DATED: October 6, 2003

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
John Hahn
*Thomas Stalnaker
United States Trustee

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