

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
MICHAEL & CATHY SUE JENNINGS,) CASE NO. BK96-81638
)
DEBTOR) CH. 7

MEMORANDUM

Hearing was held on November 14, 1996, on an Objection to Exemptions filed by Philip Kelly, Trustee. Appearances: Philip Kelly as trustee and Bert Blackwell as attorney for debtors. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A).

Background

The debtors filed their petition for relief under Chapter 7 on July 29, 1996. On their Schedule C, the debtors have claimed the equity in a 1994 Dodge Ram pickup truck and the equity in a 1993 Dodge Dakota pickup as exempt under Neb. Rev. Stat. § 25-1556 (Reissue 1995). The trustee filed an objection to this claim of exemption on September 30, 1996, and the debtor filed a resistance to the objection.

Decision and Discussion

The Nebraska exemption statute in question provides as follows:

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 1995). The debtors have made two separate arguments to support the application of this exemption statute to their trucks.

1. Transportation to Work

First, the debtors maintain that they may claim their trucks as exempt because they use the vehicles to commute to work. According to the debtor's schedules, Michael Jennings is employed by Monroe Auto Equipment Co. in Cozad, Nebraska and Cathy Jennings is employed at Elwood Care Center in Elwood, Nebraska. There is no evidence which shows that the duties of either job require an individual to possess a pickup truck. The debtors, however, maintain that use of a car or truck solely for commuting purposes is enough to satisfy the requirements of the statute.

No appellate court in Nebraska has decided a case in which this type of exemption claim was at issue. However, other courts have considered the issue of whether a car used for commuting purposes qualifies as a "tool of the trade" for lien avoidance purposes under Section 522 of the Bankruptcy Code, and the vast majority of courts have held that cars or trucks used solely for commuting purposes are not exempt as a "tool of the trade." Johnston v. Barney, 842 F.2d 1221 (10th Cir. 1988) (Wyoming exemption statute); Monticello Arcade Ltd. Partnership v. Lyall (In re Lyall), 191 B.R. 78 (E.D. Va. 1996) (Virginia exemption statute); In re Rawn, 199 B.R. 733 (Bankr. E.D. Ca. 1996) (California exemption statute); In re Montano, 98 B.R. 390 (Bankr. N.D. Ill. 1989) (Illinois exemption statute); In re Horton, 76 B.R. 166 (Bankr. D. Mont. 1987) (Montana exemption statute); In re Parker, 40 B.R. 490 (Bankr. N.D. Ala. 1984) (11 U.S.C. § 522(f)(2)(B)); In re Rice, 35 B.R. 431 (Bankr. D. Kan. 1982) (Kansas exemption statute); In re Maricle, 25 B.R. 36 (Bankr. N.D. Tex. 1982) (11 U.S.C. § 522(f)(2)(B)); In re Langley, 21 B.R. 772 (Bankr. D. Me. 1982) (Maine exemption statute); First Hardin Nat'l Bank v. Damron (In re Damron), 5 B.R. 357 (Bankr. W.D. Ky. 1980) (11 U.S.C. § 522(f)(2)(B)); Credithrift of America, Inc. v. Meyers (In re Meyers), 2 B.R. 603 (Bankr. E.D. Mich. 1980) (11 U.S.C. § 522(d)(6)); Thorpe Elec. Supply, Inc. v. Deitz, 429 N.Y.S.2d 386, 104 Misc. 2d 994 (Albany Co. Ct. 1980) (New York exemption statute).

One notable exception to the majority of cases is In re Spykstra, 86 B.R. 656 (Bankr. D. Colo. 1988). In that case, the court noted that a vehicle that was used solely for transportation to and from work was not a "tool of the trade" under Section 522(f), but it did qualify as exempt under the Colorado exemption statutes. Id. at 659. The Colorado exemption statute in question provided that "one or more motor vehicles kept and used by any debtor for the purpose of carrying on any gainful occupation . . ." was exempt.

It is true that the Nebraska statute is not specifically a "tool of the trade" statute, and that the exemption statutes are to be liberally construed in favor of the person claiming the exemption. In re Welborne, 63 B.R. 23, 26 (Bankr. D. Neb. 1986). However, unlike the Colorado statute, motor vehicles are not specifically mentioned in the Nebraska exemption statute in question.

It is likely that most people in this state who have a vehicle and are employed outside of their home use their vehicle to commute to work. It does not appear from the plain meaning of Section 25-1556 that the Nebraska legislature intended that vehicles used for such purposes are included in the exemption coverage of Section 25-1556. If the Nebraska legislature had wished to provide a general exemption for motor vehicles, or for vehicles used for transportation to and from places of employment, it certainly could have done so. However, despite the fact that numerous other states have provided a general exemption for motor vehicles, Nebraska has not.

There is no hint in the statutory language or the legislative history that vehicles used to transport persons to work are exempt under Section 25-1556. Therefore, the debtors may not claim an exemption in their two pickup trucks solely because the debtors use the trucks to commute to work.

2. Part Time Employment

The debtors' second argument is that the trucks may be claimed as exempt because Michael Jennings uses the trucks to perform various services for his neighbor for which the debtors receive payment in kind.

The evidence is that, on a regular basis, the debtors have used one or the other pickup to provide services to neighbors and in return, received, in kind, services with a value of at least \$400 per year.

The Nebraska Supreme Court has not addressed the issue, but Judge Cambridge of the U.S. District Court for the District of Nebraska touched on this question in Vass v. Security Pacific Fin. Services, Neb. Bkr. 94:501 (D. Neb. 1994). In that case, a debtor claimed a stock trailer was exempt under Section 25-1556 and the secured creditor objected. The bankruptcy judge held that the stock trailer was exempt, see In re Vass, Neb. Bkr. 94:499 (Bankr. D. Neb. 1994). On appeal, Judge Cambridge affirmed the holding that the trailer was exempt. Although the trailer was used sparingly, and although it was not being used on

the date the petition was filed, the court found that the exemption statute applied.

Section 25-1556 does not limit the exemptions to equipment or tools used in the primary occupation listed on the bankruptcy schedules. There is evidence that the trailer is used to help support the debtors' family. Although the trailer was not used in the debtors' principal occupation as listed on the schedule, he regularly used the trailer before and after filing the petition.

Security Pacific, Neb. Bkr. 94: at 503.

There is not much authority from other jurisdictions on the issue, but what little there is generally holds that a debtor may claim as exempt equipment used in part-time or secondary occupations. See, In re Henry, 183 B.R. 748 (Bankr. N.D. Tex. 1995); In re Smith, 78 B.R. 922 (Bankr. S.D. Iowa 1987); In re Myers, 56 B.R. 423, 426 (Bankr. S.D. Iowa 1985) ("The only requirement, in addition to working at the trade or profession, is that the work contribute to the debtor's support."); In re Weinbrenner, 53 B.R. 571, 577 (W.D. Wis. 1985) ("[A]llowing a debtor to claim tools of a trade for every bona fide trade in which he proves both intent and ability to engage is the best approach to ensure equal treatment of debtors.") But see, In re Samuel, 36 B.R. 312, 314 (E.D. Va. 1984) ("For purposes of the exemption statutes a debtor may claim occupationally-related exemptions . . . only in his or her principal occupation. A debtor may claim only one principal occupation.")

Accordingly, a truck used to perform various chores for a neighbor in return for payment in kind constitutes equipment used by the debtor for his or her support and is exempt under Section 25-1556. However, it is apparent from the evidence that only one truck is required to perform the services (both trucks may have been used in performing the services, but only one truck is necessary per occasion). Therefore, the debtors may claim only one of the two trucks listed as exempt.

The trustee's objection is sustained in part, and in part overruled. The equity in one truck, not to exceed the statutory dollar limit, to be chosen by the debtors, is exempt under Section 25-1556. The other truck should be turned over to the trustee, or purchased from the trustee, as soon as possible.

Separate journal entry to be filed.

DATED: December 12, 1996

BY THE COURT:

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

Copies faxed by the Court to:

BLACKWELL, BERT 308-345-4357

KELLY, PHILIP 308-635-1387

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.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
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MICHAEL & CATHY SUE JENNINGS,)	CASE NO. BK96-81638
<u>DEBTOR(S)</u>)	CH. 7
)	Filing No.
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	DATE: December 12, 1996
<u>Defendant(s)</u>)	HEARING DATE: November
)	14, 1996

Before a United States Bankruptcy Judge for the District of Nebraska regarding Objection to Exemptions.

APPEARANCES

Philip Kelly, Trustee
Bert Blackwell, Attorney for debtors

IT IS ORDERED:

The trustee's objection is sustained in part, and in part overruled. The equity in one truck, not to exceed the statutory dollar limit, to be chosen by the debtors, is exempt under Section 25-1556. The other truck should be turned over to the trustee, or purchased from the trustee, as soon as possible. See Memorandum entered this date.

BY THE COURT:

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

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