

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF: )  
 )  
SHEILA JUD, ) CASE NO. BK98-83274  
 )  
DEBTOR. ) CH. 7

MEMORANDUM

Hearing was held on April 15, 1999, on Objection to debtor's Claim of Exemptions and Notice of Intent to Claim Certain Assets filed by Trustee and resistance by debtor. Appearances: Thomas Stalnaker as Trustee and Casey Quinn for the debtor. 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)(B) and (E).

Background

The Chapter 7 trustee has objected to the claim of exemption of a diamond ring which the debtor has claimed as exempt as either "wearing apparel" under Neb. Rev. Stat. § 25-1556(2) or an "immediate personal possession" under Neb. Rev. Stat. § 25-1556(1). In addition, the trustee has filed a notice of intent to claim as property of the estate that portion of the debtor's income tax refund from 1998 which represents the number of days in the calendar year 1998 which occurred prior to the filing of the bankruptcy petition.

The debtor filed the Chapter 7 petition in this case on December 23, 1998. On "Schedule C - Property Claimed as Exempt," she claimed, among other things, "jewelry" as exempt under Neb. Rev. Stat. § 25-1556(1) and jewelry under Neb. Rev. Stat. § 25-1556(2). The jewelry was listed as having a value of \$2,500.00.

A. Wearing Apparel Exemption

The Nebraska exemption statute at Section 25-1556(2) provides that "all necessary wearing apparel of the debtor" is exempt. The debtor suggests that the diamond ring, which is always worn by the debtor and is of great significance to her, should be defined as exempt under the "wearing apparel" exemption.

Neither the Nebraska statutes nor Nebraska case law defines the term "wearing apparel" as it is used in Section 25-1556(2). However, that term was defined by the United States Supreme Court in 1893 in the case of Arnold, Constable & Co. v. United States, 147 U.S. 494, 13 S.Ct. 406, 37 L.Ed. 253 (1893). In Arnold, the Supreme Court interpreted the term "wearing apparel" as that term was used in a tariff act concerning imported goods. The court explained that dictionary definitions of "wearing apparel" generally specified that "wearing apparel" meant garments worn or made for wearing or dress in general. The court, after reviewing the exemption statutes of Kansas as an example of general exemption statute, and the federal Bankruptcy Act, concluded that "wearing apparel" includes articles which are ordinarily worn or recognized as an article of dress. Arnold, 147 U.S. at 496-97, 13 S.Ct. at 407-08.

The term "wearing apparel" has also been defined in cases construing the terms of a last will and testament as usually meaning clothing and garments protecting a person from exposure." Matter of Palmer's Estate, 109 Misc. 207, 208, 178 N.Y.S. 548, 549 (1919). See also, In re Steimes' Estate, 150 Misc. 279, 270 N.Y.S. 339 (1934).

As the cited cases suggest, the ordinary meaning of the term "wearing apparel" includes clothing, but not jewelry such as a ring. Therefore, the ring in question is not exempt as "wearing apparel" under Neb. Rev. Stat. § 25-1556(2).

#### B. Immediate Personal Possessions

On the other hand, although the term "immediate personal possessions" as found in Neb. Rev. Stat. § 25-1556(1) has not been specifically defined by the Nebraska Statutes or the Nebraska case law, this court has previously found that a diamond ring which had belonged to the debtor's deceased wife and became his property upon her death, was exempt as "an immediate personal possession" pursuant to Section 25-1556(1). In re Richard K. Burkman, Neb. Bkr. 94:687, 691 (Bankr. D. Neb. 1994). In that opinion, it was found that "it is reasonable to interpret 'immediate personal possessions' to include those items which are traditionally sentimental and symbolic of the family, e.g., photo album, family bible, etc. A wedding or an engagement ring satisfies this standard." Burkman, Neb. Bkr. 94: at 691.

In this case, the debtor received the ring from a good friend and apparently wears it at all times. It has great symbolic significance. Since the statute itself does not define, identify, or exclude, any particular personal property under the term "immediate personal possessions," it is reasonable to conclude that the ring in question does qualify under the statutory exemption provision as an "immediate personal possession." The statute does not provide any limitation on value for "immediate personal possessions" and the evidence before the court is that the ring is valued at \$2,500.00. The ring is exempt.

### C. Tax Refunds

Concerning the question of the tax refunds received by the debtor after filing bankruptcy, the trustee has claimed that portion of the refunds which represents 357/365ths of the total 1998 Nebraska and federal income tax refunds. That specific number represents the number of days in 1998 prior to the bankruptcy filing versus the total number of days in 1998.

The debtor takes the position that there was no income tax refund payable to the debtor as of the petition date, because tax refunds cannot be determined until the end of the tax year, when any and all taxes are actually due. Since the tax year ended after the petition was filed, it is the position of the debtor that any and all refunds from wages earned during the total calendar year of 1998, but received in 1999, are not property of the bankruptcy estate.

A tax refund such as that which is the subject matter of this motion was impliedly deemed property of the estate under the prior bankruptcy act and its interpretation by the Supreme Court of the United States. See Kokoszka v. Belford, 417 U.S. 642, 648, 94 S. Ct. 2431, 2435, 41 L.Ed.2d 374 (1974). Segal v. Rochelle, 382 U.S. 375, 381, 86 S.Ct. 511, 515, 15 L.Ed.2d 428 (1966). Under the Bankruptcy Code, the Tenth Circuit Court of Appeals has determined that the portion of a tax refund attributable to the prepetition earnings of the debtor is property of the estate. In re Barowsky, 946 F.2d 1516 (10th Cir. 1991). The Tenth Circuit cited not only Kokoszka and Segal, supra, as general authority for the proposition, but also referred to numerous bankruptcy court decisions as consistently siding with the trustee on the issue.

There does not appear to be any Eighth Circuit case law on the question. Therefore, since the bankruptcy courts which have addressed the issue have consistently held that the portion of the tax refund represented by prepetition earnings is property of the estate and that position has been supported by the analysis in Barowsky, it appears uncontroverted in the published opinions that the trustee is correct.

Conclusion

The objection of the trustee to exemption of the diamond ring under Neb. Rev. Stat. 25-1556(1) is denied. The ring is exempt. The trustee has an absolute right to claim 357/365ths of the state and federal tax refunds received by the debtor which relate to 1998 earnings. The total state income tax refund is \$746 and the total federal income tax refund is \$1,712.60. The trustee has the right to 357/365ths of such totals.

Separate journal entry to be filed.

DATED: May 12, 1999

BY THE COURT:

/s/Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:

**86 QUINN, CASEY**  
**12 STALNAKER, THOMAS**

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.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF: )  
)  
SHEILA JUD, ) CASE NO. BK98-83274  
DEBTOR(S). )  
) CH. 7  
) Filing No. 4,8,9,12  
Plaintiff(s) )  
vs. ) JOURNAL ENTRY  
)  
) DATE: May 12, 1999  
Defendant(s) ) HEARING DATE: April 15,  
1999

Before a United States Bankruptcy Judge for the District of Nebraska regarding Objection to debtor's Claim of Exemptions and Notice of Intent to Claim Certain Assets filed by Trustee and resistance by debtor

APPEARANCES

Thomas Stalnaker as Trustee  
Casey Quinn for the debtor

IT IS ORDERED:

The objection of the trustee to exemption of the diamond ring under Neb. Rev. Stat. 25-1556(1) is denied. The ring is exempt. The trustee has an absolute right to claim 357/365ths of the state and federal tax refunds received by the debtor which relate to 1998 earnings. The total state income tax refund is \$746 and the total federal income tax refund is \$1,712.60. The trustee has the right to 357/365ths of such totals. See separate memorandum entered this date.

BY THE COURT:

/s/Timothy J. Mahoney  
Chief Judge

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