

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
BERNARD M. DEMPSEY and) CASE NO. BK00-41987
DEBRA J. DEMPSEY)
) CHAPTER 7
)
Debtors)

MEMORANDUM

Hearing was held on January 22, 2001, on Objections to Exemptions filed by Trustee and Resistance to Objections to Exemptions filed by Debtors. Appearances: Bert Blackwell for the debtor and Philip Kelly as Trustee. 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).

Introduction

This matter is before the Court on the Trustee's objections to the debtor's claim of exemptions in a 1996 GMC Sierra pickup truck pursuant to Neb. Rev. Stat. § 25-1556(4)(1997 Supp.).

The debtors filed a joint petition for relief under Chapter 7 of the Bankruptcy Code. Included in their schedule of property claimed as exempt is a 1996 GMC Sierra pickup truck. The fair market value of the vehicle is listed as \$12,000.00. The debtors assert that each of them may exempt up to \$2,400.00 of the pickup's value as a "tool of the trade" under Section 25-1556(4), for a total exemption of \$4,800.00. In opposition, the Trustee asserts that only one \$2,400.00 exemption may be taken per automobile under § 25-1556(4).

Issue

Does the language of Neb. Rev. Stat. § 25-1556(4) permit joint debtors to each claim an exemption in the same vehicle?

Facts

1. The debtors, husband and wife, own one 1996 GMC Sierra pickup truck. The debtors own the pickup together as joint tenants.

2. Husband is a teacher and coach of the football, wrestling, and track teams at Culbertson High School in Culbertson, Nebraska. He uses the pickup to haul sports equipment from place to place as part of his employment. He also uses the pickup to drag the track.

3. In the summer, Husband uses the pickup to get to and from his summer employment with Frenchman Valley H & RW Irrigation District.

4. Wife is employed as a laundry supervisor at Cedar Inn Motel in McCook, Nebraska, located about 12 miles from the debtors' residence in Culbertson, Nebraska. She uses the pickup to get to and from work, especially when road conditions are dangerous.

5. Wife also uses the pickup to transport her child to the rural day care provider whenever road conditions do not permit her to drive the debtors' leased car, so that she is able to get to her job at Cedar Inn.

Law

In relevant part, Neb. Rev. Stat. § 25-1556(4) provides:

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: . . . (4) the debtor's interest, not to exceed an aggregate fair market value of two thousand four hundred dollars, in implements, tools, or professional books or supplies held for use in the principal trade or business of such debtor or his or her family, which may include one motor vehicle used by the debtor in connection with his or her principal trade or business or to commute to and from his or her principal place of trade or business[.]

Neb. Rev. Stat. § 25-1556.

The Trustee argues that use of the word "or" in the phrase "debtor or his or her family" in § 25-1556(4) limits the number of exemptions permitted in one vehicle. The Trustee further asserts that either the husband or the wife,

but not both, may claim an exemption in the pickup as a tool of the trade.

However, in the only cases to have discussed this aspect of the statutory provision, Judge Minahan implies that under appropriate circumstances, each joint debtor may claim a \$2,400.00 exemption in the value of a vehicle used as a tool of the trade. See In re Miller, 255 B.R. 221 (Bankr. D. Neb. 2000), and In re Schneider, Case No. BK00-40201 (Bankr. D. Neb. Nov. 29, 2000) (A copy of this unpublished Schneider opinion is attached.)

The statute states that a debtor may exempt as much as \$2,400.00 of the value of "the debtor's interest" in the property. In Miller, supra, the joint Chapter 7 debtors each claimed a tool of the trade exemption in their pickup truck. The Court noted, however, that only the husband's name was listed on the vehicle's certificate of title. Therefore, Judge Minahan ruled, and rightly so, that only the husband had an interest in the property and only the husband could claim the \$2,400.00 exemption in the pickup.

In Schneider, supra, the debtors filed a joint petition and claimed certain tools used in the husband's body shop business as exempt under § 25-1556(4). The wife and husband worked together in the body shop, but the wife was also employed elsewhere. Both debtors testified that they considered all property each brought into the marriage and all property acquired after the marriage as joint property. Judge Minahan, however, found no evidence indicating that the parties took steps to change the ownership of the tools Husband purchased prior to marriage. Nor was there any evidence showing which tools were purchased prior to the marriage and which were purchased after the marriage. Thus, finding no evidence to support the ownership interest of the wife, the Court allowed only the husband to claim an exemption in the value of the tools.

Here, the Dempseys have demonstrated that each co-debtor has an ownership interest in the pickup. They both are listed as owners of the vehicle on its certificate of title, and they both use the vehicle in their respective jobs. The husband and wife also take turns driving the pickup to and from their places of employment, depending on road conditions or other circumstances. Both debtors have an ownership interest in the pickup, and each of them should be permitted to claim

\$2,400.00 of the vehicle's value as exempt under Section 25-1556(4), for a total exemption of \$4,800.00.

Conclusion

The pickup is held for use in the principal trade or business of each debtor. Both husband and wife have an interest in the pickup. Therefore, under § 25-1556(4) and in accordance with the decisions in Miller and Schneider, both husband and wife, as co-debtors, may claim an exemption up to \$2,400.00 each against the value of their 1996 GMC Sierra pickup truck. The Trustee's objection is overruled.

Separate journal entry to be filed.

DATED: February 1, 2001

BY THE COURT:

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

Copies faxed by the Court to:

WINE, ARLAN	308-345-4353
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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BERNARD M. DEMPSEY and)
DEBRA J. DEMPSEY,)
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DEBTOR(S))
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Plaintiff(s))
vs.)
)
)
Defendant(s))

CASE NO. BK00-41987
A
CH. 7
Filing No. 5, 6
JOURNAL ENTRY
DATE: February 1, 2001
HEARING DATE: January
22, 2001

Before a United States Bankruptcy Judge for the District of
Nebraska regarding Objection to Exemptions by Trustee;
Resistance by Debtor.

APPEARANCES

Arlan Wine, Attorney for debtor
Philip Kelly, Trustee

IT IS ORDERED:

Trustee objection to debtors' claim of exemption is
denied. See Memorandum filed this date.

BY THE COURT:

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

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