

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

DENNIS E. DAHLBERG, )

CASE NO. BK78-0-1356

JUDY A. DAHLBERG, )

CASE NO. BK78-0-1357

BANKRUPTS )

MEMORANDUM OPINION

This dispute between the trustee in bankruptcy and the bankrupts centers on what property the bankrupts may claim as exempt in this bankruptcy proceeding.

The facts before me consist of a written stipulation of facts which I adopt by reference as my findings of fact.

Initially, the dispute focuses on whether or not the bankrupts must claim certain real estate as their exempt homestead or whether, as the bankrupts contend, they may elect their in lieu of homestead under §25-1552 of the Nebraska Statutes.

The evidence before me discloses that prior to bankruptcy, the bankrupts had been living in a house on which they were making payments but that they had left the house prior to bankruptcy. Mrs. Dahlberg had moved to the state of Washington and Mr. Dahlberg had moved to the residence of his brother. The exemptions of bankrupts are determined by the facts as they exist at the time of the filing of the petition in bankruptcy. 1A Collier on Bankruptcy Section 6.07, p. 825 (14th Ed.). Accordingly, as of the date of the filing of the petitions, the Dahlberrgs had abandoned the real estate. The evidence before me also discloses that they intended to abandon the real estate prior to bankruptcy. Accordingly, the Dahlberrgs are not required to claim the real estate as their homestead under §40-101 R.R.S. Reissue of 1974. Quigley v. McEvony, 41 Neb. 73, 59 N.W. 767.

I gather that part of the dispute centers on whether or not each of the bankrupts may claim exemptions under §25-1552 and 25-1556 R.R.S. 1978 Cumulative Supplement. Effective September 2, 1977, each of the foregoing statutory sections was amended by deleting the words "heads of families" and substituting the word "person". The legislative history would indicate that the intention was to give each individual who falls within the language

of the Statute the right to exemptions under those statutory provisions. Accordingly, both Mr. and Mrs. Dahlberg are entitled to exemptions under §§25-1552 and 25-1556.

The bankrupts also contend that a 1976 Pontiac station wagon is exempt to them under §25-1556 as either "immediate personal possessions of the debtor and his family" or as "equipment or tools used by the debtor or his family for their own support not exceeding \$1500.00 in value".

While it is true that a truck has been held to be exempt as a tool when used by a painter in carrying on his business, In Re Bailey, 172 F.Supp. 925, not every vehicle somehow used by a debtor is an item which is exempt as a "tool". The vehicle must be related to the occupation of the debtor. The facts before me disclose simply that the bankrupts use the automobile in going to and from their places of employment. That is not sufficiently related to their employment to come within the statutory provision. This Court has consistently held that the simple use of a vehicle for the purpose of going to and from the place of employment does not render the vehicle exempt under this specific statutory provision. I so hold.

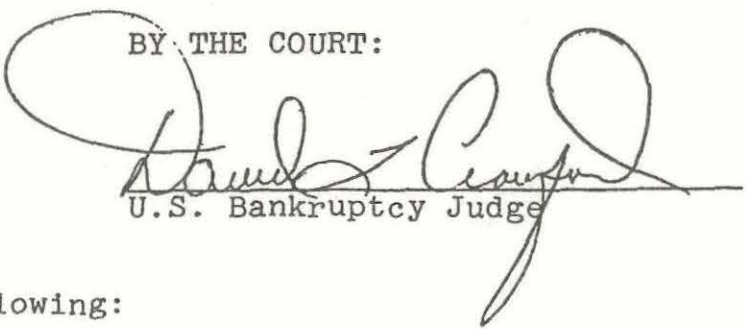
As to the question of whether or not the vehicle constitutes an "immediate personal possession of the debtor and his family", my conclusion, as in the past, is that the vehicle is neither sufficiently immediate nor personal to come within the statutory provision. That statutory provision, it seems to me, refers to something more intimate than a vehicle.

I should add that, because of statements made by the trustee in his brief, that the Dahlbergs are entitled to the Nebraska exemptions even though Mrs. Dahlberg changed her residency from that of Nebraska to the state of Washington in September, 1978. This bankruptcy proceeding was filed on October 30, 1978. By virtue of §6 of the Bankruptcy Act (11 U.S.C. §24), the bankrupts are entitled to the exemptions of the state "wherein they have had their domicile for the six months immediately preceding the filing of the petition, or for a longer portion of such six months than in any other state." Under the facts before me, the bankrupts are entitled to the exemptions of the state of Nebraska.

A separate order is entered in accordance with the foregoing.

DATED: June 27, 1979.

BY THE COURT:

  
U.S. Bankruptcy Judge

Copies to each of the following:

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