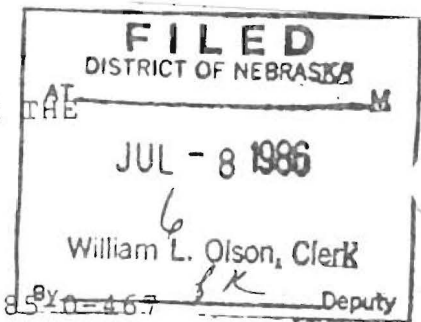


IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA



IN RE:

DOUGLAS G. FREUDENBURG and
JAYNE A. FREUDENBURG,

Debtors.

CV. 85-10-467
BK. 84-1994

MEMORANDUM AND ORDER

This matter is before the Court on appeal from a journal entry of the United States Bankruptcy Court for the District of Nebraska entered April 12, 1985. Therein, the United States Bankruptcy Judge David L. Crawford denied an objection to the confirmation of the debtors' Chapter 13 plan filed by the Bank of Madison (Bank). Upon careful review of the record and the briefs submitted by the parties, this Court finds that the Bankruptcy Court ruling should be affirmed.

The debtors/appellees Douglas G. Freudenburg and Jayne A. Freudenburg filed their bankruptcy petition on October 5, 1984, and filed their Statement of Affairs and Schedules on October 19, 1984. Within the statement, the debtors claimed as exempt property "automobile and other vehicles" valued at \$5,000 and "matured life insurance cash values" valued at \$45,000.

On November 19, 1984, the Bank filed an Objection to Claim of Exemption. The Bank objected to the debtors' claim of exemption for "automobile and other vehicles" because the Freudenburgs failed to specify which motor vehicle, or vehicles, they claimed as exempt. Additionally, the Bank asserted the vehicles were undervalued. The Bank also objected to the

debtors' \$45,000 exemption claimed for life insurance cash values because the Bank asserted that the life insurance contracts were subject to a \$5,000 statutory limitation. Thereafter, the parties filed a stipulation with the bankruptcy court on January 31, 1985, wherein they agreed "that the objection to claim of exemption filed by the Bank of Madison, Madison, Nebraska, should be sustained; that the debtors should be granted leave to file an amended claim of exemptions * * *."

In accordance with the stipulation, the debtors filed an "Amended List of Property Claimed as Exempt." Within the amended list, the debtors specified three vehicles claimed as exempt. The vehicles had a combined value of \$5,000. The matured life insurance contracts valued at \$45,000 were again included within the list. The Bank failed to file an objection to the amended list of property claimed as exempt.

The debtors filed an amended Chapter 13 plan (pre-confirmation) on January 25, 1985. The amended plan was objected to by the Bank on March 4, 1985. Within its objection, the Bank again attacked the claimed exemptions for motor vehicles and life insurance cash values asserting that both exceeded the statutory maximum limit. The objection also attacked the plans proposed surrender of estate property, sale of estate property, and abandonment of estate property.

On April 12, 1985, at the hearing on the Bank's objection to confirmation, Judge Crawford by journal entry overruled the objection. Apparently, the debtors' Chapter 13 plan was confirmed during the same hearing. The Court can only

assume such was the case since a transcript of the confirmation hearing was not designated nor included in the record on appeal presently before this Court.

The Bank lists three issues on appeal:

(1) whether the plan as confirmed by the Bankruptcy Court complies with the provisions of 11 U.S.C. § 1325(a);

(2) whether the total amount of the unsecured indebtedness owed by the debtors exceeds \$100,000 and as a result fails to comply with the jurisdictional provisions of Chapter 13 under 11 U.S.C. § 109;

(3) whether the plan should have been confirmed with exemptions claimed by the debtors in excess of the statutory maximum limits pursuant to Section 25-1552, R.R.S. and Section 44-371, R.R.S.

In discussing the issues in their briefs, the parties first addressed the question of whether the debtors met the Section 109 requirements of the Bankruptcy Code for a Chapter 13 debtor. The first and third issues were then discussed as one issue: whether the plan provided for sufficient payments to unsecured creditors in light of the exemptions claimed by the debtors.

Before this Court addresses the merits of the appeal, it is prudent to state the general standard of review that guides the Court in matters such as this. On appeal, a district court is not bound by the bankruptcy judge's conclusions of law; however, the bankruptcy judge's findings of fact are entitled to stand unless clearly erroneous. In *re American Beef Packers*, 457 F.Supp. 313, 314 (D.Neb. 1978); see Bankruptcy Rule of Procedure 8013.

With this standard in mind, the Court must now determine whether Judge Crawford erred in overruling the Bank's objection to confirmation of the debtors' plan. The appellant's argument that the debtors failed to meet the requirements of 11 U.S.C. § 109 cannot and will not be heard on appeal. The Bank asserts that the Freudenburgs have unsecured debt of at least \$147,000, well in excess of the \$100,000 limit set forth in 11 U.S.C. § 109(e). This argument, however, was not raised in the Bank's written objection to confirmation of the debtors' plan, and there is no record that it was raised during the confirmation hearing.

This appeal is presently before the Court pursuant to 28 U.S.C. § 158, which confers jurisdiction upon United States District Courts to hear appeals from final judgments rendered by United States Bankruptcy Judges. As a general rule, a federal appellate court will not consider issues not addressed by the court below. *Singleton v. Wulff*, 428 U.S. 106, 120 (1976). A federal appellate court is justified in resolving an issue not passed on below only where the proper resolution is beyond any doubt. *Id.* at 121. In this matter, the issue of whether the debtors meet the Section 109(e) requirements is certainly not beyond any doubt.

Section 109(e) provides that an individual with regular income and such individual's spouse may only file for Chapter 13 relief if they have unsecured debts that aggregate less than \$100,000 on the date of the filing of their petition. Mr. and Mrs. Freudenburg filed their Chapter 13 statement and Chapter 13

plan two weeks after they filed a bankruptcy petition. The statement and plan valued unsecured claims at \$980, secured claims at \$223,800, and property at \$184,100. Assuming all the debtors' property was encumbered, unsecured debts on or soon after the date of filing could be no more than \$40,680. Whether the debtors correctly valued their property and debts was a question for the court below to decide.

Appellant's final argument in support of reversal is meritless. The Bank contends Mr. and Mrs. Freudenburg's claimed exemptions are in excess of the statutory limitations as set forth in the Nebraska Revised Statutes. In accordance with a stipulation, the debtors amended their list of property claimed as exempt. Within the list, the Freudenburgs claimed an exemption for three vehicles pursuant to Neb.Rev.Stat. 25-1552 (Cum.Supp. 1984). The combined value of the vehicles is \$5,000. They also claim an exemption for the cash value of matured life insurance contracts pursuant to Neb.Rev.Stat. § 44-371 (Reissue 1984). The cash value of the matured life insurance contracts is listed at \$45,000.

The Bank argues that the bankruptcy court improperly allowed Mr. and Mrs. Freudenburg to claim the amended exemptions because the parties agreed the Bank's objection should be sustained. The appellant's argument is not persuasive. It appears that the parties merely stipulated that the debtors' be required to amend their list of claimed exemptions. Even if the parties did agree that the claimed exemptions were violative of the Nebraska statutes, the stipulation would be as to a matter of

law which is not binding upon this Court which is acting within its appellate capacity. *Avila v. Immigration & Naturalization Service*, 731 F.2d 616 (9th Cir. 1984).

The Bank also argues that its objection to claim of exemptions applies to the amended list of exemptions to the extent that it is the same as the original list. No legal authority for the appellant's assertion is cited, and this Court can find none. To the contrary, Bankruptcy Rule of Procedure 4003(b) requires creditors to file objections within thirty days after the filing of any amendment to the list of claimed exemptions. No evidence has been offered indicating the Bank met this requirement. As a result, the Bankruptcy Court could have properly ruled pursuant to 11 U.S.C. § 522(1) that the property claimed as exempt became exempt by operation of law when no objection was made to the amended list.

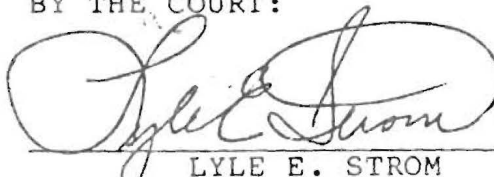
Even if, as the Bank contends, it received no notice that the debtors filed an amended list of claimed exemptions, the Bankruptcy Court's decision to allow the claimed exemptions should be affirmed. In Nebraska, each person who cannot claim a homestead exemption is allowed to claim a \$2,500 exemption in personal property. Neb.Rev.Stat. § 25-1552 (Cum.Supp. 1984). Mr. and Mrs. Freudenburg claimed a combined exemption of \$5,000 on three separate vehicles. Since the record before this Court does not contain any evidence rebutting their valuation, it appears the exemption was properly claimed.

The debtors' claim for the total cash value of their matured insurance policies was also proper under the Nebraska Revised Statutes. Section 44-371 allows an exemption for all cash values accruing under any matured life insurance policy. Neb.Rev.Stat. § 44-371 (Reissue 1984). The \$5,000 limitation cited by the Bank applies only to the loan value of an unmatured life insurance contract. Clearly, this exception does not apply to the debtors' claimed exemption for "mature life insurance cash values." Accordingly,

IT IS HEREBY ORDERED that the April 12, 1985, order overruling the Bank's objection to confirmation of plan should be and is affirmed.

DATED this 8th day of July, 1986.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "Lyle E. Strom", is written over a horizontal line.

LYLE E. STROM
UNITED STATES DISTRICT JUDGE