

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
MERLE O. FRASIER,) CASE NO. BK80-1371
)
DEBTOR)
)
HELEN J. FRASIER,) A80-363
)
Plaintiff)
)
vs.)
)
MERLE O. FRASIER,)
)
Defendant)

MEMORANDUM AND ORDER

Plaintiff's motion for new trial and for additional findings of fact raises some issues requiring brief comment. First, my statement "there has been no showing that Helen Frasier's interest in the property lacks adequate protection" was an erroneous statement of the burden of proof; however, the evidence presented indicates that the plaintiff's interest is adequately protected. Land does not generally depreciate, Merle Frasier is committing no waste, and I am persuaded that any damage to the irrigation system has been caused by plaintiff's conduct rather than Merle Frasier's neglect. My order will be amended accordingly.

Plaintiff also requests findings of fact as to the ownership of the corn and hay crops. There is no need for such findings as that status is implicit in my finding that the leasehold interest never terminated. As a mere trespasser, Helen Frasier has no rights in these crops. Peterson v. Vak, 169 Neb. 441, 100 N.W. 2d 44 (1959). Accordingly plaintiff is not entitled to adequate protection as to the crops.

The amended complaint also sought a modification of the original divorce decree and property settlement due to a change in circumstances since the decree was entered. Even assuming that the property settlement order is the type of decree which may be modified by a court of competent jurisdiction, such relief must be denied in this proceeding because the divorce proceedings are not properly before this Court. 28 U.S.C. §1478.

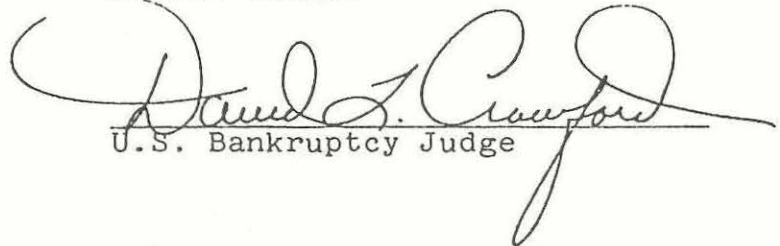
Accordingly, it is

ORDERED that the phrase "as there has been no showing that Helen Frasier's interest in the property lacks adequate protection" in my opinion dated September 22, 1980, be, and it hereby is, stricken, and the phrase "I find that Helen Frasier's interest in the property is adequately protected," be, and it hereby is, substituted therefor; and it is further

ORDERED that the remainder of plaintiff's motion be, and it hereby is, denied.

DATED: April 13, 1981.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

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