UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
RAYMOND AND ENID KICKEN,	)	CASE NO. BK87-2100
	)	
DEBTORS	)	Chapter 12

MEMORANDUM OPINION

Debtors filed a Chapter 12 petition in July 1987. FICB objects to the plan and moved to dismiss the case. Hearing was held September 10, 1987. Appearing on behalf of the debtor was Michael Snyder of Kearney, Nebraska. Appearing on behalf of the FICB was Tim Haight of Omaha, Nebraska. Richard K. Lydick, Chapter 12 Trustee, also appeared. The following constitutes the Court's findings of fact and conclusions of law.

Debtors received approximately $16,000 cash rent income from state court receivership in 1986. This cash rent was earned by the receiver appointed pursuant to a state court real estate mortgage foreclosure action. This income, although not earned by the labor or management activities of debtor, was earned by the rental of the property of the debtor and in part of debtors' 1986 gross income for the 1986 tax year.

Debtors have no farm machinery. It was repossessed in 1985. Debtors had no livestock at time of petition filing. They were not operating the farm at time of petition and did not operate it in 1986 or 1987.

Debtors did perform labor farming services for the tenant of the receiver in 1986. Debtors received wages for such services and treated the income as wages for tax purposes.

Creditor FICB moves to dismiss on the ground that the debtors are not family farmers under the Bankruptcy Code definition. 1986 income included $18,000 wages and $16,000 cash rent and no farm income. In addition, FICB urges the debtors are not farm operators.

Debtor suggests receivership rental income, although reportable by them as 1986 income, is not actually theirs and should not count in the gross income test under 11 U.S.C. § 101(17). Debtors also claim all or most of the "wage" income is actually farm income because its source was labor provided to the tenant operating the farm debtors own.

The Court finds that debtors are not eligible for relief under Chapter 12. They have no equipment or livestock. They have not operated the farm in 1986 or 1987. They received cash rent and wages for their land use and labor.

The Court will not look beyond the 1986 income tax returns to interpret type of income. In re Bergmann, 78 B.R. 911 (Bkrtcy. S.D.Ill. 1987). Thus, in 1986 they had no gross farm income.

They are not engaged in a farming operation and were not in 1986. See In re Haschke, 77 B.R. 223 (Bkrtcy. D.Neb. 1987).

This case is dismissed.

Separate Journal Entry will be entered.

DATED: January 5, 1988.

BY THE COURT:

Timothy J. Mahoney
U.S. Bankruptcy Judge

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