

In the United States Bankruptcy Court

for the Northern District of Iowa

MARLIN A. WATERBURY, JR.
Debtor.

Bankruptcy No. 87-01849S

MEMORANDUM OF DECISION Re: Trustee's Objection to Debtor's Claim of Exemption in Tools of the Trade

The matter before the Court is the Trustee's Objection to the Debtor's Claim of Exemption in certain automotive tools.

Hearing was held on December 11, 1987. Pursuant to Bankr. R. 7052, the Court issues the following Findings of Fact and Conclusions of Law and Order.

FINDINGS OF FACT

1. The debtor, Marlin A. Waterbury, Jr., filed his individual voluntary petition under Chapter 7 of the Bankruptcy Code on August 31, 1987. The case trustee is Donald H. Molstad.
2. In his schedule of personal property (B-2-E), Mr. Waterbury listed \$500.00 worth of tools, but these tools were not itemized.
3. In his schedule B-4, Mr. Waterbury claimed these tools as exempt to their full value under Iowa Code section 627.6(10)(c).
4. On September 18, 1987, the trustee, Donald H. Molstad, objected to the claim of exemption in the tools on the grounds that the debtor was not engaged in a business and the tools claimed as exempt were not tools of the trade.
5. The tools claimed as exempt are as follows:

Ag Power tool list:

- 1/4" Dr. Socket Set (14 Pieces)
- 3/8" Drive Socket Set (18 PCs)
- 3/8" Drive Deep Socket Set (11 Pieces),
- 3/8" Drive Flex Socket set (6 pcs.)
- 1/2 " Drive Socket Set (16 pcs.)
- long combination wrench set (9 wrenches)'Short
- combination wrench set (9 wrenches)
- Screwdriver set (8 pcs.)
- Tune-up kit (14 pieces)
- punch and Chisel set (10 pcs.)
- Diagonal cutter
- adj. joint pliers
- needle nose Pliers
- plastic tip hammer
- carbon scraper
- wire feeler gauge

- feeler gage set
- hacksaw
- spark plug socket, and all other ag related tools.

6. At the time Mr. Waterbury filed his Chapter 7 case, he was employed by Iowa Beef Processors, but was on strike. He was employed as a general laborer and this employment did not require the use of the tools claimed as exempt.

7. The value of the tools in the aggregate is \$500.00.⁽¹⁾

8. During 1987, Mr. Waterbury has earned approximately \$100.00 through his use of the tools doing various repair work on motor vehicles owned by other persons. He also has worked on his own motor vehicle and the motor vehicles of friends.

9. The time he spends on gratuitous work is greater than his time spent on compensated work.

10. Mr. Waterbury does not keep track of the paying jobs or his compensation per paying job. He does not keep any type of "business record" with regard to the use of the tools.

11. Mr. Waterbury had hoped to become a certified repairman and to that end had gone to Western Iowa Tech Community College (WIT) during 1985 and 1986 to take the appropriate training. The course at WIT was a six-month course requiring approximately eight hours of class per day. The course, however, related not to automobiles but to agricultural power equipment.

12. Due to financial problems, Mr. Waterbury ceased this educational training.

13. He had purchased the tools for his training in agricultural power vehicle repair. The tools were on a requirement list provided under his course of instruction.

DISCUSSION

Mr. Waterbury claims the "ag power tools" as tools of a trade under Iowa Code section 627.6(10)(c) which allows a debtor to claim as exempt tools of the trade if the debtor is engaged in a profession or occupation other than farming.

Exemption statutes are to be liberally construed in favor of those claiming their benefit. Frudden Lumber Co. v. Clifton, 183 N.W.2d 201 (Iowa 1971), In re Hahn, 5 B.R. 242 (Bankr. S.D. Iowa 1980).

At issue is whether the debtor, Mr. Waterbury, is for the purposes of the exemption statute, engaged in a trade or occupation in which he makes use of the tools, so that he might retain them as exempt property.

In determining whether Mr. Waterbury is engaged in the trade of automotive repair, this Court believes it is important to examine the intensity of his automotive repair activity so as to determine whether he is engaged in a trade in which he currently and regularly uses the tools. See In re LaFond, 791 F.2d 623, 626 (8th Cir. 1986).

In making this examination, the Court finds that Mr. Waterbury's activity in the area of automotive repair does not rise to the level of his being engaged in the trade or occupation of vehicle repair.

His repair of vehicles is casual, does not provide any significant income, and his gratuitous repair work exceeds the repair work which he does for compensation. He does not keep records with regard to the repairs.

CONCLUSIONS OF LAW

Mr. Waterbury's activities in automobile repair are not of such intensity to permit the conclusion that he is engaged in the trade or occupation of automotive repair.

The tools claimed as exempt by the debtor are not tools of a trade engaged in by Mr. Waterbury and therefore are not exempt under Iowa Code section 627.6(10)(c).

The trustee's Objection to Exemptions is sustained.

12/17/87

William L. Edmonds
Bankruptcy Judge

1. Valuation is not an issue in this contested matter proceeding.