

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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JEFFREY CHARLES GOODMAN  
Debtor.

Bankruptcy No. 88-00991S  
Chapter 7

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### ORDER RE: TRUSTEE'S OBJECTION TO EXEMPTIONS

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Trustee has objected to certain claims of exemption of the debtor. Hearing on the objection was held on September 30, 1988 in Sioux City, Iowa.

The court now issues the following ruling which shall constitute findings of fact and conclusions of law pursuant to Bankr. R. 7052.

This is a core proceeding under 28 U.S.C. 157(b)(2)(B).

### FINDINGS OF FACT

Debtor filed his Chapter 7 bankruptcy case on June 27, 1988. He listed on his schedule of assets an IRA having a value of \$2,500.00 and electrical tools having a value of \$1,000.00.

The tools were claimed as exempt under Iowa Code 627.6(11) and the IRA was claimed as exempt under I.C. 627.6(9)(e).

Trustee Donald H. Molstad (TRUSTEE) timely objected to the claims of exemption of these items on the grounds that the tools were not tools of a trade and that the IRA did not qualify for exempt status under Iowa Code 627.6(9)(e). Further, trustee contends that even were the IRA to qualify as a pension plan, it is not reasonably necessary for the debtor's support.

Jeffrey Goodman (DEBTOR) is a 23-year old man employed as a cable TV installer for Heritage Communication, Fort Dodge, Iowa. He has been so employed since April 25, 1988.

The tools which he claims as exempt are electrical tools including, but not limited to, nutdrivers, various screwdrivers, various wrenches, a volt meter, strippers, crimpers, and various other electrical tools.

Debtor is not required to use these tools as part of his employment with Heritage Communication but is permitted to use them and does so in order to make his job easier, faster and safer.

The basic tools are provided by Heritage. Debtor, however, uses two-thirds of his own tools when engaged in cable TV residential installation and the other one-third of the tools when involved in CATV construction.

Prior to working for Heritage, debtor was employed by IBP in Storm Lake in the maintenance department and by Bilmar in Storm Lake in the production department. He was not required to use his tools by either employer and did not use his tools in working on the production line at Bilmar.

Debtor received a diploma from Northwest Iowa Tech in Sheldon, Iowa where he was trained as a residential electrician. He worked as an electrician for 2-1/2 years in Illinois. He returned to Iowa in February, 1988 in hope of going to work for an electrical contractor but was not able to find such employment.

Debtor hopes that after the next five to seven years he will be in a position to start an electrical contracting business of his own. In addition to his present employment at Heritage, debtor does free electrical work for his relatives as favors to them and to gain more experience in electrical installations.

Debtor's father, Charles R. Goodman, is semi-retired. He formerly was an employee of a meat packing company in Storm Lake. He owns some farmland.

Debtor has worked on his father's farm but would not accept money for such work. Instead, his father opened an IRA at Security Trust & Savings Bank in Storm Lake to compensate his son for the work he had done. There is no evidence as to the time period or extent of the work done by debtor for his father. No other compensation was paid. It was Charles Goodman's intention in setting up the IRA for his son to provide money for his son's retirement. He believes restrictions were placed on the account at the bank. No part of the money in the account was deposited by debtor.

Debtor testified that it was his belief that he could not reach the funds until he reached 62-1/2 years of age and that at that time the money would be distributed to him in installment payments.

Debtor is not aware of any document memorializing the bank fund and his access to it other than the bank documents setting up the IRA.

The application for the account and the IRA documents were submitted to the court following the close of the evidence at the request of the court and with the agreement of the parties.

## DISCUSSION

### I.

At the time of the filing of the case, debtor was engaged in an occupation in which he, although not required by his employer, used his tools in order to make his work easier, faster and safer. This court believes that these tools, therefore, qualify as exempt tools of the debtor's occupation under Iowa Code 627.6(10).

### II.

Debtor claims the IRA as a pension or like contract under Iowa Code 627.6(8)(e)<sup>(1)</sup> which states;

"A debtor who is a resident of this state may hold exempt from execution the following property:

8. The debtor's rights in: \* \* \*

- e. A payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and of any dependent of the debtor."

In order to qualify under Iowa Code 627.6(8)(e), the debtor list show that the asset is either a pension or "similar" plan within the description of the Code section.

"It is likely that the legislature's reason for including similar plan or contract' in the statute was to give the court some latitude in treating varying factual situations under this exemption section." In re Pettit, 55 B.R. 394, 397 (Bankr. S.D. Iowa 1985).

Therefore, if the IRA has similar characteristics to a "pension" plan, it should be set aside as exempt. Id. at 397.

In Pettit, the court found that the following characteristics of a "plan or contract" would make the plan sufficiently similar to a pension plan to permit exemption under the Iowa statute.

"A formal plan or a fund established for the benefit of the debtor, usually as part of a relationship with an employer or employee organization.

The benefits of the plan or fund are of a nature 'akin to future earnings' of the debtor and intended as retirement income or at least income deferred during the debtor's employment to provide future support for the debtor.

Access and control of the plan or fund in the hands of someone other than the debtor with strong limitations on withdrawal or distribution expressed in the formal plan or a fund for the purpose of provided retirement or deferred income.

That payment under the plan or contract is to be on account of illness, disability, death, age or length of service."

The IRA of the debtor fails to meet the requirement that there are strong limitations on withdrawal or distribution.

There is no plan or document existing between debtor and his father. Therefore, the sole contractual document as to the fund is the IRA document provided by the bank. These documents show debtor as the depositor.

The court's examination of this document leads it to believe that while there may be penalties for early withdrawal, there is not sufficient inhibition to the debtor's access to the cash to qualify it as a pension or similar contract under Iowa exemption law. (See paragraph 1.5 of [debtor's] Duties and Rights, page 4.)

Having failed to meet this test, the account will not be analyzed in light of the other characteristics.

The court, therefore, concludes that the IRA is not exempt within the meaning of the Iowa Code 627.6 (8)(e).

## ORDER

IT IS ORDERED that the trustee's objection to claims of exemption is sustained as to the IRA and overruled as to the electrical tools.

SO ORDERED ON THIS 19th DAY OF OCTOBER, 1988.

William L. Edmonds  
Bankruptcy Judge

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1. The claim was made under Iowa Code 627(9)(e) but its actual basis is subsection (8)(e).