In the United States Bankruptcy Court

for the Northern District of Iowa

NYLE E. ROBINSON and
CINDY L. ROBINSON
Debtor(s).

Bankruptcy No. L-89-01776C

Chapter 7

Ruling re: FmHA's Objection to Exemptions

The matter before the Court is the objection to exemptions filed by the United States on behalf of the Farmers Home Administration ("FmHA"). FmHA objects to the exemptions claimed by the Debtors, Nyle and Cindy Robinson, for their 40 acre homestead and Nyle Robinson's tools of the trade. This is a core proceeding under 28 U.S.C. section 157(b)(2)(B). The following constitutes findings of fact and conclusions of law pursuant to Fed.R.Bankr.P. 7052.

Background

1. The Debtors filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on November 21, 1989. Their Schedule A-2 of secured creditors listed a debt to FmHA in the amount of $40,000 ("estimated"). That debt was reportedly secured by the following machinery and equipment valued at $1,415: 1974 Chevy ½ ton truck, IHM 1952 tractor, sickle mower, Westendorf wagon, chainsaw, air compressor, and hog fountains.

2. The following items were included in the list of property claimed as exempt in Debtors' Schedule B-4:

Description	Iowa Code Section	Value
1974 ½ ton pickup--Nyle	627.6(9)(b)	$ 300
Tools of trade (See B-2(i))--Nyle	627.6(11)(a)	1,115
Homestead--Lot 2 of Robinson's Subdivision of NW 1/4, Section 6, Township 88, Range 3 and NE 1/4 of section 1, Township 88, Range 4 West of the 5th P.M.	561.1, .2	54,500

3. The following items were listed in Debtors' Schedule B2(i) under the heading "[f]arming supplies and implements":

Description	Value
I.H. 1952 M tractor	$ 750
Sickle mower	50
Westendorf wagon	40
Chainsaw	100
Air compressor	125
Hog fountains	50
TOTAL	$1,115

4. On January 3, 1990, the Debtors filed an amendment to their Schedule B-4 to indicate that "[t]he 1974 ½ ton pickup truck claimed as a personal exemption by Debtor, Nyle E. Robinson, should be claimed as exempt under Iowa Code

Section 627.6(11)(a), Tools of Trade, instead of Iowa Code Section 627.6(9)(b)."

5. On January 24, 1990, FmHA filed an objection to the exemptions claimed by the Debtors for their 40 acre homestead and Nyle Robinson's tools of the trade. FmHA contended that (1) a portion of the 40 acre parcel did not qualify for the homestead exemption because it had been leased out by the Debtors before they filed their bankruptcy petition, and (2) Nyle Robinson could not claim an exemption for implements and equipment under Iowa Code section 627.6(11)(a) because he was not "engaged in farming" at the time of filing.

6. Debtors filed a resistance to FmHA's objection on January 26, 1990.

7. FmHA's objection was heard on March 7, 1990. The Debtors appeared with their attorney, Joseph Peiffer. Kristin Tolvstad Davis appeared on behalf of FmHA. The Court heard the testimony of Nyle Robinson and Norman Brus, FmHA Assistant County Supervisor for Delaware County, Iowa. The following issues were submitted at the conclusion of the hearing:

A. Whether Debtors may claim a homestead exemption for the rented portion of the 40 acre parcel listed in their Schedule B-4.
B. Whether Nyle Robinson is "engaged in farming" for purposes of claiming an exemption for implements and equipment under Iowa Code section 627.6(li)(a).

Discussion and Conclusions of Law

A. Homestead exemption.

The Debtors have claimed a homestead exemption for a 40 acre parcel of land located in Delaware County, Iowa.[(1)] The tillable acres contained in that parcel have been rented to Bruce and Leo Goldsmith under a three-year lease executed by Nyle and Arlyn Robinson[(2)] on February 1, 1989. (Government Exhibit "B"). The lease provides for the rental of approximately 110 tillable acres plus a silo and the use of two barns with feed floors. The Goldsmiths paid Nyle Robinson $22,000 in rent for the entire three-year lease term on February 1, 1989. Nyle used that lump-sum payment to settle a debt with the State Bank of Earlville, Iowa.

FmHA concedes that the Debtors are entitled to claim a homestead exemption for "the dwelling in which they live and the other buildings not subject to the Goldsmith lease." FmHA's brief at 8. FmHA contends, however, that Debtors may not claim an exemption for the balance of the 40 acre parcel. FmHA argues that (1) Iowa Code section 561.1 provides that a homestead "may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead" (emphasis added); (2) the tillable acres leased to the Goldsmiths have not been used as part of the homestead since 1986; (3) the Iowa case law provides that property may be divided into exempt and nonexempt areas when part of the property is not used as a homestead; and (4) such a division could be readily accomplished under the facts of this case.

Debtors contend that they are entitled to claim a homestead exemption for the entire 40 acre parcel. They argue that (1) Nyle Robinson has lived on that parcel for most of his life, with the exception of a few years at school and in the military service; (2) Nyle and his brother farmed the property themselves from 1972, when they inherited the land from their parents, until the early 1980's; (3) the tillable acres were leased to third parties at that time because the farm economy was deteriorating and operating loans could not be obtained; (4) Nyle intends to resume farming if he can obtain the necessary financing; and (5) they did not intend to abandon their homestead rights in the tillable acres when they rented the property to third parties.

The question is whether the Debtors may claim a homestead exemption for the rented portion of the 40 acre parcel described in their Schedule B-4. That issue arises under the following sections of Iowa Code Chapter 561:

> 561.1 "Homestead" defined.
>
> The homestead must embrace the house used as a home by the owner, and, if the owner has two or more

> houses thus used, the owner may select which the owner will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead.
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> 561.2 Extent and value.
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> If within a city plat, it must not exceed one-half acre in extent, otherwise it must not contain in the aggregate more than forty acres, but if, in either case, its value is less than five hundred dollars, it may be enlarged until it reaches that amount.
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> 561.3 Dwelling and appurtenances.
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> It must not embrace more than one dwelling house, or any other buildings except such as are properly appurtenant thereto, but a shop or other building situated thereon, actually used and occupied by the owner in the prosecution of the owner's ordinary business, and not exceeding three hundred dollars in value, is appurtenant thereto.

Debtors rely on cases which hold that the rental of homestead property does not constitute an abandonment of the homestead. Such cases include In re Sueppel's Estate, 124 N.W.2d 154, 155 (Iowa 1963) (the rental of farm land on a crop share basis was not an abandonment of the homestead rights in the farm land); Olsen v. Lohman, 234 Iowa 580, 13 N.W.2d 332, 340 (1944) (the owners did not abandon their homestead by leasing the first floor of their building for use as an office and showroom); Hatter v. Icenbice, 207 Iowa 702, 223 N.W. 527, 529 (1929) ("[t]hat part of the homestead which is temporarily leased or from which profit from privilege other than the personal use of the soil by the homesteader is derived does not thereby lose its homestead character.").

The following pertinent statement appears in In re Pope, 98 F. 722, 723 (S.D. Iowa 1900):

> In construing (the homestead exemption statute], it has been uniformly held by the supreme court of Iowa that a temporary removal from the homestead, and renting it to third parties, would not be deemed to be an abandonment of the homestead, if the party having the homestead right intended to return to the premises, and resume the occupancy thereof. Fyffe v. Beers, 18 Iowa, 4; Davis v. Kelley, 14 Iowa, 523; Morris v. Sargeant, 18 Iowa, 90; Bradshaw v. Hurst, 57 Iowa, 745, 11 N.W. 672; Dunton v. Woodbury, 24 Iowa, 74; Jones v. Blumenstein, 77 Iowa, 361, 42 N.W. 321; Painter v. Steffen, 87 Iowa, 171, 54 N.W. 229.

Additional cases on point include Kelley v. Williams, 110 Iowa 153, 81 N.W. 230 (1899) (exemption denied where the buildings in question had been rented to others for many years); Charter v. Thomas, 228 Iowa 554, 292 N.W. 842 (1940) (whether or not a homestead has been abandoned is largely a matter of intent to be determined on the particular facts in each case); In re Marriage of McMorrow, 342 N.W.2d 73 (Iowa 1983) (recognizing that "Iowa early allowed division of a homestead building into exempt and nonexempt areas," citing Johnson v. Moser, 66 Iowa 536, 540, 24 N.W. 32, 33 (1885), and Rhodes, Pearam & Co. v. McCormack, 4 Iowa 383, 390-91 (1857)). See also In re McClain's Estate, 220 Iowa 638, 644, 262 N.W. 666, 669 (1935) ("(O]nce the homestead character has attached, the owner may remove therefrom and the homestead character is preserved as long as he has an intention to return. In other words, intention to occupy in the future, while insufficient to establish a homestead originally, is sufficient to continue a homestead previously established.").

FmHA concedes that "the mere fact of leasing out portions of the property does not automatically require a denial of a homestead exemption. Other factors must also be considered." FmHA's Brief at page 7. The factors identified by FmHA include the following:

(a) The intent and purpose of the homestead exemption. FmHA cites American Sav. Bank v. Willenbrock, 209 Iowa 250, 253, 228 N.W. 295, 297 (1929), for the proposition that:

> [The] homestead exemption is allowed, not for the financial profit, or merely as a margin of financial safety to the debtor. The exemption is for the benefit of the family, to provide wife (or husband), children, and dependents with a home. The exemption is granted, not merely out of grace to the debtor, but as a matter of

> public policy.
>
> The Willenbrock Court also stated that:
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> The law allowing the homestead exemption is to be liberally construed, and is not to be pared away by construction so as to defeat its beneficent, sociological, and economic purpose.

209 Iowa at 253, 228 N.W. at 297.

(b) The divisibility and accessibility of the exempt and nonexempt areas. This factor is usually discussed in the context of urban homesteads where the question is whether an entire building is being used as a homestead. Such cases are collected and analyzed in Olsen v. Lohman, 234 Iowa 580, 13 N.W.2d 332 (1944). The cases involving rural homesteads typically address a different question: whether the property owner intended to abandon his homestead rights by renting part of the property to another person. See, e.g., n re Sueppel's Estate, 124 N.W.2d 154 (Iowa 1963).

(c) The debtor's present occupation. FmHA contends that "the fact that the debtor has a full time, off the farm occupation as a barber further leads to the conclusion that the farm land is not necessary to house the debtors and their dependents." FmHA's Brief at page 8. The evidence demonstrates that Nyle and Cindy Robinson are both employed full-time as barbers, and that Nyle earns additional income by working for Robinson Tiling and by mowing set-aside acres under an agreement with his cousin.

(d) The past and present uses of the property. FmHA points out that the tillable acres have been rented to others since at least 1986. The three-year lease to the Goldsmiths will terminate on March 1, 1992.

The Iowa case law indicates that the temporary rental of farm land is a legitimate use of a rural homestead if the owner lacks the capacity to farm the land himself. The cases also indicate that rented farm land may be exempt if it was used as a homestead before it was rented, and if the owner did not intend to abandon his homestead rights when he rented the property to someone else. The evidence demonstrates that Nyle Robinson lacked the capacity to farm the property after 1988, when most of his machinery and equipment was sold at an FmHA-approved auction. The sale proceeds of $12,682 are listed in the 1988 income summary contained in Government Exhibit 'IC". There is no question that the entire 40 acre parcel had been used as the Robinson's homestead before the tillable portions were leased to the Goldsmiths. Nyle used the lump-sum payment of $22,000 to settle a debt with the State Bank of Earlville, Iowa. He has testified that he might raise crops or livestock on the property after the lease term ends in 1992. Having considered those facts in light of the cases cited above, the Court concludes that (1) the Debtors did not intend to abandon their homestead rights when they rented the farm land to the Goldsmiths, and (2) the Debtors may claim a homestead exemption for the entire 40 acre parcel listed in their Schedule B-4.

B. "Engaged in farming."

Iowa Code section 627.6(11)(a) provides that:

> A debtor who is a resident of this state may hold exempt from execution the following property:
>
> 11. If the debtor is engaged in farming and does not exercise the delay of the enforceability of a deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, any combination of the following, not to exceed a value of ten thousand dollars in the aggregate:
>
> a. Implements and equipment reasonably related to a normal farming operation. This exemption is in addition to a motor vehicle held exempt under subsection 9.

Nyle Robinson has claimed an exemption for the following items under section 627.6(11)(a):

- I.H. 1952 M tractor
- Air compressor
- Sickle mower

- Hog fountains
- Westendorf wagon
- 1974 ½ ton truck
- Chainsaw

Nyle testified that he uses the tractor and sickle mower to maintain 5 terraces on the farm, to cut weeds for himself and his brother, and to mow 60 acres of set-aside land under a three-year agreement with his cousin. He testified that he will earn $330 per year under that agreement. He also stated that he uses the chainsaw to remove trees from the fence rows and terraces and to collect firewood from Lot 1 (a wooded 8 acre parcel located in the northwest corner of Section 6 as highlighted on the plat (Government Exhibit A)). Norman Brus testified that the Westendorf wagon and the hog fountains are in poor condition and have little value. No evidence was presented as to the use of the truck or the air compressor.

The question is whether Nyle Robinson was "engaged in farming" on the date of filing for purposes of claiming an exemption under section 627.6(11)(a). Nyle contends that the listed activities constitute "farming" for purposes of the exemption. In the alternative, he argues that he should be permitted to retain the property because he intends to resume farming in the future. He cites In re Hahn, 5 B.R. 242 (Bankr. S.D. Iowa 1980), in support of the latter contention. The debtor in Hahn was not engaged in farming at the time of filing, but he testified that farming was his life's work and that he had no intention to abandon that occupation. He had listed his occupation as "[f)arming, trucking, custom bailing and combining, and school bus driver." 5 B.R. at 245. The Court found that he was a "farmer," stating that "[i)t is not necessary that the person claiming an exemption wholly earn a livelihood using the items claimed exempt." Id., citing Equitable Life Assur. Soc. of U.S. v. Goode, [101 Iowa 160], 70 N.W. 113 (1897).

The following pertinent discussion appears in Matter of Myers, 56 B.R. 423 (Bankr. S.D. Iowa 1985):

> Iowa exemption statutes are to be liberally construed in favor of those claiming the benefit of such laws. (Citations]. The Iowa court has construed the statute liberally when deciding whether a debtor with two occupations may claim an exemption for tools of the trade. In Equitable Life Assur. Soc. of U.S. v. Goode, 101 Iowa 160, 70 N.W. 113 (1897), the debtor was in the real estate business and was also an attorney. The court ruled that the debtor was entitled to exempt his law books from execution. The court stated:
>
> The undisputed evidence is that the defendant was occupied at least one-fourth of his time in doing the proper work of a lawyer, and that what he thus did contributed to his support. We have seen that it was not necessary for him to earn his living by the services he performed as a lawyer, to hold the property in question exempt .... The only conclusions which can properly be drawn from the evidence is that the defendant was a lawyer within the meaning of the statute.... (101 Iowa at 163, 70 N.W. at 114].
>
> Thus, in the Goode case the Iowa court did not adopt a principal occupation test. It did not adopt a percentage of income test. And it did not adopt a percentage of time worked test. The only requirement, in addition to working at the trade or profession, is that the work contribute to the debtor's support.

56 B.R. at 425-26, emphasis added.

FmHA contends that Nyle was not "engaged in farming" under the standard applied in In re LaFond, 791 F.2d 623 (8th Cir. 1986). In determining whether the debtors were "farmers" for purposes of avoiding liens against their farming equipment, the LaFond Court adopted the view that:

> [A] more realistic definition [of "farmer"] should take into account the intensity of a debtor's past farming activities and the sincerity of his intentions to continue farming, as well as evidence that debtor is legitimately engaged in a trade which currently and regularly uses the specific implements or tools exempted and on which lien avoidance is sought. [Citations].

791 F.2d at 626.

FmHA argues that the intensity of Nyle's past farming activities was extremely low, as reflected in the income

statements for 1986-88 contained in Government Exhibit "C":

	1986	1987	1988
Sale of chattels	$ 600	$ 450	$12,682
Cash rent	4,400	5,250	5,250
Non-farm income	41,992	54,265	38,000

FmHA also contends that (1) Nyle is legitimately engaged in the trade of being a barber, not in farming activities; and (2) the only activity which might qualify as "farming"--Nyle's agreement to mow set-aside acres for his cousin--only generates income of $330 per year. FmHA insists that Nyle is not "engaged in farming" for purposes of section 627.6(11)(a).

For the reasons stated below, the Court concludes that Nyle Robinson was not "engaged in farming" on the date of filing:

(a) Some of the listed activities might qualify as "farming" if they contributed to the Debtors' support, but with one exception, they do not. The income generated by the mowing agreement is simply too insubstantial to support a finding that Nyle Robinson is currently "engaged in farming."

(b) In Iowa, a temporary cessation of farming does not defeat a claimed exemption if the debtor intends to return to farming. Matter of Claussen, 81 B.R. 519, 521 (Bankr. S.D. Iowa 1988), citing cases. The evidence in this case does not reflect "a temporary cessation of farming." Nyle has not farmed the property himself since the early 1980's and most of his machinery and equipment was sold in 1988. The three-year lease to the Goldsmiths runs until March 1, 1992. Even assuming that Nyle intends to return to farming someday--and the evidence on this point is not overwhelming[(3)]--a lapse of 10 years or more cannot reasonably be characterized as a "temporary cessation" for purposes of the exemption. Compare Matter of Claussen, 81 B.R. at 522 (a lapse of 11 years stretches the notion of "temporary cessation" beyond reasonable limits).

ORDER

IT IS THEREFORE ORDERED that FmHA's objection to exemptions is overruled as to Debtors' homestead and sustained as to Nyle Robinson's tools of the trade.

DONE AND ORDERED this 13th day of July, 1990.

Michael J. Melloy
Chief Bankruptcy Judge

In the United States District Court

for the Northern District of Iowa

Eastern Division

NYLE E. ROBINSON and
CINDY L. ROBINSON
Debtors.

Bankr. No. L-89-01776C

NO. C 90-2067

ORDER

This matter is before the court on appellant United States of America's appeal, filed September 5, 1990, from a decision of the bankruptcy court,[4] entered July 13, 1990, overruling the Farmer's Home Administration's objection to exemption as to debtors' homestead. Debtors/appellees resist the appellant's appeal and urge this court to affirm the bankruptcy court. Both sides have filed briefs outlining their argument.

The court has carefully reviewed the record on appeal and has also carefully studied the exhaustive and well written briefs filed by the parties. Finding no error in the well reasoned opinion of the bankruptcy court, this court determines that it could add little to this case by a separate opinion coming to the same legally warranted conclusions.

ORDER:

Accordingly, It Is Ordered:

The decision of the bankruptcy court, entered July 13, 1990, is hereby affirmed.

Done and Ordered this 21st day of February, 1991.

David R. Hansen, Judge
UNITED STATES DISTRICT COURT

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1. A plat of the property was introduced into evidence as Government Exhibit "A". The 40 acre homestead is located in the northeast corner of Lot 2 as highlighted on the plat. The area circled in blue represents the approximate location of the Debtors' residence and the surrounding buildings.

2. Nyle Robinson and his brother Arlyn inherited approximately 158 acres of land from their parents in 1969 and 1972. The Robinson brothers held undivided one-half interests in that property until November 21, 1989 when they divided the property between themselves. Arlyn received approximately 110 acres and Nyle received the remaining 48, including the residence and the surrounding buildings.

3. It might be argued that there is an inconsistency in the Court's findings as to Nyle's intent; i.e., that he intended to retain his homestead rights in the tillable land, but may not intend to resume farming when the lease to the Goldsmiths expires. However, the Court believes the issue of whether a debtor has "abandoned" his homestead and whether the debtor is engaged in farming are two separate and distinct issues. A debtor may be able to occupy a rural 40 acre homestead without farming the land. As an example, the Debtors could enroll the property in the conservation reserve pro ' gam, if the property qualifies, or combine it with Arlyn Robinson's acreage and jointly farm it with him as in the past. "[I]ntention to occupy in the future, while insufficient to establish a homestead originally, is sufficient to continue a homestead previously established." In re McClain's Estate, 220 Iowa at 644, 262 N.W. at 669. The Court believes the evidence and testimony presented by the Debtor evidences intent not to abandon the homestead.

On the other hand, the Court does not believe there is sufficient evidence to justify a finding that the Debtor is engaged in farming. While the Debtor may sincerely desire to return to farming someday, the period of cessation involved in this case is simply too long to justify a finding that he is currently engaged in farming. Thus, the Court does not believe there is an inconsistency between the holdings in this case.

4. The Honorable Michael J. Melloy, Chief United States Bankruptcy Judge.