

In the United States Bankruptcy Court

for the Northern District of Iowa

NEIL G. BROMM and SUSAN BROMM
d/b/a Bromm Mink Ranch
Debtors.

Bankruptcy No. X90-01787F

Chapter 7

MEMORANDUM OF DECISION AND ORDER RE: OBJECTIONS TO EXEMPTIONS

The Farmers National Bank of Webster City (BANK) objects to Susan Bromm's claim of exemption in two pension contracts. The trustee, David Sergeant, objects to Neil Bromm's claim that his pickup truck is exempt as a tool of his trade. Trustee and Bank had filed objections to various other claims of exemption. However, these were resolved prior to trial and an order was entered March 25, 1991 approving the settlement. The pension plan and pickup truck issues are all that remain. Trial was held February 13, 1991.

FINDINGS OF FACT

Neil and Susan Bromm, husband and wife, filed their chapter 7 petition on October 17, 1990. Susan Bromm scheduled her interests in two pension contracts, and she claimed them as exempt pursuant to Iowa Code S 627.6(8) (e) . Bank contends that neither is reasonably necessary for the support of the debtor or her dependents.

Susan Bromm is 44 years old. She is a high school graduate. Having injured her back in 1980, she receives monthly disability income payments of \$430.49. The injury is permanent and entitles her to these disability payments until she reaches retirement age.

From 1964 to 1980, Susan Bromm was employed as a bookkeeper with Webster City Production Credit Association. After 1980, she was self-employed with her husband in the mink ranching business. As a result of their financial problems, the Bromms no longer are mink ranching, although they hope eventually to re-establish their business. Because the debtors still have the mink facility, including equipment, they could earn money by caring for mink owned by others or by leasing the facility. No such plans have been made, and there is no evidence projecting for the immediate earnings from such possible endeavors. Susan Bromm's duties at the ranch were limited by her injury. she can do no heavy lifting. She was able to help in breeding, pelting and tending to the minks. Since the cessation of the ranching operation, Susan Bromm has performed bookkeeping tasks for her husband's masonry business. Because of her disability, it is difficult for her to stand or sit for prolonged periods. She anticipates no future surgery on her back. Mrs. Bromm has medical problems also with her elbow which was fractured in a recent car accident.

While employed at PCA, Susan Bromm participated in two employee-established investment plans with the Principal Financial Group--a "Salary Deferral Plan" and a "Money Purchase Plan." As of the date of bankruptcy, the former had a value of \$1,051.77 and the latter a value of \$3,967.33. By December 31, 1990, the value of the Salary Deferral Plan had decreased to \$958.06, and the value of the Money Purchase Plan had

decreased to \$3,872.43. Susan Bromm has immediate access to the funds in each plan, however, she does not plan to invade them prior to reaching age 65.

It has been ten years since Susan Bromm has contributed to the federal social security program. There is no evidence as to what her social security benefit would be upon retirement. She does not anticipate being financially able to contribute to any private retirement program in the near future. One week before filing bankruptcy, she withdrew \$4,000.00 from an IRA. She used the proceeds to pay income taxes and attorney fees and to purchase a life insurance policy.

Neil Bromm is 50 years old. He is the primary income earner for the Bromms. Although he has been involved in the mink ranching business for 30 years, he has also worked periodically since 1966 as a brick mason. From January, 1990 to August, 1990, Neil Bromm was self-employed part time as a brick mason. Since August, 1990, he has worked as a brick mason on a full-time basis. From the masonry business, Neil Bromm's 1990 income, after payment of business expenses, was approximately \$20,000.00. He anticipates an increase in this income for 1991. There was no estimate as to how much it might be. Neil Bromm does not presently participate in a retirement savings plan. He cashed in a \$20,000.00 Keough plan shortly before filing bankruptcy. The proceeds were used to pay income taxes and attorney fees.

The Bromms have two daughters, Amy, age 19 and Lori, age 21. Amy is a full-time college student who is financially dependent on her parents. Lori, although residing with her parents, is not financially dependent upon them.

Debtors' otherwise exempt property is shown in the list below. The list takes into consideration the original claims of the debtors as affected by the settlement approved by the court on March 22, 1991.

Property	Value Claimed Exempt
Homestead (4.4 acres with home and sheds)	\$150,000.00
Cash and checking accounts	197.45
Household goods	2,425.00
Pictures	300.00
Wearing apparel	400.00
Wedding rings	500.00
Shotgun, Winchester .22	80.00
1987 Olds Toronado	6,677.68
Farming equipment	10,000.00
Brick laying equipment	4,280.00
Life insurance policy no. 06397118 (Neil Bromm)	38,025.00
Life insurance policy no. 2611334 (Susan Bromm)	4,225.00
Life insurance policy no. 0430193 (Susan Bromm)	3,428.00
First Capital Life policy (Susan Bromm)	9,000.00

The homestead is not encumbered by any debt. The only encumbered asset is the automobile. Its estimated value is \$9,500.00, and \$6,677.68 is the debtors' estimate of their equity in it. Debt against the car was the only debt reaffirmed by the Bromms.

Susan Bromm testified that the debtors' monthly income and expenses were about the same as shown on the debtors' "Schedule of Current Income . . . and Current Expenditures. . . ." This schedule showed joint monthly income of \$1,930.49 and monthly expenses of \$2,437.00. The debtors are spending at a deficit rate of \$506.51 per month. Although insurance expenses of \$626.00 per month seem high given the debtors' financial condition, and although legal and professional costs are unexplained, still, the reasonableness of the expenses are not challenged by the Bank. Nor do the expenses seem excessive to the court.

Neil Bromm uses a 1976 Ford F-150 pickup truck in his masonry business. The truck is used regularly each week to haul materials and tools to various job sites. It was previously used in the mink ranching business. Without the use of the truck, he believes it would be impossible to be a self-employed brick mason. The truck is valued at approximately \$800.00. There are no liens or encumbrances against it. The Bromms have used their allowable automobile exemption by claiming the Olds Toronado.

DISCUSSION

The Pension Plans

A debtor may exempt any rights in "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 any dependent of the debtor." Iowa Code 627.6(8)(e). The Bank does not dispute that Susan Bromm's money purchase and salary deferral plans fall within the ambit of 627.6(8)(e). The only issue disputed by the Bank is whether the plans are "reasonably necessary for the support" of Susan Bromm and her dependents.

In determining what is "reasonably necessary", this court has looked on a case-by-case basis to several non-exclusive factors. In re Flygstad, 56 B.R. 884, 889 (Bankr. N.D. Iowa 1986). These factors include: (1) debtor's present and anticipated living expenses; (2) debtor's present and anticipated income from all sources; (3) age of the debtor and dependents; (4) health of the debtor and dependents; (5) debtor's ability to work and earn a living; (6) debtor's job skills, training and education; (7) debtor's other assets, including exempt assets; (8) liquidity of other assets; (9) debtor's ability to save for retirement; (10) special needs of the debtor and dependents; and (11) debtor's financial obligations (e.g. alimony or support payments). Flygstad, 56 B.R. at 889-89.

In Iowa, exemption laws are liberally construed in favor of the debtor. Frudden Lumber Co. v. Clifton, 183 N.W.2d 201, 203 (Iowa 1971). The primary objectives underlying Iowans exemption statutes have been described as: (1) providing a debtor enough money to survive; (2) protection of a debtor's dignity; (3) providing the debtor a means for financial rehabilitation; (4) spreading the burden of the debtor's support from society to his creditors; and (5) protecting the debtor's family unit from impoverishment. In re Gilbert, 74 B.R. 1, 2 (Bankr. N.D. Iowa 1985); Matter of Hahn, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980).

After considering the factors set forth in Flygstad against the backdrop of the aforementioned objectives, the court concludes that Susan Bromm's money purchase and salary deferral plans are not reasonably necessary to the Bromms' support.

Many debtors emerge from bankruptcy with only minimal assets. This is not so with the Bromms. Bromms' "fresh start" will be aided by Susan's retention of three life insurance policies with a combined surrender value of \$16,653.00. Neil Bromm will retain a life insurance policy with a surrender value of \$38,408.00. In addition to numerous items of personalty, the Bromms will also keep their exempt interest in a 4.4 acre, unencumbered homestead valued at \$150,000.00. Bromms also retain exempt tools having a value of nearly \$14,000.00. With these tools, the Bromms could earn income in two businesses.

While the court recognizes Susan Bromm's physical condition may restrict her employment opportunities, it also recognizes that her condition does not prevent her from earning future income. This is evidenced by the fact that since 1980 she has played an active and integral role in the mink ranching operation and hopes to do so again. She also currently maintains the books and records for Neil Bromm's masonry business.

The court must also consider that Neil Bromm has significant income potential. His 1991 income as a full time brick mason is expected to increase from the \$20,000.00 earned in 1990, a year when he was employed as a brick mason part time for seven months and full time for only five months. The court finds from these considerations that the pension plans are not reasonably necessary for Bromms' support.

The Pickup Truck

Neil Bromm claims his 1976 Ford F-150 pickup truck as an exempt tool of trade pursuant to Iowa Code S 627.6(10).⁽¹⁾

The trustee contends that a debtor seeking to claim a motor vehicle as exempt in Iowa is limited to Iowa Code S 627.6(9)(b). The court agrees. A debtor may include one motor vehicle among his exemption claims under S 627.6(9). Iowa law prohibits a debtor from claiming a motor vehicle exempt as a tool of a trade under 627.6(10), regardless of the purpose for which such vehicle is used. In re Graettinger, 95 B.R. 632, 635 (Bankr. N.D. Iowa 1988); Matter of Van Pelt, 83 B.R. 617, 620 (Bankr. S.D. Iowa 1987).

The Bromms' reading of Graettinger for the proposition that a motor vehicle may be exempted as a tool of trade is incorrect. The court in Graettinger held that a motor vehicle may be treated under 11 U.S.C. S 522(f)(2)(B) as a tool of trade for lien avoidance purposes. In reaching this decision, the Graettinger court followed the rule set forth in Matter of Thompson, 750 F.2d 628, 630 (8th Cir. 1984), requiring that although "a state may elect to control what property is exempt under state law, federal law determines the availability of lien avoidability.¹¹ Thus, the holding in Graettinger is applicable only to whether a lien on exempt property may be avoided under 11 U.S.C. S 522(f), not whether such property is exempt under Iowa law. The court concludes that the pickup truck is not a "tool of the trade" under Iowa Code S 627.6(10).

ORDER

IT IS ORDERED that the Farmers National Bank of Webster City's objection to Susan Bromms' claimed exemption in a money purchase plan and salary deferral plan is sustained.

IT IS ORDERED that the trustee's objection to debtors' claim of exemption in a 1976 Ford F-150 pickup truck is sustained.

SO ORDERED ON THIS 11th DAY OF APRIL, 1991.

William L. Edmonds
Bankruptcy Judge

1. Iowa Code S 627.6(10) provides: "If the debtor is engaged in any profession or occupation other than farming, the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value \$10,000.00 in the aggregate.