

In the United States Bankruptcy Court
for the Northern District of Iowa
Western Division

THERESE M. MORRIS	Bankruptcy No. X91-00828S
<i>Debtor(s).</i>	Chapter 7

DECISION RE: TRUSTEE'S OBJECTION TO EXEMPTIONS

Therese Morris, a resident of Nebraska, filed her chapter 7 case on May 1, 1991. She claims as exempt an automobile and a \$27,000.00 back child support judgment against her former spouse. At the time of filing, she owned a home in Norfolk, Nebraska which the parties stipulate was encumbered by mortgages for more than its value. Debtor does not claim the homestead as exempt. She claims the automobile and the child support judgment as exempt under Neb.Rev.Stat. § § 25-1552 and 25-1556 (Reissue 1988). The trustee objects claiming that because the debtor has an available homestead exemption, she may not utilize Neb.Rev.Stat. § 25-1552 to claim either the automobile or the support judgment. The debtor responds that since the homestead is fully encumbered, it is not "subject to exemptions as a homestead" under Nebraska law. Alternatively, debtor claims the child support judgment as exempt under Neb.Rev.Stat. § 25-1556 as the "provisions for the debtor and his family necessary for six month's support. . . ." Trustee argues that that section is inapplicable to child support.

DISCUSSION

Section 25-1552 of the Nebraska Revised Statutes states in pertinent part:

All persons who have neither lands, town lots, or houses subject to exemptions as a homestead, under the laws of this state, shall have exempt from forced sale on execution the sum of twenty-five hundred dollars in personal property, except wages. * * *

Neb.Rev.Stat. § 25-1552 (Reissue 1988).

Section 25-1556 of the Nebraska Revised Statutes states in pertinent part:

No property hereinafter mentioned shall be liable to attachment, execution or sale on any final process issued from any court in this state, against any person being a resident of this state: . . . (2) . . . the provisions for the debtor and his family necessary for six month's support, either provided or growing, or both.

Neb.Rev.Stat. § 25-1556 (Reissue 1988).

There is no question that at the time of the filing of the bankruptcy case debtor owned a homestead in the state of

Nebraska, although she did not enjoy any equity in it. Debtor could claim the homestead as exempt from general creditors under Neb.Rev.Stat. § 40-101, although it would not be exempt from consensual mortgages. Neb.Rev.Stat. § 40-103(2). The lack of equity does not enable the debtor to forego the homestead exemption in favor of the personal property exemption under § 25-1552. State v. Krumpus, 13 Neb. 321, 14 N.W. 409 (1882).

Debtor seeks to exempt the support judgment under the
Nebraska statute which permits a debtor to exempt provisions

necessary for six months support. Debtor cites no case which would define "provisions" to include a back child support judgment even if part or all of the child support were intended for necessities for the child. The common meaning of the term "provisions" is "a stock of supplies that are necessary, especially food." Webster's II New Riverside University Dictionary 948 (1984). Case authority in most states appears to define "provisions" in terms of foodstuffs. This court has not been able to find any cases which would define "provisions" to include a judgment held by the debtor against another.

CONCLUSIONS OF LAW

Debtor may not claim her automobile or a back child support judgment against her former spouse as exempt properties under Neb.Rev.Stat. § § 25-1552 or 1556.

ORDER

IT IS ORDERED that the trustee's objection to the debtor's claim of exemption in a back child support judgment and a 1980 Chevy automobile are sustained. Judgment shall enter

accordingly.

SO ORDERED ON THIS 8th DAY OF AUGUST, 1991.

William L. Edmonds
Chief Bankruptcy Judge