

In the United States Bankruptcy Court

for the Northern District of Iowa

GORDON FRED KUNKLE
MARY JO KUNKLE
Debtor(s).

Bankruptcy No. 93-60077LW

Chapter 7

ORDER

The above-captioned matter came on for hearing on May 26, 1993 on Objection to Debtors Exemption Claims. The Debtor appeared by Attorney Jeffrey C. Peterzalek. Mr. Peterzalek was substitute counsel for Attorney Thomas C. Verhulst. The Debtors, Gordon Fred KUNKLE and Mary Jo Kunkle, also appeared at this hearing. Also appearing was Attorney peter C. Riley representing the interest of Aurora Supply, Inc., the Objector to the Debtors claims of exempt property.

ISSUES

Debtors Gordon and Mary Jo Kunkle file a list of property claims as exempt. On April 7, 1993, the Objector, Aurora Supply, Inc., filed an objection to Debtors list of property claimed as exempt. This motion contained three specific objections to the claim of exemption. The first objects to the Debtors' claim of exemption of household goods and furnishings on the grounds that these items are not household goods and furnishings and can not appropriately be claimed as exempt property. The second objects to the Debtors' claim of exemption interest in certain life insurance policies. Immediately prior to the commencement of the presentation of evidence, Aurora Supply, Inc. withdrew their objection to this exemption claim. Finally, Aurora Supply, Inc. objects to the claim of exemption for Debtor Gordon Kunkle's 401k Plan and Debtor Mary Jo Kunkle's John Deere Pension Plan. Again, immediately prior to the commencement of the presentation of evidence, Aurora Supply, Inc. withdrew its objection to Mary Jo Kunkle's claim of exemption in her John Deere Employer Pension Plan. As such, this objection is directed solely toward Debtor Gordon Fred Kunkle's 401k Plan.

In addition to the foregoing, there is on file a Motion to Avoid Impairing Exemption. This was filed by Debtors on April 19, 1993. Notice of this Motion was provided and a 20 day bar date was provided. The bar date has now expired without any objections being filed. As such, this Motion is granted and counsel for the Movant is directed to prepare an appropriate order for the Court's signature.

EXEMPTION OF HOUSEHOLD GOODS AND FURNISHINGS

The facts establish that the Debtors Mr. & Mrs. Gordon Kunkle live in Hazleton, Iowa. This property has a large yard which requires more than ordinary lawn equipment to maintain. At the time of the filing of the Petition and the associated schedules, the Debtors listed various items of personal property as household goods and furnishings. More specifically, they listed the following items: push mower; string trimmer; riding mower; snow blower; garden trailer; wheelbarrow; lawn sweeper;

garden rakes and shovels; air compressor; wood storage shed; car ramps; jack stands; floor jack; circular saw; bench grinder; sabre saw; wet and dry shop vac; metal truck tool box; plastic storage truck box; 5 gallon air tank; miscellaneous hand tools; hammers, wrenches, sockets, chisels; and 18" chain saw.

Objector Aurora Supply, Inc. asserts that some or all of these items are not household goods and furnishings as defined under the exemption section of Chapter 627 of the Iowa Code. The burden is on the Objector to prove that the exemption is not properly claimed. See Bankr. Rule 4003(c) and In re Krantz, 97 B.R. 514 (Bankr. N.D. Iowa 1989).

In analyzing this issue, courts have wound their way through the household goods maze on a case-by-case and item-by-item basis. It is therefore difficult to find any clearly discernible standard in the case law. In re Reid, 121 B.R. 875, 877 (Bankr. D. N.M. 1990). This approach is necessary because each individual household has different needs and wants. In re Vale, 110 B.R. 396, 400 (Bankr. N.D. Ind. 1989)(power drill and mower are household goods; movie camera, hedge trimmer and boat motor are not). Reid concludes that "household goods" should include what a person might expect to find in today's average household. Id. at 878 (TV, VCRs, video cameras, telephones, home computers are household goods). The Fourth Circuit has stated that "household goods" are those items of personal property that are typically found in or around the home and used by the debtor or his dependents to support and facilitate day-to-day living within the home, including maintenance and upkeep of the home itself. In re McGreevy, 995 F.2d 957, 961-62 (4th Cir. 1992)(in Debtors' circumstances, firearms are not household goods). Though the foregoing cases consider the meaning of "household goods" under § 522(f)(2)(A) relating to lien avoidance rather than exemptions the wording of that section is sufficiently similar to Iowa Code § 627.6(5) to provide guidance in the present context.

The evidence on this issue establishes that the Debtors do have a substantial yard. It requires more than an ordinary lawn mower to maintain this property and the surrounding grounds. The parties also have a substantial driveway which requires clearing of snow in the winter. The law mandates that the exemption statute be liberally construed in favor of the Debtor in order to effectuate the purpose of the statute. Based on the evidentiary record, it is the conclusion of this Court that the following items are properly claimed as household goods and furnishings: push mower; string trimmer; riding mower; snow blower, garden trailer; wheelbarrow; lawn sweeper; garden rakes and shovels; wood storage shed; circular saw; bench grinder; sabre saw; wet and dry shop vac; miscellaneous hand tools; hammers, wrenches, sockets, chisels; 18" chain saw.

However, other items listed as exempt relate to the Debtor, Gordon Kunkle's use of a motor vehicle. Many of these items deal with repair of his motor vehicles. They are often carried in the vehicles. These items do not properly or appropriately fit under the exemption for household goods and furnishings. They are tools or items associated with the maintenance and care of a motor vehicle. As such, it is the conclusion of this Court that the following items are not household goods and furnishings as defined under Iowa or Bankruptcy Law: air compressor; car ramps; jack stands; floor jack; metal truck tool box; plastic storage truck box; five gallon air tank.

As such, Aurora Supply, Inc.'s objection to the list of exempt property is overruled as to the first category and sustained as to the second category of claimed exempt property.

EXEMPTION OF 401K PLAN

The second issue for the Court's determination relates to the 401k Plan. Debtor Gordon Fred Kunkle has a 401k Plan through his employer. He has made \$2,880 in contributions. He began fund this plan

within the last year. All contributions were made between January, 1992 when he signed up for this plan, and January, 1993 when the petition was filed in these Bankruptcy proceedings. He paid into the plan the sum of \$80.00 per week. However, if he was laid off or did not work a full 40 hour week, he did not make a contribution. Approximately 36 payments were made during this year. This is an elective program and the Debtor can terminate his contributions at any time. This plan also provides that money can only be taken out of the 401k plan if the Debtor retires. He can borrow against it for extreme medical need, college expenses, or as a home equity loan, however, this loan must be paid back unless the Debtor retires with 30 years of service. An affidavit of the plant administrator was provided to the Court, setting out these restrictions.

The Debtors cite recently amended Iowa Code § 627.6(8)(3) in an attempt to fit the 401k plan within that claimed exemption. It is very questionable whether that statute exempts the undistributed corpus of a pension plan, as distinguished from distributions, from such a plan to which the debtor has an immediate and present right. Compare In re Huebner, 986 F.2d 1222, 1224 (8th Cir. 1993)(Iowa has no statute granting an exemption for all or any part of the undistributed corpus of an annuity contract); Velis v. Kardanis, 949 F.2d 78, 81 (3rd Cir. 1991)(similar Federal exemption pertains only to present rights to distribution from pension plan), with In re Pettit, 57 B.R. 362, 363 (S.D. Iowa 1985) (exemption for debtor's rights in payment under pension plan applies to all assets of plan, not just to present payments due). However, this Court concludes that an analysis of § 541(c)(2) as it applies to these circumstances relieves this Court from addressing the issue of the applicability of § 627.6(8)(e).

Before analyzing exemptions, the Court must, as a threshold requirement, determine whether the property in dispute is property of the bankruptcy estate. Property of the debtor's estate is broadly defined in § 541(c), to include all the debtor's interests in property. However, § 541(c)(2) makes the following exception: "A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title."

The U.S. Supreme Court recently held that a debtor's interest in an ERISA-qualified pension plan may be excluded from the property of the bankruptcy estate pursuant to § 541(c)(2). Patterson v. Shumate, 112 S.Ct. 2242, 2250, 119 L. Ed.2d 519 (1992). The Court acknowledged the split in the Circuits on the issue of whether ERISA restrictions on alienation qualify as "applicable nonbankruptcy law" in determining whether a fund is included as property of the estate under that section. Id. at 2246. In its holding, the Court rejected the 8th Circuit view expressed in In re Graham, 726 F.2d 1268, 1271 (8th Cir. 1984), that § 541(c)(2) only protects spendthrift trusts as defined by state law. In re Green, 967 F.2d 1216, 1217 (8th Cir. 1992) (after Patterson, Graham is no longer valid law).

Patterson found that the plain language of § 541(c)(2) requires the conclusion that "applicable nonbankruptcy law" refers not only to state spendthrift law but also to ERISA requirements. Id. at 2246. Both ERISA and coordinate sections of the Internal Revenue Code (29 U.S.C. § 1056(d)(1) and 26 U.S.C. § 401(a)(13), respectively) impose restrictions on the transfer of a debtor's interest in a qualified plan. These restrictions are "enforceable" as required by § 541(c)(2).

On the basis of the record made, the John Deere Tax Deferred Savings Plan is an ERISA-qualified plan. Both Debtors and objector, Aurora Supply, Inc., refer to the plan as a 401k plan which is one type of plan subject to ERISA. See In re Lucas, 924 F.2d 597, 598 (6th Cir. 1991). Debtor Gordon Kunkle is eligible to participate in the plan because of his employment with John Deere Waterloo Works. The affidavit by the plan administrator states that the assets of the plan may not be voluntarily or involuntarily assigned or alienated. Testimony by Gordon Kunkle establishes that there are severe restrictions on his use of the funds.

In the absence of contrary evidence, the Court finds that the 401k plan is an ERISA-qualified pension plan. Following the holding of Patterson, the Debtors' interest in the 401k plan is excluded from the Debtors' bankruptcy estate pursuant to § 541(c)(2). Aurora Supply's Objection to the exemption of the Debtors' interest in the 401k plan is thus moot. The Debtors' interest in the assets of the 401k plan is not property of the estate.

WHEREFORE, the Court finds the various items of personal property are exempt or non-exempt consistent with this ruling.

FURTHER, it is the conclusion of this Court that the 401k plan in issue is not property of the estate and the Motion for Exemption is unnecessary and moot.

SO ORDERED this 4th day of June, 1993.

Paul J. Kilburg
U.S. Bankruptcy Judge