

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

DONALD D. FINK and BETTY J. FINK
Debtors.

Bankruptcy No. 95-51926XS
Chapter 13

ORDER RE: OBJECTION TO CLAIM OF EXEMPTIONS

The matter before the court is the objection filed by Farm Services Agency to the debtors' claim of exemption in farm equipment as tools of their trade. Hearing was held February 6, 1996 in Sioux City, Iowa. Donald H. Molstad appeared for the debtors. Donna K. Webb, Assistant U.S. Attorney, appeared for FSA. The court now issues its findings of fact and conclusions of law as required by Fed.R.Bankr.P. 7052. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2) (B).

Findings of Fact

On October 6, 1995, the debtors Donald D. Fink and Betty J. Fink filed a Chapter 7 bankruptcy petition. They scheduled a claim by Farmer's Home Administration secured by their farm land and equipment. Farmer's Home Administration is now known as Farm Services Agency. The Finks claimed an exemption in farm equipment valued at \$20,000, described as follows:

- 1486 Diesel Tractor International
- 806 Diesel tractor International
- 560 Diesel Tractor International
- 7000 John Deere Planter
- 490 International 21 ft disc
- 12 ft bush-hog disc
- #133 International [cultivator]
- # 400 John Deere hoe
- #234 corn picker/sheller
- 200 gal. 8 row sprayer
- 2-100 gal. saddle tanks
- 500 gal. water tank
- 4 row weed wiper
- bush hog blade
- 3-8 ft x 12 ft wagons
- John Deere 5-16" plow
- John Deere 25 ft field cultivator
- 6" 42 ft grain auger
- Hawk belt 2220 gal. liquid spreader
- John Deere 10 ft grain drill
- Vinco generator
- Van-dale pump
- 5 coop hog feeders
- Gehl 2 row chopper

- Schultz chisel plow
- #100 9 ft mower

Document 1, Schedule C. On December 11, 1995, FSA filed an objection to the claim of exemption in farm equipment. Document 24.

On October 11, 1995, on the Finks' motion, the court entered an order converting the case to one under Chapter 13. The Finks filed a plan stating that they would avoid FSA's lien on their farm equipment. Their plan was confirmed on January 23, 1996.

Both debtors have off-farm jobs. Donald Fink has worked for Petersen Manufacturing for eight years. He is the foreman in a welding shop. Betty Fink has worked for Martin Luther Homes for the past two years. On October 31, 1995, she fell and broke her ankle. She has not been able to work since then and does not receive any unemployment or disability benefits.

The Finks own 80 acres of farm ground. Their homestead is located on an adjacent five acres. They began farming in 1970 growing row crops and raising stock cows and hogs. They eventually leased additional ground and farmed more than 700 acres. In 1991 the Finks lost their leases and were unable to secure replacement ground. The Finks last farmed their own 80 acres in 1991. For the last four years they have leased the ground to Donovan Sonnichsen or his brother. The annual rent is \$4,100, payable half on March 1 and half on October 1. In 1993, the Finks earned \$300 for custom disking. In 1995 Donald Fink disked 25 of the 80 acres for Donovan Sonnichsen for no compensation.

For ten years ending in 1993 the Finks raised custom feeder pigs. The owner of the pigs went out of business, and the Finks have not found a replacement owner.

For the last four years, the Finks have operated a business, "Herbs and More," growing and harvesting herbs and dried flowers. In the past, they have grown the flowers on a half acre of their homestead plus part of their lawn. They have had income of about \$3,000 and expenses of \$1,000 per year. Next year they plan to plant four acres of flowers. Of the farm equipment claimed exempt, the following pieces are necessary for their herb and flower business:

- 806 Diesel tractor International
- 12 ft bush-hog disc
- 200 gal. 8 row sprayer
- 500 gal. water tank
- bush hog blade
- John Deere 5-16" plow
- John Deere 10 ft grain drill
- #100 9 ft mower

Discussion

The Finks claim the farm equipment exempt under Iowa Code 627.6(11)(a), which provides that a debtor "engaged in farming" may exempt the equipment "reasonably related to a normal farming operation" not to exceed \$10,000 in value. Unless an objection is filed, the property claimed as exempt by a debtor is exempt. 11 U.S.C. 522(*l*). The FSA, as the objecting party, has the burden of proof that the Finks' farm equipment is not exempt. Fed.R.Bankr.P. 4003(c).

FSA contends that the Finks are not engaged in farming. In determining whether a debtor is engaged in farming for Iowa exemption law or whether a debtor is engaged in the trade of farming for federal lien avoidance law, the tests are substantially the same. In re Indvik, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990). The court must consider the intensity of the debtors' past farming activities, the sincerity of their intentions to continue farming, and whether debtors are legitimately engaged in a farming activity which currently and regularly uses the specific implements exempted. Production Credit Ass'n of St. Cloud v. LaFond (In re LaFond), 791 F.2d 623, 626 (8th Cir. 1986). Debtors claiming an exemption for tools of the trade must be engaged in the trade at the time of filing the bankruptcy petition. Matter of Myers, 56 B.R. 423, 426 (Bankr. S.D. Iowa 1985). However, a debtor may still claim an exemption in farm equipment if

the debtor has temporarily ceased farming as of the filing date and intends to return to farming. Indvik, 118 B.R. at 1005; Myers, 56 B.R. at 426. The debtor must show a sincere intention to resume farming and reasonable prospects for doing so in the near future. In re Nie, No. 87-01248W, slip op. at 9 (Bankr. N.D. Iowa Jan. 4, 1988). Debtors may claim an exemption for farm equipment even though they derive income from off-farm jobs. Matter of Hahn, 5 B.R. 242, 245 (Bankr. S.D. Iowa 1980).

The Finks do not claim they are engaged in farming by virtue of their farm rent income. See In re Easton, 883 F.2d 630, 633 (8th Cir. 1989) (for purposes of Chapter 12 eligibility, the renting out of farm land is not in itself a farming operation). Nor do they express any intention to resume custom hog farming. They claim that their farming operation consists of their herb and flower business. They also desire to retain equipment necessary for custom field work. Custom farming has been held to be a farm operation for exemption purposes. Myers, 56 B.R. at 427. The FSA has not claimed that the flower business is not a farming operation. The court will assume that it is.

The preponderance of the evidence is that the Finks have never been in the business of custom field work. They have earned only \$300 from custom work in the last five years. Moreover, they have not shown a strong desire or reasonable prospects for starting a custom farm operation in the near future. The rationale for doing so has existed since 1991 when the Finks lost their leases. The Finks have not yet made inquiries to find work for the upcoming crop year. It does not seem reasonable that they would wait until March before making efforts to secure future work, when the Finks claim that income from custom farming will be necessary for them to make their plan payments.

However, the court finds and concludes that the Finks are engaged in farming as to their herb and flower business and that the equipment necessary for that operation is exempt.

IT IS ORDERED that Farm Service Agency's objection to exemptions is sustained except as to the 806 Diesel tractor International, 12 ft bush-hog disc, 200 gal. 8 row sprayer, 500 gal. water tank, bush hog blade, John Deere 5-16" plow, John Deere 10 ft grain drill and #100 9 ft mower. Judgment shall enter accordingly.

SO ORDERED THIS 8th DAY OF FEBRUARY 1996.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U.S. mail to: Don Molstad, USAttorney, Carol Dunbar, Judith Spindler and U. S. Trustee.