

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

REBECCA E. CLARK
Debtor(s).

Bankruptcy No. 95-51996XS
Chapter 7

DECISION RE: TRUSTEE'S OBJECTION TO EXEMPTION

Trustee Wil L. Forker objects to the debtor's claim of exemption in a handgun. Hearing was held March 5, 1996 in Sioux City. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

Rebecca E. Clark lives in Germantown, Iowa with her two grandsons, ages two-years old and four-months old. The boys are her son's children. Her son is in prison in Wyoming serving concurrent sentences of four-to-six and three-to-five years. He is violent, especially when taking drugs or alcohol, and he has threatened approximately 14 times to kill her. He has been abusive to his mother since he was 14 years old. He has beaten the debtor's sister. He twice broke into the debtor's home, each time taking her .22 caliber pistol. He has said that when he gets out of prison, he is going to come and take the boys. Ms. Clark fears for her life. For protection, she purchased a 9-mm Ruger pistol. She believes she needs such a gun because a .22 caliber gun would not stop him.

The debtor claims the 9-mm Ruger exempt as a household good under Iowa Code § 627.6(5) which permits the exemption of "[t]he debtor's interest in household furnishings, household goods, and appliances held primarily for the personal, family, or household use of the debtor or a dependent of the debtor. . . ." Iowa Code § 627.6(5). Debtor claims the gun is a household good because it provides her with protection in her home. The trustee objects. He contends that in Iowa, the firearms exemption is limited to "[o]ne shotgun, and either one rifle or one musket." Iowa Code § 626.6(2). I agree with the trustee.

There are a substantial number of bankruptcy court cases involving whether firearms are household goods. Most, however, deal with whether firearms are household goods within the meaning of 11 U.S.C. § 522(f)(2)(A). This bankruptcy provision, now redesignated as § 522(f)(1)(B)(i) by the Bankruptcy Reform Act of 1994, permits a debtor to avoid a nonpossessory, nonpurchase-money security interest in "any household furnishings, household goods, . . . appliances . . . that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor. . . ." 11 U.S.C. § 522(f)(1)(B)(i).

The cases, therefore, interpret the meaning of "household goods" under federal law for lien avoidance purposes. McGreevy v. ITT Financial Services (In re McGreevy), 955 F.2d 957 (4th Cir. 1992) (rejects per se rule that firearms may never be household goods, but concludes for this case that they are not); In re French, 177 B.R. 568 (Bankr. E.D. Tenn. 1995) (court follows McGreevy; concludes in the case that a pistol and shotgun are not household goods); First Family Financial Services, Inc. v. Raines (In re Raines), 161 B.R. 548 (Bankr. N.D. Ga. 1993) (handgun is a household good) *aff'd* 170 B.R. 187 (N.D. Ga. 1994); Barnes v. ITT Financial Services (In re Barnes), 117 B.R. 842 (Bankr. D. Md. 1990) (firearms are not household goods); In re Gonshorowski, 110 B.R. 51 (Bankr. N.D. Ala. 1990) (a pistol was a household good as it was owned for defense); In re McCain, 114 B.R. 652 (Bankr. E.D. Mo. 1990) (firearm not a household good even though exempt under state law because it was not necessary to fresh start); Barrick v. Avco Consumer Discount Co. (In re Barrick), 95 B.R. 310 (Bankr. M.D. Pa. 1989) (firearms are not household goods); In re Champion, 94 B.R. 709 (Bankr. S.D. Ala. 1988) (guns are household goods); In re Courtney, 89 B.R. 15 (Bankr. W.D. Tex. 1988) (guns are household goods); Oswald v. ITT Financial Services, 85 B.R. 541 (W.D. Mo. 1986) (district court reverses bankruptcy court and concludes that firearms are not household goods); In re Weaver, 78 B.R. 135 (Bankr.

N.D. Tex. 1987) (firearms not household goods); Heights Finance Corp. v. Barley (In re Barley), 74 B.R. 450 (Bankr. N.D. Ind. 1987) (rifle was household good); In re Wetzel, 46 B.R. 254 (Bankr. W.D. Va. 1984) (firearm not a household good); In re Wright, 34 B.R. 643 (Bankr. W.D. Ky. 1983) (guns are not household goods); Noggle v. Beneficial Finance Co. (Matter of Noggle), 30 B.R. 303 (Bankr. E.D. Mich. 1983) (rifle not a household good); McPherson v. Associates Financial Services (In re McPherson), 18 B.R. 240 (Bankr. D. N.M. 1982) (guns not household goods); Cole v. Beneficial Finance Co. (Matter of Cole), 15 B.R. 322 (Bankr. W.D. Mo. 1981) (debtor may not avoid lien on exempt firearms).

In dealing with the issue of whether a debtor may avoid a lien in a particular type of property under § 522(f), the courts discuss whether the provision should be given a broad or narrow interpretation. See General Finance Corp. of Colorado v. Ruppe (In re Ruppe), 3 B.R. 60 (Bankr. D. Colo. 1980) (narrow construction) and Coleman v. Lake Air Bank (In re Coleman), 5 B.R. 76 (Bankr. M.D. Tenn. 1980) (liberal construction). So far as lien avoidance is concerned, in the Eighth Circuit, "[n]ot every item exempt under state or federal law can be avoided under section 522(f)." Matter of Thompson, 750 F.2d 628, 631 (8th Cir. 1984). The debtor may avoid liens only on "those personal goods necessary to the debtor's new beginning and of little resale value. . . ." Id. Exemption statutes, on the other hand, are construed broadly in favor of the debtor. Shepard v. Findley, 204 Iowa 107, 214 N.W. 676, 678 (1927).

Several bankruptcy courts have examined whether firearms are exempt under state or federal bankruptcy exemption statutes. In re McCain, 114 B.R. 652 (Bankr. E.D. Mo. 1990) (firearms are household goods under Missouri exemption statute); In re Oglesby, 98 B.R. 960 (Bankr. E.D. Mo. 1989) (firearm not a household good under Missouri exemption statute); Barrick v. Avco Consumer Discount Co. (In re Barrick), 95 B.R. 310 (Bankr. M.D. Pa. 1989) (firearm not exempt as household good under federal exemption statute); In re Stroman, 78 B.R. 785 (Bankr. D. S.C. 1987) (magnum pistol and semiautomatic gun not exempt as household goods under South Carolina exemption statute); In re Greenlee, 61 B.R. 257 (Bankr. D. Colo. 1986) (guns not exempt as household goods under Colorado exemption statute); Noggle v. Beneficial Finance Co. (Matter of Noggle), 30 B.R. 303 (Bankr. E.D. Mich. 1983) (rifle not exempt as household good under federal bankruptcy exemption statute).

I have found no Iowa case, state or federal, involving the issue of whether a pistol, indeed a firearm of any kind, is a household good under Iowa's exemption statute. That, not lien avoidance, is the issue which is presented in this case.

The exemption statute must be construed liberally in favor of the debtor. "The purpose underlying all exemption legislation is to secure to the unfortunate debtor the means to support himself and the family; the protection of the family being the main consideration." Shepard v. Findley, 204 Iowa 107, 214 N.W. 676, 678 (1927).

The statute at issue is relatively new. It was enacted nearly in its present form in 1981. In its pertinent parts it stated:

A debtor who is a resident of this state may hold exempt from execution the following property:

...

2. One shotgun, and either one rifle or one musket.

...

6. The debtor's interest, not to exceed two hundred dollars in value in any particular item, in household furnishings, household goods, and appliances held primarily for the personal, family, or household use of the debtor or a dependent of the debtor, not to exceed in value two thousand dollars in the aggregate.

...

Iowa Code § 627.6 (1981).

In 1986, the Iowa legislature revised its exemption statute regarding household goods, household furnishings, and appliances to delete the individual item value limitation of \$200.00 and to renumber the exemption as § 627.6(5).

Prior to 1981, the exemptions allowed were somewhat more specific and more archaic. Among the items relating to the household which a debtor might exempt from execution were:

One bedstead and the necessary bedding for every two in the family. Iowa Code § 627.6(11).

Household and kitchen furniture, not exceeding two hundred dollars in value. Iowa Code § 627.6(13).

All spinning wheels and looms. Iowa Code § 627.6(14).

One sewing machine and other instruments of domestic labor kept for actual use. Iowa Code § 627.6(15).

Iowa Code § 627.6 (1980). The Code also allowed the exemption of certain firearms without reference to the purpose of use. The debtor could exempt "one musket or rifle and shotgun." Iowa Code § 627.6(2) (1980).

The exemption statute passed in 1981 was similar in many ways to the federal exemptions which were made part of the Bankruptcy Reform Act of 1978. Section 522(d)(3) of the Code allowed as a federal exemption in bankruptcy:

The debtor's interest, not to exceed \$200 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

11 U.S.C. § 522(d)(3) (1978).

Arguably, federal cases interpreting § 522(d)(3) and cases broadly interpreting § 522(f)(2)(A), now § 522(f)(1)(B)(i), would be helpful in interpreting Iowa Code § 627.6(5) in that it appears that the Iowa legislature patterned the latter after § 522(d)(3). However, Congress did not provide a separate firearms exemption. The Iowa legislature did. It may be then that federal courts that construe § 522(d)(3) and § 522(f)(1)(B)(i) to include firearms as household goods interpret those sections more broadly than the Iowa legislature might have done, so Iowa retained its firearms exemption. On the other hand, the Iowa legislature might have retained its firearms exemption because it wanted residents to be able to claim certain firearms exempt without regard to location or purpose of use, and it was concerned that the "household goods" exemption modeled after the Bankruptcy Code would not provide such a broad exemption. I cannot say, therefore, that federal cases interpreting the federal statutes will provide a complete answer to this dispute.

Although interpretations of the federal statute may not help to determine specifically whether the Iowa legislature intended that a firearm might be a household good, federal interpretations of the term "household goods" provide help in determining whether an item might fall into that category. Of the many cases attempting a definition of the term, I find In re McGreevy to be the most satisfactory. McGreevy v. ITT Financial Services (In re McGreevy), 955 F.2d 957 (4th Cir. 1992).

In McGreevy, the Fourth Circuit Court of Appeals rejected a definition of household goods that exempted only such goods that were found and used in or around the home and that were necessary to a debtor's fresh start. 955 F.2d at 960. It concluded that the statute did not include a requirement of necessity. I agree with its interpretation. There is no necessity requirement in the Iowa statute.

The court then rejected a more liberal definition of "household goods" because it failed to "capture fully the functional nexus between the good and the household that distinguishes a household good from a good that happens (even typically so) to be used in the house." *Id.* at 961. The language of the Iowa statute also seems to require this functional nexus. In subsection 5, the terms "furnishings" and "goods" are both modified by "household." The adjective is defined as "of or pertaining to a household . . ." and "for use in maintaining a home." The Random House Dictionary of the English Language 688 (1983). See State v. Jones, 524 N.W.2d 172, 174 (Iowa 1994) (statutory words are given their plain or ordinary meaning absent a legislative definition, and a dictionary may be used to ascertain the meaning of a statute's language.) The same section of the Iowa statute also exempts appliances, but does not require that they be household appliances. The statute states that the debtor may exempt "appliances held primarily for the personal, family, or household use of the debtor or a dependent. . . ." Iowa Code § 627.6(5). It appears, therefore, that appliances may be exempted not only if they pertain to the household but even if they do not, so long as they are held primarily for

personal or family use. In reading the entire section, the Iowa legislature appears to have intended that there be a "functional nexus" between the household and the "goods."

The circuit court in McGreevy arrived at a definition of household goods which honors the maxim that exemption statutes be construed liberally and which gives effect to the language of the statute. It defined household goods as "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." McGreevy, 955 F.2d at 961-62. Because the language of 11 U.S.C. § § 522(d)(3) and 522(f)(1)(B)(i) and Iowa Code § 627.6(5) are so similar, I conclude that such a definition is helpful in determining whether a particular item is a household good under Iowa law. The definition takes account of both the language of the statute and the object sought to be accomplished. Havill v. Iowa Depart. of Job Service, 423 N.W.2d 184, 186 (Iowa 1988).

I conclude that a handgun fails to meet the definition of a household good under Iowa law despite that it might typically be found in a home and be kept there for defense. A gun by its nature does not pertain to the household. It is an item that generally exists independently and without reference to a home. Because there is no functional nexus with the home, I conclude a handgun is not a household good.

But even if a liberal construction of the Iowa Code might include a handgun within the definition, I would determine that a handgun is not a household good, because I conclude that the Iowa legislature intended the Iowa firearms exemption to be contained solely in Iowa Code § 627.6(2). In determining this, I may look to the former statute. Iowa Code § 4.6(4). I find nothing in the items or categories made exempt prior to 1981 making a pistol exempt. One musket or rifle and a shotgun were. Iowa Code § 627.6(2) (1980). In amending the statute in 1981, the legislature deleted very specific items of a household nature and adopted a more general provision, but it retained its firearm exemption language. I take judicial notice that at the time of adoption of the prior statute and at the time of the amendment, handguns existed and were present in Iowa. I do not doubt they were kept in homes.

It would seem reasonable to believe that in amending the exemption statute, the legislature went from the very specific to the more general language so far as household goods were concerned to take into consideration the rapid expansion in modern society of the type of goods that might be used in a home. The firearms exemption was left untouched, and then as now, it contains no restriction on the nature or location of the debtor's use. In amending § 627.6, the legislature could have added a pistol, handgun, or revolver to the firearms exemption, but it did not. I am unable to conclude that the legislature intended handguns to be exempt, but only if they were shown to be household goods.

In Iowa, a resident may claim exempt a shotgun and either a rifle or a musket. The resident may own the firearm for protection in the home, for hunting, target shooting, for collecting or for any other reason. The reason does not matter.

Under the present scheme of exemptions, a person with two shotguns could claim one exempt under § 627.6(2), if for example he or she used it for hunting, but he or she could not claim the second as a household good, even if it were proven beyond doubt that the second was kept for protection of the home and its occupants. See Farmers' Elevator & Livestock Co. v. Satre, 196 Iowa 1076, 195 N.W. 1011, 1013 (1923) (vehicle not exempt as farmer's tools when statute separately exempts vehicle by use of which a farmer "habitually earns his living"). It would be odd that the legislature would permit a handgun to be exempted as a household good in addition to a shotgun or rifle or musket, but that it would not permit the exemption of a second shotgun, a second rifle, or a second musket as a household good. There is no reason to believe that the legislature would prefer handguns over other firearms as household weapons of protection, yet such a preference would be the consequence of the construction sought by debtor. This unlikelihood that the legislature intended such a consequence may be considered by me in construing the statute. Iowa Code § 4.6(5).

Because prior to 1981 the legislature did not permit the exemption of handguns, and because it did not add them to the firearms exemption in its 1981 revision of the statute, I conclude they did not intend them to be exempt from execution under the household goods exemption. Because I conclude that handguns are not household goods and because they are not included in the firearms exemption, they might be claimed in Iowa's general exemption under § 627.6(13) as "personal property not otherwise specifically provided for in this chapter."

IT IS ORDERED that the trustee's objection to the debtor's claim of exemption in a 9-mm Ruger pistol is sustained. Judgment shall enter accordingly.

SO ORDERED THIS 14th DAY OF MARCH 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: Wil Forker, Alvin Ford and U.S. Trustee.