

In the United States Bankruptcy Court

for the Northern District of Iowa

KRISTAN E. LUNGWITZ
Debtor.

Bankruptcy No. 96-22823KD
Chapter 7

ORDER RE OBJECTION TO EXEMPTION

On January 22, 1997, the above-captioned matter came on for trial pursuant to assignment. Trustee Sheryl Youngblut appeared in person. Debtor appeared in person with Attorney Paul Fitzsimmons. The matter before the Court is an objection to exemption filed by the Chapter 7 Trustee. Evidence was presented after which the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(B).

STATEMENT OF THE CASE

Debtor filed her Chapter 7 Petition on November 6, 1996. On Schedule C (Property Claimed as Exempt), Debtor claimed as exempt pursuant to Iowa Code sec. 627.6(10) a computer, desk, lamps, chair, and adding machine. The stated value in the exemption schedule was \$100. On Schedule B, Debtor lists the value of these items as \$2,000.

The Trustee filed her objection to exemption of the foregoing items on December 11, 1996. In so doing, the Trustee alleged that Debtor had not established that she is self-employed nor that her employer requires her to maintain an office in the home as a condition of employment. Based on this objection, the Trustee asks the Court to deny the exemption.

FINDINGS OF FACT

Debtor Kristan E. Lungwitz has been employed at Clarke College in Dubuque, Iowa for approximately four years. She is employed as a secretary in the Capital Campaign Department of Clarke College, working a 40 hour week from 8:00 a.m. until approximately 4:30 p.m, Monday through Friday. She types correspondence, letters, mailing lists and other documents as required by her employer. In addition, she is required to file and to answer the telephone and route calls during her work day. Debtor testified that her employer does not require her to take work home. She testified, however, that her office works on a crisis basis and taking work home and working on it there allows her to keep from getting behind.

Debtor testified that she purchased the 486SX computer new in 1993 for approximately \$3,000. The computer came with a color monitor and a printer. She purchased the computer prior to the commencement of her employment at Clarke College, but she purchased it with the Clarke College job in mind. She purchased the other items in order to have a small office at home so that she can bring work home and not be interrupted. She brings work home in the form of correspondence, mailing lists and letters from work.

In addition, Debtor testified that she does typing for students at Clarke College. She testified that she has done term papers on the computer to supplement her income. She stated that she started doing this work for students at about the time that she started her employment at Clarke College. However, this testimony is contradictory. On cross-examination, Debtor testified that she has never declared income from this outside work on previous tax returns. She later testified that her earnings for doing student typing in 1996 were less than \$50 for the entire year.

Debtor has access to her Clarke College office in the evenings and on weekends. Entrance is obtained by contacting the security guard who allows her into her office. The evidence fails to establish that Debtor has medical needs or family responsibilities which require her to remain at home in off hours as opposed to going into the office to do necessary work.

CONCLUSIONS OF LAW

Exemption determinations are made with a view toward the general rule that courts should construe exemption statutes liberally in favor of the debtor in light of the purposes of the exemption. In re Wallerstedt, 930 F.2d 630, 631 (8th Cir. 1991); Chariton Feed & Grain, Inc. v. Kinser, 794 F.2d 1329, 1331 (8th Cir. 1986) (applying Iowa law); Frudden Lumber Co. v. Clifton, 183 N.W.2d 201, 203 (Iowa 1971). The purpose of Iowa's exemption statute is to secure to debtors the means to support themselves and their family. In re Knight, 75 B.R. 838, 839 (Bankr. S.D. Iowa 1987). This is based on the premise that it is better that a creditor's claim remain partially unsatisfied than that Iowa residents be placed in such impecunious circumstances that they and their family become charges of the state. Id.

Iowa Code section 627.6(10) provides that a debtor, engaged in a profession or occupation other than farming, may claim as exempt the proper implements and tools of the debtor's trade, not to exceed ten thousand dollars in aggregate value. The test to determine whether property is exempt under this section is "whether the items are the proper implements in the reasonable conduct of the debtor's trade or profession." In re Indvik, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990); In re Eby, 76 B.R. 140, 141 (Bankr. S.D. Iowa 1987); Hoyer v. McBride, 211 N.W. 847, 848 (Iowa 1927). An implement is an item reasonably fitted or employed as a means of making labor more effective. Baker v. Maxwell, 168 N.W. 160 (Iowa 1918). Thus, property which is reasonably fitted to being employed in making its owner's labor more effective may appropriately be considered exempt as an implement of the owner's trade. Id. at 161.

Necessity of the item in the debtor's job need not be shown. Eby, 76 B.R. at 141. The question is whether the item is reasonably related to the debtor's profession or occupation. Id. It is enough if the item is a "proper" tool in such employment. Knight, 75 B.R. at 839. "Any tool or instrument which is usually adapted to such use is a proper one." Id. at 840 (citation omitted).

A personal computer was determined to be exempt as reasonably related to the debtor's farm operations in Eby. 76 B.R. at 141. The court stated that the computer facilitates debtor's compilation of data and assists in the farmer's decision-making. Id. at 142. In Knight, a personal computer used by the debtor in his insurance office was exempt as a tool of his trade. 75 B.R. at 840. The court stated that "[t]he ubiquity of computers in the business world attests to their importance to the effective and efficient operation of businesses." Id.

A standard similar to Knight was followed in In re Shumaker, 124 B.R. 820, 823 (Bankr. D. Mont. 1991), which allowed a ranch hand to exempt a personal computer as a tool of his trade. The

computer was not a requirement of his employment. Id. The debtor used the computer to keep production records of livestock from the ranch where he was employed, as well as records from his former business. Id. at 821. The court stated that the debtor need not prove the computer was a necessity; it was enough that it was a convenient item to use in performing his trade. Id. at 823.

Other jurisdictions require an item to be necessary for the debtor's employment in order for it to be exempt as a tool of the trade. See In re Biancavilla, 173 B.R. 930, 933 (Bankr. D. Idaho 1994) (stating that Idaho law requires that the item be necessary to continued employment); In re Cottingham, 1996 WL 288393, at *4 (Bankr. W.D. Tenn. Apr. 25, 1996) (stating that under Tennessee law necessity to present employment is the appropriate standard). In both those cases, the courts exempted a home computer as a tool of the trade. In Biancavilla, a debtor owned a home computer and his employer paid for software to allow the debtor to work at home. 173 B.R. at 933. In Cottingham, the debtor was self-employed in the catering business and the court found that the personal computer contributed to the efficiency of the debtor's present business. 1996 WL 288393, at *4.

In Texas, exempt tools of the trade are limited to items peculiarly adapted to the trade or profession and do not include items having merely general value and use. In re Neal, 140 B.R. 634, 637 (Bankr. W.D. Tex. 1992). The court held that a personal computer used in the debtor's computer-aided drafting business run out of his home was exempt as tool of the trade. Id. at 638. It warned that a general exemption for all personal computers should not be inferred. Id. n.2.

In determining whether an item is a tool of the trade for lien avoidance purposes under 522(f)(1)(B) (ii), the Eighth Circuit has held that the test is the reasonable necessity of the item to the debtor's trade or business. In re LaFond, 791 F.2d 623, 628 (8th Cir. 1986). The LaFond test is not necessarily the applicable one in this case, however, because state law governs the availability and scope of exemptions while federal law determines the availability of 522(f)(1) lien avoidance. In re Thompson, 884 F.2d 1100, 1102 (8th Cir. 1989). Debtor is not attempting to avoid a lien in this case.

Debtor seeks to exempt her home office equipment, listed in her schedules as computer, desk, lamps, chair and adding machine, exempt as tools of the trade under Iowa Code sec. 627.6(10). This office equipment is in a very general sense reasonably related to the ordinary duties of a secretary. It could also be used to allow Debtor to earn extra income by typing student papers.

The Court first addresses Debtor's assertion that she has earned extra income through typing student papers. Debtor's testimony in this regard is inconsistent and contradictory. On direct examination, Debtor implied, if not directly stated, that she has typed numerous term papers at \$4.00 per page. However, on cross-examination, she testified that she has never declared any earnings from this alleged enterprise on her income tax returns. Still later, Debtor testified that she did a small amount of this work which generated less than \$50 per year.

In evaluating testimony, the trial court has the opportunity to observe the demeanor of the witnesses and weigh their credibility. On this issue, the Court concludes that it will not make a finding inconsistent with Debtor's prior representations to the Internal Revenue Service that she has generated no income from this outside activity over the past years. As such, the Court need not consider the impact of such alleged employment in the present context of whether this equipment constitutes tools of the trade.

Debtor's primary argument is that she is employed full-time by Clarke College as a secretary and that this equipment is necessary or convenient to her responsibilities as a secretary. The Court has previously discussed many of the cases throughout the country addressing the issue of whether a

computer is exempt as a tool of the trade. This discussion includes cases from the Bankruptcy Court in the Southern District of Iowa. However, the Iowa Supreme Court has never addressed this issue nor has the issue been directly addressed in the Northern District of Iowa. It is clear from the various cases that a computer can be a tool of the trade, vital to certain occupations. However, a computer can also be viewed as a generic piece of equipment which is of merely general use if not adapted to a particular profession or use.

Debtor is employed full-time by Clarke College as a secretary. She is not required to continue her work outside of the workplace nor is she required to own a computer. While there is no dispute that computers have become almost indispensable in secretarial work, a computer is already supplied to Debtor. The distinction between this case and cases previously discussed is that Debtor has a computer already available in her workplace and now seeks to exempt a second computer at her home. In the other cases discussed, the debtor requesting exemption had available only the computer sought to be exempted. In those cases, the courts concluded that the computer was a necessary component of the employment and therefore exempt. Here, Debtor has available to her the unrestricted use of a computer owned by her employer. Nevertheless, she seeks a determination that a redundant system in her home be found to be exempt. This Court concludes that the mere preference of Debtor performing her duties away from the workplace, on an apparently limited basis, rather than going into the office is insufficient to qualify this office equipment as exempt tools of Debtor's trade.

In summary, unlike the debtors in Eby and Knight, this Debtor is not self-employed. All her employment duties can be performed at her workplace away from home during her regular forty hour work week. Debtor does not use her computer during her regular work hours as secretary for Clarke College but rather, similar equipment is provided by her employer. Debtor's computer and other associated equipment merely duplicates equipment already available to her at her office.

Although computer equipment clearly can be construed as tools of the trade and reasonably related to secretarial work under appropriate circumstances, there must be some nexus between job responsibilities and the particular item of equipment. In this case, Debtor's ownership of a computer in her home is not reasonably related to her job responsibilities as a secretary for Clarke College. The most that can be said of this arrangement is that periodically Debtor prefers to work at her home rather than remain at the job after hours or to return to the college to complete unfinished tasks. Such a preference does not provide a sufficient causal relationship to satisfy the requirement that this equipment is necessary or even convenient to Debtor's responsibilities as a secretary. This Court concludes that the office equipment is not exempt as tools of Debtor's trade.

WHEREFORE, Trustee's Objection to Exemptions is SUSTAINED.

FURTHER, Debtor's computer, desk, lamps, chair and adding machine are not exempt as tools of the trade under Iowa Code sec. 627.6(10).

SO ORDERED this 11th day of February, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge