

In the United States Bankruptcy Court

for the Northern District of Iowa

LARRY L. BRISLAWN,
CAROL J. BRISLAWN
Debtors.

Bankruptcy No. 97-10137KC

Chapter 7

ORDER RE TRUSTEE'S OBJECTION TO EXEMPTION

On May 7, 1997, the above-captioned matter came on for hearing pursuant to assignment on Trustee's Objection to Exemption. Present at the hearing were Trustee Wesley B. Huisinga and Debtors' attorney Michael Mollman. Trustee's exhibits were received and the record was closed by agreement of the parties. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(B).

FINDINGS OF FACT

Debtors list three vehicles as property of the estate. They claim two of these exempt under Iowa Code sec. 627.6(9)(b): Debtor Carol Brislawn claims the 1984 Dodge Truck exempt and Debtor Larry Brislawn claims the 1955 Chevy 210 Auto exempt. Trustee's Exhibits 1 and 2 are copies of the relevant certificates of title. Both of these vehicles are titled solely in Larry Brislawn.

Trustee objects to exemption of the 1984 Dodge Truck. He argues that Debtor Carol Brislawn may not claim the truck exempt because she does not have an ownership interest in it. Debtors' Resistance asserts that Debtor Carol Brislawn has a dollar interest in the vehicle. No evidence was presented to support the existence of such an interest. Debtors state that they are in the process of a dissolution of marriage and Carol Brislawn is to receive the truck as part of the dissolution settlement.

CONCLUSIONS OF LAW

The issue in this matter is whether Carol Brislawn may claim a vehicle titled solely in Larry Brislawn's name exempt under Iowa Code sec. 627.6(9)(b). The language of that exemption statute is as follows:

A debtor . . . may hold exempt from execution the following property:

Any combination of the following, not to exceed a value of five thousand dollars in the aggregate:

. . .

b. One motor vehicle.

- c. In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds

...

Iowa Code 627.6(9). This statute is applicable to Debtors pursuant to Iowa Code sec. 627.10 and 11 U.S.C. 522(b) through which Iowa opted out of the Federal bankruptcy exemption scheme. This allows debtors in Iowa to "exempt from property of the estate", 11 U.S.C. 522(b), the property exempted under Iowa law. Property of the estate includes "all legal and equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. 541(a)(1).

In In re Bierman, 133 B.R. 484, 487 (Bankr. N.D. Iowa 1991), this Court upheld a debtor's right to exempt an interest in a vehicle which was not noted on the certificate of title. The debtor had furnished the down payment but the car was titled in his father's name. Id. at 485. The Court found that the debtor's equitable interest in the vehicle was provable under Iowa Code sec. 321.45(2)(c). Id. at 487. It held that the debtor's right under his agreement with his father, to the extent provable, is a property right under 11 U.S.C. 541(a)(1) and exemptible under sec. 627.6(9)(b). Id. The certificate of title is prima facie evidence, but not conclusive proof, of ownership rights in a vehicle in Iowa. Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d 393, 398 (Iowa 1977); Iowa Code 321.45. A party may have an ownership interest in a vehicle even though it is not noted on the certificate of title. Sandhorst, 252 N.W.2d at 398.

Underlying the Bierman opinion, though not explicit, is the notion that the debtor must have a property interest in the vehicle to order to claim it exempt. The language of sec. 627.6(9) exempting "[o]ne motor vehicle", unlike the language exempting wages and tax refunds, does not specifically require that the debtor have an interest in the vehicle. See In re Couron, No. X90-00442S, slip op. at 3 (Bankr. N.D. Iowa July 16, 1990) (holding joint debtors must each have property interest in taxes withheld to claim tax refunds exempt); In re Honomichl, 82 B.R. 92, 94 (Bankr. S.D. Iowa 1987) (same). The Eighth Circuit has analyzed the requirement of ownership in Bauldry v. Hall, 174 F.2d 379 (8th Cir. 1949), in considering a debtor's attempt to exempt hogs under a previous version of Iowa Code sec. 627.6. The court stated that the statute did not specify that the debtor must be the owner of the property claimed exempt, "yet the language used clearly requires ownership." Id. at 381. It held that ownership is required but need not be absolute to support an exemption in property. Id.

The language of the Bankruptcy Code allowing exemptions does speak of the debtor's interest in property. Under 522(b), a debtor may "exempt from property of the estate", the property listed in the Iowa exemption statute. Property of the estate includes "all legal and equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. 541(a)(1). The court in In re Miller, 167 B.R. 782, 784 (Bankr. S.D.N.Y. 1994), stated that 522(l) implies the requirement that the debtor have an ownership interest in property claimed exempt. Sec. 522(l) states that the debtor "shall file a list of property that the debtor claims as exempt". That court noted that joint debtors may stack exemptions under 522(m). Id. at 783. However, exclusive title of a car in one debtor precludes that debtor's spouse from claiming the exemption. Id. 784.

Carol Brislawn argues her rights as the spouse of the owner of the car constitute ownership rights. In Iowa, however, a wife has no rights in her husband's personal property during his lifetime. Gunsaulis

v. Tingler, 218 N.W.2d 575, 578 (Iowa 1974); Nichols v. Nichols, 526 N.W.2d 346, 349 (Iowa App. 1994). As a general statement of the law, a spouse in his or her own right owns property separate from the other spouse. Nichols, 526 N.W.2d at 348; Iowa Code 597.2. The court in Miller reached the same conclusion based on New York law, finding that the debtor's husband had no equitable interest in her property which he could claim exempt. 167 B.R. at 784.

In Iowa, state district courts make an equitable division of marital property in dissolution actions. Nichols, 526 N.W.2d at 349. A nonowner spouse can receive an ownership interest in property when the court adjudicates what that interest will be, if any, in a dissolution decree. Id. "Until then, such property remains the separate property of the owner spouse." Id. Principles of equitable distribution in the context of divorce or dissolution do not apply to a determination in a bankruptcy case of whether a debtor may claim an exemption in property owned by a joint debtor spouse. In re Wilkinson, 100 B.R. 315, 317 (Bankr. W.D. Va. 1989).

Under the foregoing, a debtor must have a provable legal or equitable interest in property in order to claim an exemption in that property. This ownership interest need not be absolute. In Iowa, prima facie proof of ownership of a vehicle is established by the certificate of title.

Debtors have offered no evidence that Carol Brislawn has a dollar interest in the 1984 Dodge Truck. Therefore, they have failed to rebut the presumption arising from the certificate of title that Larry Brislawn is the sole owner of the vehicle. Carol Brislawn has no ownership interest in the truck under Iowa law by virtue of her status as the owner's spouse. Only in dissolution proceedings may a spouse's separate property be equitably distributed to the nonowner spouse.

WHEREFORE, Trustee's Objection to Exemption is SUSTAINED.

FURTHER, Debtor Carol Brislawn does not have a property interest in the 1984 Dodge Truck.

FURTHER, Debtor Carol Brislawn may not claim the 1984 Dodge Truck exempt under Iowa Code sec. 627.6(9)(b).

SO ORDERED this 23rd day of May, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge