

In the United States Bankruptcy Court

for the Northern District of Iowa

ROBERT L. FUNK, TINA L. FUNK
Debtors.

Bankruptcy No. 97-20462-D
Chapter 7

ORDER RE OBJECTIONS TO EXEMPTION BY TRUSTEE AND GARNAVILLO SAVINGS BANK

This matter came on for hearing before the undersigned on April 29, 1997 pursuant to assignment. Debtors Robert and Tina Funk were represented by Attorney James O'Brien. Chad Leitch appeared for Garnavillo Savings Bank. A.J. Flickinger appeared for Richard, Penny and Melvin Wright. Paul Fitzsimmons appeared as Chapter 7 Trustee. After the presentation of evidence and arguments, the Court took the matter under advisement.

As a result of the hearing, as noted in subsequent proceeding memos, the issues remaining for resolution include the exempt status of Debtors' milk check and the Bank's assertion of a purchase-money security interest in five pieces of equipment. The Court granted the parties time to file briefs on these issues. Trustee has not filed a brief. Debtors and the Bank each submitted briefs. The parties did not address the purchase-money issue. This issue arose from Debtors' Motion to Avoid Lien and the Bank's Objection to Exemptions. The Court assumes the parties have resolved this issue and this issue will not be further addressed in this ruling. If an issue remains for resolution, the parties may seek additional hearing.

Based on the briefs, the Court limits this ruling to a consideration of the milk check as exempt wages. This matter is now ready for resolution. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) (B),(K).

STATEMENT OF THE CASE

Trustee filed an Objection to Claim of Exemption, arguing that the milk check claimed exempt by Debtors does not constitute accrued wages under Iowa Code sec. 627.6(9)(c). The Bank also raised this issue in its Objection to Exemption.

FINDINGS OF FACT

Debtors Robert and Tina Funk are in the business of farming. They operate Funk Dairy Farms in Guttenburg, Iowa. In their schedules, they list a milk check from Swiss Valley Farms in the amount of \$2,000 as personal property. They claim this is exempt as accrued wages under Iowa Code sec. 627.6 (9)(c). The parties stipulate that the milk check was derived from milk sold to Swiss Valley from cows milked, fed and cared for by Debtors.

Debtors assert that this milk was produced as a result of their personal services. Their brief states: "The cows could not produce the milk without the Debtors' personal services and the portion attributable to the cows' efforts is already being deducted from the check and paid to the secured creditor." Garnavillo Savings Bank asserts that the proceeds from the sale of the milk do not constitute compensation for Debtors' personal services which can be exempt as accrued wages. The Bank has a security interest in "farm products". It argues that the milk check is not wages, but constitutes proceeds from livestock, subject to its security interest.

CONCLUSIONS OF LAW

Iowa Code sec. 627.6(9)(c) grants an exemption, "[i]n the event of a bankruptcy proceeding, [in] the debtor's interest in accrued wages . . . as of the date of filing of the petition in bankruptcy, not to exceed one thousand dollars." The Iowa Supreme Court has not interpreted the term "wages" in sec. 627.6(9)(c). In re Sexton, 140 B.R. 742, 743 (Bankr. S.D. Iowa 1992). The court in Sexton borrowed from an Iowa Court of Appeals opinion interpreting the term "earnings" in Iowa Code sec. 642.21, which details the property exempt from garnishment in Iowa. Marian Health Ctr. v. Cooks, 451 N.W.2d 846, 847 (Iowa App. 1989). These cases state that the terms "earnings" in sec. 642.21 and "wages" in sec. 627.6(9)(c) are defined as "compensation for personal services." Sexton, 140 B.R. at 744; Cooks, 451 N.W.2d at 847. The focus is on distinguishing types of income. Sexton, 140 B.R. at 744. In Sexton, income from personal services is distinguished from accounts receivable, income from labor of employees, and investment income. Id. The court held that an independent contractor's income from his personal trucking services was exempt. Id. In In re Mattice, 81 B.R. 504, 508 (Bankr. S.D. Iowa 1987), the court likewise interpreted "wages" to require a relationship with the debtor's labor. It held that Federal feed and grain program payments did not constitute wages. Id.

Other courts have questioned whether milk checks constitute exempt wages or earnings. In Leach v. Frazier, 215 So. 2d 253, 255 (Miss. 1968), the relevant statute exempted "wages for personal services" from garnishment. The court held that funds for the purchase of raw milk sold by the debtor to a dairy did not constitute exempt wages for personal services. Id. More recently, the court in Friedt v. Moseanko, 498 N.W.2d 129, 133 (N.D. 1993), considered a debtor's claim that milk funds were exempt from garnishment as "earnings" and found the precedents to be largely negative. The statute defined "earnings" as compensation paid for personal services. Id. at 133. The court held, following the trend of cases, "proceeds from the sale of milk produced by a dairy farmer are not the kind of earnings . . . exempted from garnishment." Id. at 133-34.

The Court concludes that Debtors' milk check from Swiss Valley Farms is not exempt under Iowa Code sec. 627.6(9)(c) as accrued wages. The language of that statute grants exempt status to compensation for personal services. The milk check from Swiss Valley Farms is payment for a farm product, not for personal services of Debtors. The milk check does not constitute Debtors' wages.

WHEREFORE, Objections filed by Trustee and Garnavillo Savings Bank to exemption of the Swiss Valley Farms -- milk check are SUSTAINED.

FURTHER, Debtors may not claim the milk check exempt as accrued wages under Iowa Code sec. 627.6(9)(c).

FURTHER, the Court assumes that the issue of the Bank's assertion of a purchase-money security interest in five pieces of equipment has been resolved by the parties. If that is not the case, the parties may reassert that issue by separate application.

SO ORDERED this 4th day of June, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge