

In the United States Bankruptcy Court

for the Northern District of Iowa

Cynthia Climer
Debtor(s).

Bankruptcy No. 97-01864-C
Chapter 7

ORDER RE TRUSTEE'S REPORT OF ABANDONMENT OF PROPERTY AND RESPONSE THERETO

This matter came on for hearing on October 16, 1997 on Trustee's Report of Abandonment of Property and the Response thereto filed by Creditor Hobby Homes, Inc. Stephen B. Jackson, Jr. appeared for Debtor Cynthia Climer. Harry R. Terpstra appeared as the Chapter 7 Trustee. Roger and Diane Bauer appeared as officers of Hobby Homes, Inc. After hearing the positions of the parties, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) (A) and (B).

FINDINGS OF FACT

Hobby Homes, the creditor objecting to Trustee's proposed abandonment, successfully sued Debtor in the Iowa District Court in Linn County. In March, 1997, judgment was entered on the \$3,300 debt as listed on Debtor's Schedule F. Hobby Homes then started garnishment proceedings. The sheriff made one seizure of wages for the amount of \$136.23 on May 20, 1997 and deposited the funds with the Clerk of the Iowa District Court. On June 17, 1997, Debtor filed her Chapter 7 petition. The Iowa District Court later turned over the garnished funds to Trustee.

On September 22, 1997, Debtor received her Chapter 7 discharge. Trustee proposes to abandon the \$136.23 of garnished funds to Debtor. He states the garnished funds are not property of the estate and either (1) liens exceed the value of the property, (2) the property is of insignificant value, or (3) the property is exempt. Hobby Homes opposes abandonment of the \$136.23 to Debtor and asks that the funds be turned over to it.

CONCLUSIONS OF LAW

Trustee may abandon property of the estate that is burdensome to the estate or that is of inconsequential value or benefit to the estate. 11 U.S.C. §554. "Title to abandoned property reverts to the debtor as it was held previous to the filing of the bankruptcy." In re Bentley, 916 F.2d 431, 432 (8th Cir. 1990). The legislative history of §554 indicates that property may be abandoned to any party with a possessory interest. In re Popp, 166 B.R. 697, 700 (Bankr. D. Neb. 1993). Although this party is usually the debtor, it can also be a creditor if the creditor has superior possessory interests. Id.; see also In re Goffena, 175 B.R. 386, 388 n.7 (Bankr. D. Mont. 1994). The court in In re Sininger, 84 B.R. 115, 117 (Bankr. S.D. Ohio 1988), noted that when wages are paid into court pursuant to a garnishment order, the effect of the garnishment is to be determined by the laws of the state where the

writ issues. Generally, state law governs the resolution of property rights within a bankruptcy proceeding. Chiu v. Wong, 16 F.3d 306, 309 (8th Cir. 1994).

On this record, the Clerk of Iowa District Court was in possession of the property at the filing of Debtor's bankruptcy petition. A creditor acquires a lien on garnished funds in possession of the sheriff. Conklin v. Iowa Dist. Court, 482 N.W.2d 444, 447 (Iowa 1992). Under Iowa Code sec. 630.18, a judicial lien is created and perfected at the time of the service of notice of garnishment. In re Aztec Concrete, Inc., 143 B.R. 537, 539 (Bankr. S.D. Iowa 1992). Delivery to the sheriff, however, does not automatically entitle the garnishing creditor to the funds. Hubbard v. Des Moines Indep. Community Sch. Dist., 323 N.W.2d 238, 240 (Iowa 1982).

The debtor retains some interest in such wages until an order condemning the funds is entered by the Iowa District Court. In re Yetter, 112 B.R. 301, 303 (Bankr. S.D. Iowa 1990). Prior to a condemnation order, the debtor can claim to be not liable on the debt or that the property is exempt. Id. This right to contest the garnishment is property of the bankruptcy estate. Id.; In re Koch, 197 B.R. 654, 659 (Bankr. W.D. Wis. 1996). The order condemning the funds extinguishes any right or interest of the debtor held in the funds. Garton v. Garton, 533 N.W.2d 828, 830 (Iowa 1995).

Sininger notes that, for example, Tennessee law determines that garnishment ends the debtor's legal and equitable rights to the property. 84 B.R. at 117. In California and Ohio, by contrast, garnishment creates a lien and does not divest the debtor of all legal and equitable rights. Id. Similarly, in United States v. Whiting Pools, Inc., 462 U.S. 198, 103 S. Ct. 2309, 2316 (1983), the court noted that a levy on an IRS tax lien is a remedy to bring the property into the custody of the IRS but does not determine the IRS' rights to the property.

Like property seized under a federal criminal forfeiture, the garnished funds are "[i]n a word, . . . in a state of limbo." In re Thena, Inc., 190 B.R. 407, 411 (D. Ore. 1995). The debtor's bare legal title and the right to use judicial process to challenge the seizure constitute rights which are property of the estate. Id. at 412. However, the actual property seized is not subject to turnover to the estate where the debtor did not have equitable control over the property at the time of the petition. Id. at 413.

Based on the foregoing, Debtor's right to contest the garnishment is property of the estate. The garnished funds themselves, over which Debtor had no equitable control at the filing of the petition, are not property of the estate. Hobby Homes appears to have a judicial lien on the funds based on the garnishment proceeding. Debtor has an equitable interest in raising defenses or exemptions until the funds are condemned. Neither Hobby Homes nor Debtor has possessory rights in the garnished funds of \$136.23 at this point until an order regarding condemnation of the funds is entered in Iowa District Court.

The Court concludes that the \$136.23 in garnished funds should be abandoned for the reasons stated by Trustee. They should not be turned over to Debtor. The funds should be returned to the Clerk of the Iowa District Court to allow completion of condemnation proceedings.

WHEREFORE, Trustee's Report of Abandonment of Property is APPROVED IN PART.

FURTHER, the objection filed as a Response to Report of Abandonment of Property by Hobby Homes, Inc. is SUSTAINED IN PART.

FURTHER, Trustee is authorized to abandon the garnished funds in the amount of \$136.23 to the possession of the Clerk of the Iowa District Court for further proceedings under Iowa law.

SO ORDERED this 26 day of November, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge