

In the United States Bankruptcy Court

for the Northern District of Iowa

CARL M. WITT JR.
Debtor(s).

Bankruptcy No. 98-03345-C
Chapter 7

ORDER RE OBJECTION TO EXEMPTION

On February 11, 1999, the above-captioned matter came on for hearing pursuant to assignment. Debtor appeared by Attorney John Maher. Attorney Wesley Huisinga appeared for Trustee Sheryl Youngblut. Trustee objects to the exemption by Debtor of a Freightliner Semi Tractor as a tool of the trade. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B).

STATEMENT OF THE CASE AND UNCONTESTED FACTS

Debtor filed a voluntary Chapter 7 petition on November 6, 1998. Schedule C of the petition sets out property which Debtor claims exempt. Debtor claims as exempt a 1989 Chevrolet van pursuant to Iowa Code sec. 627.6(9)(b). This van has a stated value of \$1,500. Debtor also claims as exempt a 1991 Freightliner Semi Tractor as a tool of the trade pursuant to Iowa Code sec. 627.6(10). The semi tractor is valued at \$10,000 by Debtor. The uncontested record establishes that Debtor is exclusively employed as a freight truck driver.

Trustee filed an objection to exemption on December 23, 1998. She objects to Debtor's claimed exemption of the semi tractor on the basis that Iowa law prohibits a debtor from claiming a motor vehicle exempt as a tool of the trade. Debtor recognizes that existing authority supports Trustee's position. However, Debtor asks the Court to change existing law in this District and enter a finding that a semi tractor can be claimed exempt as a tool of the trade pursuant to Iowa Code sec. 627.6(10). Additionally, Debtor asserts that Iowa Code sec. 627.6, as interpreted and applied, is arbitrary and capricious and denies Debtor equal protection of the law.

CONCLUSIONS OF LAW

The sole issue in this case is whether Debtor Carl M. Witt, Jr. may claim a semi tractor exempt under Iowa Code sec. 627.6(10). The language of that exemption statute is as follows:

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

. . .

10. if the debtor is engaged is engaged in any profession or occupation other than farming, the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate.

Iowa Code §627.6(10).

Debtor has also claimed a 1989 Chevrolet van exempt pursuant to sec. 627.6(9)(b). The language of that exemption statute is as follows:

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

...

9. any combination of the following, not to exceed a value of five thousand dollars in the aggregate;

...

(b) One motor vehicle.

Iowa Code §627.6(9)(b).

The exemption statute in Iowa is applicable to debtors pursuant to Iowa Code sec. 627.10 and 11 U.S.C. §522(b). Pursuant to these Code sections, Iowa has opted out of the Federal bankruptcy exemption scheme. This allows debtors in Iowa to "exempt from property of the estate", property exempted under Iowa law.

Trustee takes the position that a debtor is precluded from claiming a motor vehicle exempt under Iowa Code sec. 627.6(10). It is Trustee's position that Debtor is limited to claiming a single motor vehicle exempt under Iowa law and that exemption may only be claimed pursuant to Iowa Code sec. 627.6(9)(b). Trustee argues that under Iowa exemption law, Debtor is precluded from claiming a semi tractor as exempt as a tool of the trade pursuant to sec. 627.6(10). As Debtor concedes, this conclusion comports with existing case law in this District. In re Graettinger, 95 B.R. 632, 635 (Bankr. N.D. Iowa 1988); In re Van Pelt, 83 B.R. 617, 620 (Bankr. S.D. Iowa 1987); In re Bromm, No. X90-01787F, slip op. at 4 (Bankr. N.D. Iowa, April 11, 1991).

In seeking to change existing law, Debtor has supplied a memorandum of authorities to the Court. This memorandum relies substantially, if not entirely, upon cases involving debtors who were engaged in farming. Debtor cites In re Erickson, 76 B.R. 136 (Bankr. S.D. Iowa 1987), which holds that, for a debtor engaged in farming, a motor vehicle may be considered a tool of the trade. Erickson, 76 B.R. at 139. However, Debtor's reliance upon this line of cases is misplaced. Debtors engaged in farming are entitled to derive the benefits of an additional exemption under Iowa exemption law. Iowa Code §627.6(11)(a). This exemption allows debtors engaged in farming to claim exemptions including implements and equipment reasonably related to a normal farming operation. This exemption is in addition to motor vehicles held exempt under subsection 9. Thus, a debtor engaged in farming is allowed to exempt additional motor vehicles. This right is unavailable to debtors not engaged in farming. As it is uncontested that Debtor is not engaged in farming, the Code section which forms the basis for the decision in Erickson is not available to Debtor. As such, the line of authority cited by Debtor is not applicable here.

As recognized by the Court in Erickson, absent the special exemption for farmers, "a truck can not be deemed a tool of the trade but rather must be relegated to the vehicle exemption under section 627.6(9)(b)." Erickson, 76 B.R. at 138. It is that conclusion which controls here. Debtor is not a farmer. Erickson is consistent with the long-term findings of this District that Debtor is limited to utilizing the vehicle exemption under sec. 627.6(9)(b).

Secondly, Debtor asserts that his only source of income is as an over-the-road truck driver. He asserts that if he cannot claim this semi tractor as a tool of the trade, he is denied equal protection of the law. Debtor cites no authority for this position. It is the conclusion of this Court that Debtor has failed to establish a constitutional infirmity. A Court may only make a determination of a constitutional

violation if a protected class of persons has been treated in a disparate manner. The U.S. Supreme Court has held that:

Whether embodied in the Fourteenth Amendment or inferred from the Fifth, equal protection is not a license from the Fifth, equal protection is not a license for courts to judge the wisdom, fairness or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.

Fed. Communications Comm'n. v. Beach Communications, Inc., 508 U.S. 307, 313 (1992).

The Constitution does not require that all professions be treated equally. The Iowa Supreme Court has held that the Iowa legislature's determination of exemption law does not involve a fundamental right nor an inherently suspect classification. As such, the courts apply the least rigorous equal protection scrutiny to these classifications. West Des Moines State Bank v. Mills, 482 N.W.2d 432, 436 (Iowa 1992). In applying this test, the Iowa Supreme Court concluded that the agricultural crisis existing at the time of the passage of Iowa Code sec. 627.6(11)(a) made financial hardship to farmers more likely than to other citizens. Mills, 482 N.W.2d at 436.

It is, therefore, the conclusion of this Court that Iowa exemption law may provide a benefit to debtors engaged in farming which is not available to other professions. In its present application, Debtor is not prevented from claiming the semi tractor exempt, he is merely limited to claiming it exempt under Iowa Code sec. 627.6(9)(b) and not under sec. 627.6(10). The overall effect is that Debtor is limited to a claimed exemption of \$5,000 instead of \$10,000.

While there may appear to be a level of unfairness in allowing an exemption to debtors engaged in farming which is not available to over-the-road truckers, Debtor has failed to establish that such treatment does not bear a rational relationship to a legitimate State interest. It is the legislature which has the power to establish exemptions. In re Estate of Deblois, 531 N.W.2d 128, 131 (Iowa 1995). Absent some constitutional violation, statutes which appear to be unfair in their application must be rectified by the legislative process. Vance v. Bradley, 440 U.S. 93, 97 (1979). It is the conclusion of this Court that Debtor has failed to establish any constitutional violation and if there is any fundamental unfairness in the present application, it is one which must be rectified by the Iowa legislature and not by an artificial interpretation imposed by this Court.

WHEREFORE, Trustee's objection to exemption is SUSTAINED.

FURTHER, Debtor Carl M. Witt, Jr. may not claim the 1991 Freightliner Semi Tractor exempt under Iowa Code sec. 627.6(10).

FURTHER, Debtor Carl M. Witt, Jr. is limited to claiming exempt one motor vehicle with a value not to exceed \$5,000 pursuant to Iowa Code sec. 627.6(9)(b).

FURTHER, Debtor Carl M. Witt, Jr. is granted authority to modify his exemptions under Iowa Code sec. 627.6(9)(b) if he elects to do so.

SO ORDERED this 4th day of March, 1999.

PAUL J. KILBURG

Paul J. Kilburg
U.S. Bankruptcy Judge