

In the United States Bankruptcy Court

for the Northern District of Iowa

DANIEL JAMES ELLIS
Debtor(s).

Bankruptcy No. 99-00291-D
Chapter 7

ORDER RE TRUSTEE'S FINAL REPORT

On January 31, 2001, the above-captioned matter came on for hearing on Trustee's Final Report and Debtor's objection thereto. Debtor Daniel James Ellis appeared with his attorney Thomas C. Verhulst. Creditor Janet B. Ellis appeared pro se. Chapter 7 Trustee Sheryl Youngblut was also present. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (K), (O).

STATEMENT OF THE CASE

Debtor objected to the proposed distribution to Creditor Janet B. Ellis and a hearing on the objection was held on November 14, 2000. On December 4, 2000, this Court found that Ms. Ellis has a \$24,447.04 priority claim for support, part of which is secured by collateral. Because Ms. Ellis levied upon Debtor's 1996 Chevrolet truck prior to the filing of the bankruptcy petition, this Court found that Ms. Ellis has a valid lien against Debtor's automobile. Furthermore, this Court found that it was possible that Ms. Ellis had a lien against Debtor's homestead as well. A hearing was set to determine whether the homestead secured the debt, the value of the secured collateral, and whether any senior liens existed in the secured collateral.

On January 31, 2001, Debtor presented evidence which showed that his homestead remains unencumbered by Ms. Ellis' lien. In order for a judgment lien to attach to real property the judgment must be recorded in the county where the property is located. Iowa Code § 626.9. Since the judgment had not been transcribed to the appropriate county prior to the filing of the bankruptcy petition, the judgment lien did not attach. Therefore, since Ms. Ellis does not have a lien in the homestead, the only collateral that secures Ms. Ellis' debt is the 1996 Chevrolet truck. Debtor testified that no prior liens exist in the truck.

Debtor testified as to the condition of the truck. It has four-wheel drive, air conditioning, automatic windows and locks, specialized paint, and customized seats. However, it has been driven 130,000 miles, the passenger-side door doesn't open, the water pump is broken, and a new set of heavy-duty tires are needed. An expert witness for Debtor estimates the value of the truck to be \$7,800. Ms. Ellis presented no evidence as to the value of the truck, nor did the Trustee.

The record reveals that Trustee abandoned the truck from the bankruptcy estate on June 26, 2000. Ms. Ellis has a lien in the truck to the full extent of its value. Based on the evidence presented, the value of the truck is \$7,800 which represents Ms. Ellis' secured claim. The remainder of her claim, or \$16,647.04, is a priority claim. Ms. Ellis is free to execute upon her lien and sell the truck at any time to satisfy the secured portion of her claim. See Iowa Code Chapter 626.

WHEREFORE, this Court finds that Ms. Ellis does not have a valid lien against Debtor's homestead.

FURTHER, Ms. Ellis has a secured claim in the amount of \$7,800 in Debtor's 1996 Chevrolet truck.

FURTHER, to the extent that the automatic stay remains in effect, the provisions of 11 U.S.C. §362 are modified to allow Ms. Ellis to execute on the collateral at any time, subject to applicable Iowa law.

FURTHER, the remainder of Ms. Ellis' claim, or \$16,647.04, is a priority claim.

FURTHER, Trustee is directed to file an amendment to the Final Report in accordance with this ruling.

SO ORDERED this 20th day of February, 2001.

Paul J. Kilburg
Chief Bankruptcy Judge