

In the United States Bankruptcy Court

for the Northern District of Iowa

DANIEL JAMES ELLIS
Debtor(s).

Bankruptcy No. 99-00291-D
Chapter 7

Appealed to U.S.D.C. on 03/22/01
[Affirmed](#) by U.S.D.C. on 10/30/01

ORDER RE MOTION TO RECONSIDER

On March 9, 2001, the above-captioned matter came on for telephonic hearing on U.S. Trustee's Motion to Reconsider and Debtor's Joinder therein. John Schmillen appeared on behalf of the U.S. Trustee. Debtor Daniel Ellis was represented by Attorney Jeff Peterzalek. Sheryl Youngblut appeared as Chapter 7 Trustee. Janet Kohlmeyer, f/k/a/ Janet Ellis, appeared pro se. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (B), (K).

On February 20, 2001, this Court entered a final order on Trustee's Final Report. The Court concluded that Creditor Janet Ellis has a secured claim in the amount of \$7,800 in Debtor's 1996 Chevrolet truck and a priority claim of \$16,647.04 arising from Debtor's child support obligations. These amounts total \$24,447.04.

U.S. Trustee's Motion to Reconsider requests the Court modify its order to state that Ms. Ellis' secured claim is \$7,800 and her priority claim is \$24,447.04. Upon review of the record, the Court concludes that U.S. Trustee's Motion to Reconsider should be granted pursuant to federal Rule of Civil Procedure 60(a). The February 20, 2001 Order erroneously through oversight subtracted Ms. Ellis' secured claim from her priority claim.

Debtor's Joinder in U.S. Trustee's Motion to Reconsider raises additional issues regarding the amount of Ms. Ellis' claims and his exemption rights in the 1996 Chevy truck. The Court concludes these arguments of Debtor were or should have been raised in earlier proceedings and will not now be considered by the Court. See In re Barger, 219 B.R. 238, 245 (B.A.P. 8th Cir. 1998). Debtor has failed to prove he is entitled to modification of the judgment under Rule 60(a) or (b), or under any other theory. The Court, in its discretion, concludes that to the extent Debtor's Joinder raises matters beyond the scope of the U.S. Trustee's Motion to Reconsider it should be denied.

WHEREFORE, U.S. Trustee's Motion to Reconsider is GRANTED.

FURTHER, the Court's Order re Trustee's Final Report is amended to reflect that Creditor Janet Ellis, n/k/a/ Janet Kohlmeyer, holds a secured claim in the amount of \$7,800 in Debtor's 1996 Chevrolet truck and a priority claim in the amount of \$24,447.04 arising from Debtor's support obligations.

FURTHER, Debtor's additional requests to modify the Order are DENIED.

SO ORDERED this 9th day of March, 2001.

Paul J. Kilburg
Chief Bankruptcy Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

IN RE:
DANIEL J. ELLIS

No. C01-1020-EJM
JUDGMENT IN A CIVIL CASE

Debtor.

DECISION BY COURT: This action came on for decision before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT the Findings of the Bankruptcy Court are AFFIRMED.

Dated: October 29, 2001.

JAMES D. HODGES, JR.
Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

IN RE:
DANIEL J. ELLIS

C01-1020 EJM
ORDER

Debtor,

This matter is before the court on an appeal from the Bankruptcy Court.⁽¹⁾ Affirmed.

Debtor Daniel Ellis appeals the Bankruptcy Court's decision that the entire support claim for attorney fees of creditor Janet Ellis in the amount of \$7,800 plus pre-filing interest constituted a secured claim in debtor's 1996 truck. This court has jurisdiction pursuant to 28 USC §158.

For review, appellant asserts that only the portion of the support claim exceeding his \$5000 exemption interest in the value of the truck is a secured claim, resulting in \$5000 of that claim being an unsecured priority claim entitled to a priority over unsecured nonpriority claims in the bankruptcy estate.

This court reviews the Bankruptcy Court's findings of fact for clear error, and its conclusions of law de novo. In Re Mathiason, 16 F3d 234, 235 (8th Cir. 1994).

This matter shall be affirmed for the reasons set forth in the Bankruptcy Court's decision, including the Bankruptcy Court's finding the value of the truck to be \$7,800, and the value of the secured claim to be \$7,800. It appearing undisputed that there is no equity in the truck, there is no equity interest to which the exemption may be applied under IC Section 627.6(9)(b). See also Hearing Transcript p. 8, March 9,2001.

Finding no error of fact or law, this matter shall be affirmed.

It is therefore

ORDERED

Affirmed.

Edward J.McManus, Judge
UNITED STATES DISTRICT COURT

1. The Honorable Paul J. Kilburg.