United States Bankruptcy Court
Western District of Wisconsin

Cite as: [Unpublished]

In re Helen Ann Feaster, Debtor
Bankruptcy Case No. MM7-90-02202

United States Bankruptcy Court
W.D. Wisconsin

June 14, 1991

Patricia K. Hammel, King Street Alternative Law Office, Madison, WI, for debtor.
William J. Rameker, Murphy & Desmond, S.C., Madison, WI, for trustee.

Robert D. Martin, United States Bankruptcy Judge.

MEMORANDUM DECISION

The debtor, Helen Ann Feaster filed an individual Chapter 7 bankruptcy petition on August 8, 1990. By her amended schedule B-4, she claimed a $945.74 exemption in a 1988 Honey motorhome under Wis Stat §815.18(3)(b) which provides an exemption for "equipment, inventory, farm products and professional books used in the business of the debtor or the business of a dependent of the debtor, not to exceed $7,500 in aggregate value."

Rev. Daniel Feaster has been married to the debtor since 1977. In addition to being a chaplain and counselor, Rev. Feaster is a professional clown and magician. He uses magic and clowning as an adjunct to his other forms of ministry. The motorhome is used extensively in his clown business, Agape Clown and Magic, both as a means of transporting Mr. Feaster and his props (and not infrequently, the debtor), and as a backdrop and stage for his show. The debtor's schedule of current income and expenditures shows that the income associated with this clown business is $300 a month. The debtor participates in the clown business and asserts that the business is as much hers as it is her husband's because of Wisconsin's marital property laws.

The trustee, William J. Rameker, filed an objection to the claimed exemption. He contends that a motorhome is a motor vehicle for which a specific exemption is provided under Wis Stat §815.18(3)(g) and therefore cannot qualify as exempt business equipment under Wis Stat §815.18(3)(b).

It has been stated that "[g]enerally, marital property consists of wealth created by a spouse effort's as well as income earned or accrued from a spouse's property during marriage and after the determination date." Keith A. Christiansen et al., 1 Marital Property Law in Wisconsin §2.10b at 2-20 (State Bar of Wisconsin, 1990). The determination date in this case is January 1, 1986. Wis Stat §766.01(5). Wis Stat §766.31(3) provides in relevant part that "[e]ach spouse has a present undivided one-half interest in each item of marital property." Furthermore, "[a]ll property of the spouses is presumed to be marital property," and "[a]ll property of spouses is marital property except that which is classified otherwise by this chapter." Wis Stat §766.31(2),

(1). There is no evidence that the clown business has been classified as other than marital property, and accordingly, the debtor retains an undivided one-half interest in it.[(1)]

Although there is little legislative comment on the subject exemption statute, some history of the Wisconsin exemptions may be of assistance. In the 1951 enactment, two provisions coexisted, one which provided for the exemption of an automobile used to carry on the debtor's trade or business, and another which provided for the exemption of tools used for the purpose of carrying on the debtor's trade or business. Wis Stat §272.18(6), (8) (1951).[(2)] The explicit separation of the "automobile used in the business" exemption from the "tools of the trade" exemption suggests that under that prior statute, motor vehicles were not considered to be tools of the trade.

Today, the automobile exemption, Wis Stat §815.18(3)(g), remains separate from the "equipment used in the business" exemption. Wis Stat §815.18(3)(b). The term "equipment" has replaced the term "tools of the trade." This change may justify a reading broad enough so as to include at least some motor vehicles. The failure to continue the separate exemption for an "automobile used in business" appears to be a conscious choice. Whether that choice was intended to terminate any exemption in motor driven equipment or whether it merely reflected a desire to avoid redundancy cannot be discerned from either the context or the reports prepared at the time of the change. The use of the word "equipment" rather than "tools" may expand the coverage from the prior enactment, but whether the expansion is enough to encompass the mobile home is unclear.

Similar issues have arisen under other states' exemption statutes. In In re McNutt, 87 BR 84, 86 (9th Cir BAP 1988), the court summarized the two prevailing lines of cases. The first contains those cases holding or acknowledging that a motor vehicle (or motorized farm machinery) may be a tool of the trade under 11 USC §522(d)(6), 11 USC §522(f)(2)(B), or applicable state law. The second contains those cases holding or opining that a motor vehicle or motorized farm machinery is by definition not a tool of the trade. No cases have directly addressed the question of whether a vehicle qualifies as equipment used in the business of the debtor under Wis Stat §815.18(3)(b). Nor are there cases addressing the question of whether a motor vehicle qualifies as a "tool of the trade" under the previous tool of trade exemption contained in Wis Stat §815.18(8) (1975).

Although it offers little guidance in this case, the scope of the federal "tools of the trade" exemption contained in 11 USC §522(d)(6), as applied in Wisconsin, was considered in Matter of Patterson, 825 F2d 1140 (7th Cir 1987). Patterson is a peculiar case in which the Seventh Circuit Court of Appeals held that a farmer's tractor was not a farm implement and, therefore did not qualify for the exemption provided by 11 USC §522(d)(6).[(3)] The court explained that the purpose of the "tools of the trade" exemption is to "enable an artisan to retain tools of modest value so that he is not forced out of his trade." Patterson, 825 F2d at 1146. Arguably, the debtor or her spouse might be forced from the clowning trade if the vehicle weren't available, but to so argue might misread the import of what the Circuit Court sought to convey.

The trustee also refers to Bank of Edgar v. Nowak, (In re Nowak), 48 BR 290 (DC Wis 1984), to support his claim that an automobile cannot be considered a tool of the trade. However, Nowak involves questions of lien avoidance under 11 USC §522(f)(2) rather than exemptions under §522(d)(6) and is accordingly inapplicable to the facts of the present case. A similarly inapplicable case is In re Pockat, 6 BR 24 (Bankr WD Wis 1980), in which a semi-tractor was found to be an implement or tool of the debtor's trade for purposes of lien avoidance under 11 USC §522(f).

In the absence of controlling authority to the contrary, the consideration of exemptions allowed in bankruptcy must be guided by the direction to construe exemption statutes liberally or in favor of permitting debtors the greater benefit of the exemptions. See In re Erickson, 63 BR 632, 632 (WD Wis 1986), aff'd, 815 F2d 1090 (7th Cir 1987); citing Opitz v Brawley, 10 Wis 2d 93, 102 NW2d 117 (1960); Julius v Druckey, 214 Wis 643, 649, 254 NW 358, 361 (1934).

To be consistent with that liberal approach, this very close case must be decided in favor of the debtor.(4) Therefore, the debtor's claim of exemption in the motor vehicle used in a trade in which she participates with her spouse must be allowed. It may be so ordered.

END NOTES:

1. It does not appear from the record that Agape Clown and Magic has been registered as a service corporation. However, with respect to service corporations, Wis Stat § 180.99(6) explicitly provides that "the nonparticipant spouse of a married individual has the rights of ownership provided under ch. 766." There is no reason to believe that the legislature would intend a different result in the case of an unregistered service entity.

2. Wis. Stat. (1951) §272.18(6) read in part: "Eight cows, ten swine, fifty chickens, two horses or two mules, any automobile used or kept for the purpose of carrying on the debtor's trade or business, not exceeding four hundred dollars in value . . . ."

Wis. Stat. (1951) §272.18(8) read: "The tools, implements and stock in trade of any mechanic, miner, merchant, trader or other person, used or kept for the purpose of carrying on his trade or business, not exceeding two hundred dollars in value."

3. Although the court's language provides some guidance here as to congressional intent, its statements with respect to §522(d)(6) should be recognized as dicta.

4. In so determining, this court is mindful of Judge Easterbrook's admonition, when considering a related exemption statute, that "[t]oo much 'liberality' will undermine the statute as surely as too literal an interpretation would." Erickson, 815 F2d at 1094. However, due to the unique factual circumstances of the present case, it is unlikely that furthering the fresh start policy of the statute by granting the debtor's claimed exemption will raise anything other than a theoretical specter of an increased cost of credit.