

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In Re:

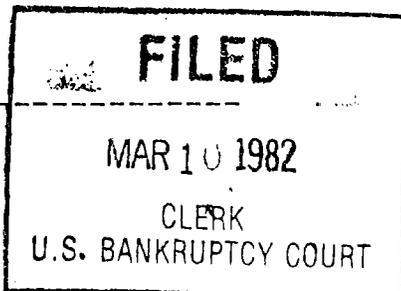
BANKRUPTCY NO.

GARRY NANFORD OLSON
and DONNA JEAN OLSON

79-01460

Debtors.

FINDINGS OF FACT,
CONCLUSIONS OF LAW and ORDER



The application of the debtor, Garry Nanford Olson, to determine the equitable distribution of the sum of \$25,000.00 insurance proceeds arising out of a personal injury action commenced by said debtor in the Circuit Court of Pierce County, Wisconsin, which sum was paid to the trustee, Peter F. Herrell, pursuant to an order of the court dated September 30, 1981, coming on for hearing before the court; the debtor appearing by Robert R. Gavic, his attorney; the trustee, Peter F. Herrell, appearing in person and by Lawrence J. Kaiser, his attorney; and counsel having orally presented to the court their positions relative to said distribution and having filed memorandum briefs; and the court having considered the entire record and file herein, the arguments of counsel, the respective briefs, and being fully advised in the premises, FINDS:

1. That the above named debtors filed a petition for relief on the 30th day of November, 1979.

2. That Peter F. Herrell was appointed interim trustee herein and Lawrence J. Kaiser was appointed his attorney.

3. That at the time of the filing of the petition for relief the debtor, Garry Nanford Olson, had a personal injury suit pending in the Circuit Court of Pierce County,

Wisconsin, in which Orin C. Knoblauch was plaintiff and Garry Nanford Olson was defendant, and an action was also commenced by Garry Olson against Orin Knoblauch arising out of the same action. Said action is referred to in Question #12 of the statement of affairs in debtors' schedules. It was not listed on Schedule B-2 or in the claim of exemptions for the reason that it was believed the personal injury claim had no value because of the lack of insurance on the part of the defendant Knoblauch, and also because of the expense of prosecuting said claim.

4. That at the time of the filing of the petition for relief Attorney B. J. Hammarback represented the debtors.

5. That on the 5th day of February, 1981, Robert R. Gavic represented the debtor, Garry Nanford Olson, in a jury trial in the Circuit Court of Pierce County in which a special verdict was rendered finding negligence of 70% on Orin Knoblauch and only 30% on the debtor, Garry Nanford Olson, and finding damages to the said Garry Nanford Olson in the sum of \$60,000.00.

6. That the percentage of recovery would amount to approximately \$42,000.00, if collectible.

7. That Garry Nanford Olson was permanently injured in the accident.

8. That Robert R. Gavic had been employed to represent the debtor on a contingent fee basis of one-third of the recovery plus expenses and disbursements.

9. That the facts of the personal injury claim were very complex and required experienced legal counsel in the handling of the same, in view of the fact that a question of liability with debtor's insurance company subsequently arose in that at the time of the accident he was a resident of the State of Minnesota and his policy of insurance had a "no fault" provision that carried an "uninsured motorist" clause.

10. That the trial of the action involved expertise in personal injury work as well as familiarity with Wisconsin and Minnesota insurance responsibility.

11. That Robert R. Gavic is an experienced attorney in personal injury matters and he convinced the American Family Insurance Company of the liability under said policy and that pursuant to the order of the court, after previous applications to the court, payment was to be made to the trustee to abide by the further order of the court as to the distribution thereof.

12. That the debtor made application to amend his claim for exemptions in said proceedings under 11 U.S.C. 522(d)(11)(D).

13. Counsel agree that the first question at issue in this matter is:

(a) Should the petitioner, Garry Nanford Olson, be allowed to amend his claim for exemptions in the bankruptcy proceedings to claim the exemption of \$7,500.00 for personal injuries under 11 U.S.C. 522(d)(11)(D)? And second,

(b) Should the cost of collecting the \$25,000.00 through the trial work and legal services of Robert R. Gavic be allowed?

14. The trustee objects to the claim of exemption and contends that the attorney fees of Robert R. Gavic be limited to \$6,250.00, based on a compensated rate of 25% of recovery where no jury trial was held as to the uninsured motorist clause.

15. The debtor contends that the exemption should be permitted and the contingent fee contract allowed.

16. As to the first question, the brief submitted by the trustee cites cases wherein exemptions should not be allowed at a later date as contended in this particular case. There is no limitation in the bankruptcy law requiring that an exemption be in existence at the time it is claimed.

17. That the exemption was not claimed by the original attorney in these proceedings for the reason that it was believed the claim for personal injuries had no value.

18. That the purpose of exemptions is to allow a debtor to get a fresh start and especially an exemption for personal injuries which could subsequently affect the earnings and enjoyment of life, and especially in this case where permanent injuries were found to exist.

19. That from a complete review of the cases submitted by the respective counsel, it is the opinion of this court that in order to carry out the purposes of the Bankruptcy Code the exemption of \$7,500.00 as claimed under Section 11 U.S.C. 522(d)(11)(D) should be allowed.

20. That the claim for attorney fees of Robert R. Gavic in the sum of \$8,330.00 contingent fee and \$403.44 taxable costs, in the total sum of \$8,733.44, should be allowed.

21. That Attorney Gavic rendered valuable services in the handling of this matter based on Minnesota and Wisconsin law, the pending lawsuits in the Circuit Court of Pierce County that were necessarily tried to bring about a final disposition of the case, and his expertise and specialization in this particular field of law materially accomplished the settlement and payment made herein.

CONCLUSIONS OF LAW

That the court enter an order permitting the amendment for exemptions and approving the claim of Robert R. Gavic for attorney fees and costs.

O R D E R

NOW, THEREFORE, IT IS ORDERED:

1. That the application of the debtor, Garry Nanford Olson, to amend his claim for exemptions under 11 U.S.C. 522 (d)(11)(D) in the sum of \$7,500.00 be and the same is hereby

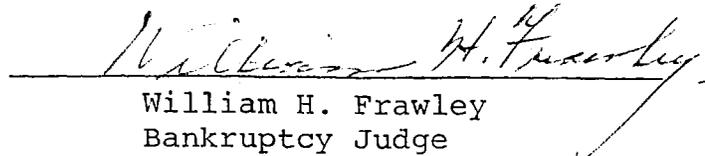
permitted and allowed.

2. That the claim of Robert R. Gavic for attorney fees and costs in the sum of \$8,733.44 is hereby allowed.

3. That the trustee is ordered and directed to pay to the debtor, Garry Nanford Olson, the sum of \$7,500.00, his claim of exemption herein allowed, and to pay to Robert R. Gavic as and for his fees and costs the sum of \$8,733.44 as herein allowed.

Dated: March 10, 1982.

BY THE COURT:


William H. Frawley
Bankruptcy Judge