

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

Case No. 87-1969-C

WILLIAM K. APPENZELLER
NEOMI J. APPENZELLER
Engaged in Farming,

Chapter 7

Debtors

RULING ON OBJECTION TO DEBTORS' CLAIM OF EXEMPTION

On January 19, 1988, a hearing on Perry State Bank's Objection to Debtors' Claim of Exemption, and the joinder therein by Heartland Coop Elevator f/k/a Minburn Coop Elevator, came on for hearing in Des Moines, Iowa. Patrick J. Spellman appeared for the Creditor, Perry State Bank; Larry L. Miller appeared for the Creditor, Heartland Coop Elevator; and, Jonathan M. Kimple appeared for the debtors.

This is a case proceeding pursuant to 28 U.S.C. §157(b)(2)(B). The Court having heard and considered the evidence and having heard the arguments of counsel now makes the following findings of fact and conclusions of law.

ISSUE

The Debtors' Chapter 7 petition was filed on August 4, 1987. Debtors claimed farm equipment, machinery and supplies as exempt in the amount of \$20,000.00 pursuant to Iowa Code Section 627.6(12) (1987).

The Perry State Bank and the Heartland Cooperative Elevator objected to these claimed exemptions in that the

debtors do not qualify as farmers for purposes of the exemption statute.

The issue is whether Debtors qualify as farmers.

FINDINGS OF FACT

The Debtors have been engaged in farming in Dallas County since 1950. Their farming operation has consisted of grain farming, the raising of hogs, and custom farming. Mrs. Appenzeller has consistently and actively participated with her husband in the farm operation.

The Debtors own 40 acres of real estate in Dallas County. This real estate was inherited from Mr. Appenzeller's parents. The Debtors' home is constructed on this 40 and Debtors have lived there since 1954. This is the only real estate owned by the Debtors.

The Debtors last raised crops in 1985. The tillable acres were cash rented in 1986. Debtors earned approximately \$17,000.00 in 1986, from their custom farming operation.

Perry State Bank terminated Debtors' line of credit in 1986. Said bank has a security interest in the machinery and equipment and commenced a replevin action to take possession of said machinery and equipment. This action of replevin was pending at the time of the filing of the petition. Debtors did not have the use of the machinery in 1987, so they were unable to custom farm.

Debtors have entered into lease agreements covering the hog facilities and machine shed located on the homestead 40. These leases were in existence at the time of the filing of the petition. Debtors continue to maintain these structures.

The Debtors commenced wintering in Florida around 1976. They originally pulled a trailer to Florida, but in 1986, their tow vehicle, a pickup, was repossessed and they were required to make other arrangements while living in Florida.

The Debtors have now rented an unfurnished apartment in Florida. This apartment was in existence at the time of the filing of the petition. Debtors pay the rent for this apartment during the winter months and their son pays the rent during the summer months.

Mrs. Appenzeller held a public auction on September 28, 1986, in which some of her household furniture, glassware, antiques, collectibles, tack, and personal property were sold. Thereafter, the Debtors moved some household furniture and appliances to Florida while leaving some in their home in Iowa.

The Debtors lived on the farm from approximately May through November 1987, when they retired to Florida for the winter.

Mr. Appenzeller continues to be a Beaver Township Trustee in Dallas County, Iowa; a registered voter of Dallas County, Iowa; an ASCS community committeeman representing Beaver Township; a member of the Dallas County Democratic

Central Committee; and a member of the Dallas County Eminent Domain Compensation Commission.

Their mail is delivered to the Debtors at the Iowa address during the summer. Their first class mail is forwarded to them in Florida when they are there during the winter months. The Debtors are not listed in the local telephone directories. This listing last appeared in the April 1986 directory.

Mr. Appenzeller has been receiving social security since approximately June 1987. The Debtors have received some income in Florida from cleaning houses and helping their son.

Debtors intend on returning to Iowa in the spring of 1988, and if they can obtain financing, they hope to farm again.

DISCUSSION

Pursuant to 11 U.S.C. §522(b) (1) Iowa enacted Iowa Code §627.10 and provided for its property exemptions in lieu of the federal exemption. Accordingly, the definition of a farmer for purposes of Iowa's exemption statute is determined by Iowa law.

Iowa Code section 627.6 (1987) provides,, as relevant herein, that if the debtor is engaged in farming, the debtor may claim as exempt, any combination of implements and equipment, and livestock and feed for the livestock,

reasonably related to a normal farming operation, not to exceed a value of \$10,000.00 in the aggregate per debtor.

The Supreme Court of Iowa has held that Iowa's exemption statute must be liberally construed. Frudden Lumber Co. v. Clifton, 183 N.W.2d 201, 203 (Iowa 1971). The purpose of the exemption statute is to secure to the debtor the means to support the debtor and his or her family, and preserve those earnings for the benefit of the family. Ohio Cas. Ins. Co. v. Calvin, 222 Iowa 670, _____, 269 N.W. 254, 256, 108 A.L.R. 1036 (1936).

This court, in the Matter of Myers, 56 B.R. 423 (Bankr. S.D. Iowa 1985), has examined the definition of a "farmer" for purposes of determining exemptions under Iowa law. The Court in Myers determined that a debtor who engages in another occupation may still claim exemptions as a farmer; custom farming may be farming for purposes of said exemption statute; and, Iowa law does not use the primary occupation test for allowing or disallowing an exemption. Further, this court determined that a debtor's intention to return to farming, after a temporary cessation of farming, must be given great weight. Myers, 56 B.R. at 426, citing In re Pommerer, 10 B.R. 935, 942 (Bankr. D. Minn. 1981).

Under the facts and circumstances of this case, the debtors, individually and together, are farmers as that term is used under the Iowa law. The Appenzellers temporarily terminated their farming operation because of their

inability to secure a line of credit. They express a strong intention of returning to farming if they can find the financing to do so.

"Homestead," for purposes of the Iowa exemption is defined in Iowa Code Section 561.1 (1987).

The evidence shows that the Iowa residence described in Schedule B-4 is used as a home by the Appenzellers. They have not abandoned this residence as they maintain household furniture, fixtures and appliances therein, and reside in that home during the spring, summer and fall months and during the winter when the occasion demands.

The fact that the Appenzellers winter in Florida does not change the result. Winter migration is not merely an avian phenomenon.

The Court concludes that the Appenzellers qualify as farmers and may claim the exemptions of farmers such as farm equipment, machinery and supplies. Further, the evidence shows that the real estate described in schedule B-4 qualifies as Debtors' homestead.

IT IS ACCORDINGLY ORDERED that the objection to Debtors' claims of exemptions by Perry State Bank and Heartland Cooperative Elevator f/k/a Minburn. Cooperative Elevator are OVERRULED.

Dated this 12th day of February, 1988.

RUSSELL J. HILL
U.S BANKRUPTCY JUDGE