

3. On his Schedule B, Debtor listed personal property in the total amount of \$17,030.00. He also listed a profit sharing trust and 401(k) benefit plan with the respective values of \$61,000.00 and \$5,500.00.

4. Debtor claimed the pension and profit sharing plans as exempt and placed a value of \$66,000.00 on these assets.

5. The profit sharing plan is a deferred profit sharing type of retirement plan. Debtor's employer, Fareway Stores, Inc., contributes to said plan in an amount which depends upon the annual profits of the company. Debtor does not contribute to this plan. The plan is supervised by a company committee and the trustees are responsible for the management investment of the trust fund.

6. The purpose of the plan is to provide income at retirement, disability, or death. A member's account will be 100% vested in 10 or more years and will vest in percentage increments commencing after two years of service. If a member dies, becomes disabled, or reaches normal retirement age while employed by the company, the account becomes 100% vested.

7. The plan provides for retirement at the age of 55 or at the age in which a member completes 20 years of service. Disability and death benefits are also provided.

8. A member may not withdraw from the account until retirement, disability, death, resignation, or discharge. A

member may borrow against the account in the event of sickness, unusual need or emergency.

9. Debtor has been voluntarily contributing to his 401(k) plan since 1986. He is presently contributing \$60.00 per week, or approximately 10% of his weekly income. If a member suffers a financial hardship, the member may request a hardship withdrawal from the 401(k) account. However, these withdrawals may be subject to tax penalties for early withdrawal.

10. Debtor is 44 years of age and is in good health.

11. Debtor is divorced but has remarried. His wife is 41 years of age and in good health. She is employed outside the home and earns approximately \$600.00 per month net.

12. Two step-children reside with Debtor. They receive \$500.00 per month as child support.

13. Debtor is a high school graduate with one semester of college credit. He has been continuously employed by Fareway Stores, Inc., since July, 1963. He has been the manager of the Indianola store since October, 1979.

14. Debtor has earned \$78,897.00, \$70,746.00, and \$72,266.00, in wages and earned income for the years 1985, 1986, and 1987, respectively.

15. As of May 14, 1988, Debtor had gross income for 1988 of \$33,945.50.

16. Debtor is eligible for a bonus when the store is profitable. Debtor has never missed a bonus and his bonus has consistently equaled his weekly salary of \$602.52.

17. Debtor's schedule of income and expenditures indicates his net monthly income is \$2,400.00. This schedule shows that as of November 17, 1987, his monthly expenditures total \$2,220.00. This figure includes \$1,200.00 per month for a support payment. This support payment will be reduced fifty percent in August, 1990, and will be reduced to \$1.00 a year in 1992.

18. Debtor has now submitted his statement of monthly expenses for himself and his wife. He testified his monthly expenses for himself and his wife now total \$4,045.00. Debtor also testified his monthly income, excluding the bonus, remains at \$2,400.00 per month. His wife's income is \$600.00 per month, and the child support payment is \$500.00 per month, for a total of \$3,500.00.

19. Debtor's recapitulation and summary of debts and payments filed on November 17, 1987, shows a total of \$46,440.00 in debts and \$83,530.00 in property.

20. Debtor is eligible for monetary benefits and pension under the Social Security Act. In the last few years, he has paid the maximum contribution. Other than benefits under said act, the profit sharing plan, and the 401(k) plan, Debtor has no other pension plans or benefits.

DISCUSSION

Iowa Code section 627.6(8)(e) provides:

A debtor who is a resident of this state may hold exempt from execution the following property:

...

8. The debtor's rights in:

...

(e) A payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor [emphasis added].

The objecting parties do not dispute Debtor's claimed exemptions in the pension and profit sharing plan and the 401(k) benefit plan qualify as a "pension, annuity, or similar plan or contract...." Thus, the sole issue is whether these plans are "reasonably necessary" for Debtor's support.

In construing section 627.6(8)(e), the court in In re Flygstad, 56 B.R. 884 (Bankr. N.D. Iowa 1986), set out numerous factors that must be considered on a case-by-case basis to determine if a plan is "reasonably necessary" for a debtor's support. Those factors include:

- (1) Debtor's present and anticipated living expenses;

- (2) Debtor's present and anticipated income from all sources;
- (3) Age of the debtor and dependents;
- (4) Health of the debtor and dependents;
- (5) Debtor's ability to work and earn a living;
- (6) Debtor's job skills, training, and education;
- (7) Debtor's other assets, including exempt assets;
- (8) Liquidity of other assets;
- (9) Debtor's ability to save for retirement;
- (10) Special needs of the debtor and dependents; and
- (11) Debtor's financial obligations, e.g., alimony or support payments.

Id. at 889-90. The Court will now address those factors.

In the case at bar, an analysis of the factors leads the Court to conclude Debtor's pension and profit sharing plan and the 401(k) plan are not "reasonably necessary for Debtor's support. The main factor cutting against Debtor is the fact that his average annual income over the past three years was approximately \$74,000.00. Added to this amount is another \$1,100.00 per month from his wife's salary and child support for the two step-children residing with Debtor. In addition, Debtor is only 44 years old and is in good health. His employment situation is very stable as he has worked for Fareway Stores for the past 25 years, the last 9 of which as manager of the Indianola store. Further, Debtor's monthly

expenses of \$4,045.00 include \$1,200.00 in support payments to his former wife which will decrease to \$600.00 per month in August, 1990, and further decrease to \$1.00 per year in 1992.

Finally, given Debtor's salary, future earning potential, decreasing support obligation, young age and good health, the Court believes Debtor will be quite able to save for retirement.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes Debtor's rights in payments under the pension and profit sharing plan and the 401(k) benefit plan are not reasonably necessary for the support of Debtor.

IT IS ACCORDINGLY ORDERED that the objections to Debtor's claim of exemptions are sustained.

Dated this 27th day of September, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

IN RE:)	CIVIL NO. 88-1067-A
DALLAS A. HUNT,)	RULING ON APPEAL
Debtor.)	FROM BANKRUPTCY COURT 87-2850-CH

On September 27, 1988, the United States Bankruptcy Court entered its order concluding that the debtor's rights in payments under a pension and profit sharing plan and a 401(k) benefit plan were not reasonable necessary for the support of debtor. The objections to the debtor's claim of exemptions were sustained.

The debtor appealed, asserting four stated issues in his designation of the contents for inclusion in the record on appeal.

The debtor requested and was granted an additional thirty days to file his brief; the brief was required to be filed by January 15, 1989. Without filing a brief, the debtor filed on January 18, 1989, a second request for extension of time. The debtor has not shown good cause for the request for time to file a brief. The request is denied.

This matter is now deemed submitted for ruling pursuant to Bankruptcy Rules 8009 and 9006.

The court has reviewed the bankruptcy file submitted on November 4, 1988. The court finds no merit in the four issues

raised by the debtor. The bankruptcy court's findings of fact are supported by the record, and the bankruptcy court properly applied applicable law.

The court affirms the bankruptcy court's order entered on September 27, 1988.

IT IS SO ORDERED.

Dated this 19th day of January, 1989.

CHARLES R. WOLLE, JUDGE
UNITED STATES DISTRICT COURT

United States District Court

SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

DALLAS A. HUNT,
Plaintiff,

JUDGMENT IN A CIVIL CASE

v.
ROBERT D. TAHA, Chap. 7 Trustee,
and NANCY LAING,
Defendants.

CASE NUMBER: 88-1607-A

- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the order of the bankruptcy court, concluding that the debtor's rights in payments under a pension and profit sharing plan and a 401(k) benefit plan were not reasonably necessary for the support of debtor, is affirmed.

January 19, 1989 _____
Date

JAMES R. ROSENBAUM _____
Clerk

Shirley Dooley _____
(By) Deputy Clerk