

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

JAMES ALLEN JAHNER,
DORIS ROSETTA JAHNER,

Case No. 87-796-C
Chapter 7

Debtors

ORDER ON OBJECTIONS TO EXEMPTIONS

On June 16, 1987 a telephonic hearing on trustee's objections to property claimed exempt was held before this court in Des Moines, Iowa. David A. Erickson, trustee, appeared on his own behalf and Leslie Babich appeared on behalf of the debtors. Optional briefs were due by June 30, 1987. Neither party has submitted a brief.

The debtors filed a joint petition under Chapter 7 on March 25, 1987. They claim a 1978 Kountry Air fifth wheel camper either as an exempt implement or tool of the trade or as a homestead under the Iowa exemption statutes. James Jahner is a construction lineman and was residing in Burbon, Missouri on the date of filing. Mr. Jahner asserts that the camper is used as his home and office. The debtors have also claimed a homestead exemption in Knoxville, Iowa. They assert that since they are not residing in a single household unit, they are entitled to claim both homesteads exempt.

The debtors also claim an exemption in income tax refunds and accrued wages in the amount of \$2,000.00. Only James Jahner is a wage earner.

DISCUSSION

I.

Iowa's tools of the trade exemption provision provides:

If the debtor is engaged in any profession or occupation other than farming, the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate [may be claimed exempt].

Iowa Code section 627.6(10)(1987). The trustee challenges the camper's status as a tool of the trade on the ground it is not reasonably necessary to James' job performance.

In construing section 627.6(10), the court is mindful of the well-settled proposition that Iowa's exemption statute must be liberally construed. Frudden Lumber Co. v. Clifton, 183 N.W.2d 201, 203 (Iowa 1971). Yet, this court must be careful not to depart substantially from the express language of the exemption statute or to extend the legislative grant. Matter of Hahn, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980), citing Wertz v. Hale, 234 N.W. 534 (Iowa 1931) and Iowa Methodist Hospital v. Long, 12 N.W.2d 171 (Iowa 1944).

The term "implement" has been defined as "an item reasonably fitted or employed as a means of making labor more effective." Matter of Hahn, 5 B.R. 242, 245 (Bankr. S.D. Iowa 1980). Contrary to the trustee's assertions, it

need not be shown that the implement claimed exempt be a necessity to the debtor's employment. Baker v. Maxwell, 168 N.W. 160, 161 (Iowa 1918). The critical inquiry in each case is whether implements and tools of the trade are proper in the reasonable conduct of the debtor's trade or profession.

The camper in this instance primarily serves as a shelter for the debtor when working away from home. In the sense that shelter is a basic necessity of life, it could be viewed as a requisite for engaging in any employment. The same could be said for food, medicine and clothing. However, to deem such necessities of life as implements or tools of the trade would impermissibly broaden Iowa's exemption statute.

Mr. Jahner is a construction lineman. To the extent he uses the camper to travel to job sites or to carry any tools and equipment, the camper would be a vehicle. This court has previously held that vehicles do not qualify as tools of the trade. See In the Matter of Van Pelt, Case No. 86-2192-C, slip op. (Bankr. S.D. Iowa, July 9, 1986). Hence, the camper cannot be claimed as an exemption under section 627.6(10).

II.

Iowa's homestead exemption provision provides:

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary, provided that persons who reside together as a single household unit are entitled to claim in the

aggregate only one homestead to be exempt from judicial sale. For purposes of this section, "household unit" means all persons of whatever ages, whether or not related, who habitually reside together in the same household as a group.

Iowa Code section 561.16 (1987). The "homestead" is defined as follows:

The homestead must embrace the house used as a home by the owner, and, if the owner has two or more houses thus used, the owner may select which the owner will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead.

Iowa Code section 561.1 (1987). The trustee challenges the debtors' claim of the camper as a homestead under section 561.16 and asserts that the debtors are not entitled to claim more than one homestead as exempt property.

Neither party has submitted any case authority for or against the proposition that joint debtors may claim only one homestead as exempt and the court has found none directly on point. The present statute refers to the "homestead of every person" as opposed to its predecessor's reference to the "homestead of every family." See Iowa Code section 561.16 (1979). Thus, the statute seemingly indicates that two married persons who do not habitually reside together may each claim a separate homestead exempt. Such an interpretation is suspect. Given Iowa caselaw predating the current version of section 561.16, the probable legislative intent was to provide a homestead exemption for unmarried

persons. See Perez v. Pogge, 303 N.W.2d 145, 148 (Iowa 1981) (under pre-1981 law "an unmarried person living alone or an owner who shares living quarters with others who are not family members does not have a homestead for purposes of Chapter 561."); Shepard v. Findley, 214 N.W. 676, 678 (Iowa 1927) (to allow married debtors to claim individual homestead exemptions would extend the stated purpose of the exemption statute which "is to secure to the unfortunate debtor the means to support himself and the family; the protection of the family being the main consideration.").

The fact that James Jahner uses the camper at issue as a home and office almost every day out of the year does not alter the court's ruling. The use of the camper is clearly necessitated by the debtor's occupation. However, other occupations require travel and overnight accommodations and those accommodations are not construed as homesteads. Moreover, Iowa Code section 561.1 states that the "homestead must embrace the house used as a home". Use of the term house indicates the legislative intent to include only traditional structures. Accordingly, the camper cannot be claimed as a homestead under section 651.16.

III.

The trustee contends that Doris Jahner is not entitled to claim a tax refund exemption because she did not contribute to tax withholdings. Iowa Code section 627.6(9)(c) states in part:

In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed one thousand dollars in the aggregate [may be claimed exempt].

Whether Doris, as a non wage earner, is entitled to a tax refund exemption turns on state law. In re Taylor, 22 B.R. 888, 890 (Bankr. N.D. Ohio 1982). Specifically, the court must determine what interest, if any, Doris has in the wages of James under Iowa law.

A wife has no inchoate right to her husband's personal property. Gunsalis v. Tingler, 218 N.W.2d 575, 578 (Iowa 1974). One spouse's right to ownership of property separate from that of the other spouse has been established by statute. According to Iowa Code section 597.16, "a married person may receive the wages for the person's personal labor... as if unmarried." The tax withholdings and refunds were derived solely from James' wages. Doris has no interest in James' wages.

It is important to note that this result is not altered by the fact that the debtors may have filed a joint tax return. It is well settled that a joint filing does not change the ownership of property rights between taxpayers. In re Wetheroff, 453 F.2d 544 (8th Cir. 1972), cert. denied 409 U.S. 934, 93 S.Ct. 242, 34 L.Ed.2d 188, rehearing denied 409 U.S. 1050, 93 S.Ct. 532, 34 L.Ed.2d 503 (1972); In re Taylor, 22 B.R. 888, 890 (Bankr. N.D. Ohio 1982); Butz v.

Wheeler, 17 B.R. 85, 88 (Bankr. S.D. Ohio 1981); and In re Colbert, 5 B.R. 646, 649 (Bankr. S.D. Ohio 1980).

CONCLUSION AND ORDER

WHEREFORE, based upon the foregoing discussion, the debtors may not claim the 1978 Kountry Air fifth wheel camper exempt under either Iowa Code section 627.6(10) or 651.16. Furthermore, Doris Jahner may not claim an exemption in James Jahner's accrued wages and tax refunds under Iowa Code section 627.6(9)(c).

THEREFORE, the trustee's objections to property claimed exempt are sustained.

Signed and filed this 30th day of December, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE