

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

ARDEN L. HUGHES and
KAREN E. HUGHES,

Debtors.

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Case No. 90-2301-D H

Chapter 7

ORDER--OBJECTION TO CLAIM OF EXEMPTIONS

On March 13, 1991, a hearing was held on the objections to Debtors' claims of exemptions. The following attorneys appeared on behalf of their respective clients: Thomas L. Yeggy, Attorney at Law, on behalf of Farmers and Traders Savings Bank (hereinafter "Bank"); Michael R. Brown, Attorney at law, on behalf of the Debtors; and Kevin R. Query, Assistant U.S. Attorney, Southern District of Iowa, on behalf of the United States of America. At the conclusion of the hearing, the Court took the matter under advisement upon a briefing deadline. Briefs were timely filed, and the Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B). The Court, upon review of the pleadings, arguments of counsel, and briefs submitted, now enters its findings and conclusions pursuant to Fed.R.Bankr. 7052.

FINDINGS OF FACT

1. Debtors filed for protection under Chapter 7 of the Bankruptcy Code on September 7, 1990.

2. Both Debtors' claim \$10,000.00 as exemptions under Iowa Code § 627.6(11) for a total of \$20,000.00 in value of "implements and equipment reasonably related to a normal farming operation."

3. Bank and the United States of America have objected to this claim of exemption on the basis that Karen Hughes does not qualify as a farmer and the values of the tools of trade, farm machinery, exceed the claimed amount of exemption, to-wit: \$19,850.00.

4. Debtors farm 232 acres of farmland of which approximately 68.9 acres are tillable.

5. The tillable acreage has been in the "CRP" program since 1987. Under this program the land is removed from crop production, but the Hughes are required to maintain the land, including mowing the weeds.

6. Debtors engaged in a livestock operation but terminated this operation in 1984, when they were forced to liquidate their herd. They hope to return to raising livestock but are unable to do so at this time because of lack of financing.

7. Karen Hughes has worked in a bank since 1973, although not on a full-time basis at all times. She has worked full time since 1985.

8. Karen has participated in all the farming activities and has performed all tasks necessary for the bookkeeping

function of the farm operation.

9. Arden Hughes has been a full-time truck driver for the greater part of the last six years.

10. Debtors' farming operation has had a net operating loss for the past six years. However, in excess of 60 percent of the Hughes' gross income comes from the farming operation.

11. An independent appraisal of the farm machinery (Exh. A) establishes that the machinery located on Debtors' farm has a total value of \$27,020.00. Gary Hughes, Debtors' son, has a one-half interest in some of this equipment, and the value of Debtors' interest in the machinery, after deducting Gary's one-half interest, is \$21,520.00. Some of this machinery's primary use is involved in a livestock operation.

CONCLUSIONS OF LAW

11 U.S.C. § 522(f) provides for lien avoidance. Debtors' may avoid security interest in exempt tools of the trade to the extent that the exemption is impaired. § 522(f)(2)(B). Accordingly, a valid exemption is a prerequisite to receiving this relief.

Iowa has opted out of federal exemptions. Iowa Code § 627.10. Accordingly, the legality of an exemption is a matter of Iowa law.

Iowa Code § 627.6(11), as relevant herein, provides that if a debtor is engaged in farming, the debtor may hold as

exempt the implements and equipment reasonably related to a normal farming operation not to exceed a value of \$10,000.00.

Debtors can qualify as farmers and still have a full-time occupation off the farm. Matter of Myers, 56 B.R. 423 (Bankr. S.D. Iowa 1985); Matter of Hahn, 5 B.R. 242 (Bankr. S.D. Iowa 1980); Matter of Smith, 78 B.R. 922 (Bankr. S.D. Iowa 1987).

Further, a debtor's intention to return to farming, or an aspect thereof, after a temporary cessation of farming, must be given great weight. Myers, 56 B.R. at 426.

There is no objection to classifying Arden Hughes as a farmer, but the creditors object to considering Karen as a farmer. Under the facts and circumstances of this case, Karen is also a farmer as that term is used under Iowa law.

The Hughes have temporarily suspended their livestock operation because of inability to obtain financing. It is their hope and expectation to return to raising livestock when their finances permit. This is sufficient under the Iowa law.

Karen Hughes assists in the actual farm operation. The fact that the Department of Agriculture permits the land to be removed from farm production and that farm work is minimal at the present is not enough to remove the classification from either Arden or Karen Hughes. Karen also maintains the books and records for the farm operation. The fact that she receives income from other sources does not disqualify her as a farmer under the Iowa exemption law. Accordingly, the

objection to claim of exemptions must be overruled on this basis.

The value of Debtors' interest in the machinery is \$21,520.00. The Debtors are entitled to an exemption of \$10,000.00 per farmer. Both Arden and Karen qualify as farmers and qualify for a total exemption of \$20,000.00.

Therefore, Debtors' claim of exemptions exceed the permitted amount by \$1,520.00. Accordingly, the objection to exemption must be sustained in this amount and Debtors' must amend their schedules to show exemptions within the lawful amount.

IT IS ACCORDINGLY ORDERED, as follows:

(1) The objections to Debtors' claim of exemptions are overruled and sustained in part;

(2) Karen E. Hughes qualifies as a farmer and is entitled to an exemption of \$10,000.00 as tools of the trade pursuant to Iowa Code § 626.6(11); and

(3) Debtors are entitled to a maximum total exemption of \$20,000.00 and must amend their claim of exemption by reducing their claim of tools of trade at or below this amount.

Dated this 29th day of July, 1991.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE