

**UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa**

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| <b>In re:</b>                 | : | <b>Case No. 00-2274-WH</b> |
| <b>HOWARD W. WILLIAMS and</b> | : |                            |
| <b>ROSEMARIE P. WILLIAMS,</b> | : |                            |
|                               | : | <b>Chapter 7</b>           |
| <b>Debtors.</b>               | : |                            |
|                               | : |                            |

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**ORDER—OBJECTION TO EXEMPTIONS AND RESISTANCE THERETO**

On August 17, 2000, Trustee filed an Objection to Debtors' Claim of Exemptions. Debtor filed a timely resistance, and a telephone hearing on the matter was conducted on October 19, 2000. Debtors were represented by attorney James C. Willis. Trustee Charles L. Smith appeared for himself. At the conclusion of the hearing, the court took the matter under advisement. The court considers the matter fully submitted.

The court has jurisdiction of these matters pursuant to 28 U.S. C. § 157(b)(1) and § 1334 and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Upon review of the pleadings, evidence, memorandums, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

**FINDINGS OF FACT**

1. Howard W. Williams and Rosemarie P. Williams (hereinafter Debtors) filed a petition for bankruptcy protection under Chapter 7 of the Bankruptcy Code on June 23, 2000.

2. On Schedule A, Real Property, Debtors scheduled “Homestead, 901 S. 16th Street Legally – Lot 1, Blocks Orri’s Addition to the City of Clarinda, Page County, Iowa” (hereinafter Real Estate).

3. On Schedule C, Property Claimed As Exempt, Debtors scheduled the Real Estate. Debtors valued their exempt interest at \$8,000.00 and valued the property without deducting exemptions at \$42,000.00. Debtors claimed their interest exempt pursuant to Iowa Code §§ 561.2. Debtors subsequently amended their schedules to include exemption under § 627.9

4. Debtors formerly resided in California where Rosemarie Williams was employed by Professional Group located in Santa Fe, California. According to their Statement of Financial Affairs, Rosemarie’s employment ended in 1999. At that time, she received a \$61,169.00 distribution from her pension plan.

5. Debtors used \$8,000.00 from the pension distribution as a down payment for the Real Estate in Clarinda. The balance of the pension money was used to modify their vehicle to accommodate Howard Williams’ wheelchair and to pay medical bills associated with his surgeries.

6. Debtors acquired the Real Estate in September of 1999. With the exception of the debt to Wal-Mart, all the debts scheduled in their bankruptcy existed at the time they acquired the Real Estate.

### **DISCUSSION**

Trustee objects to Debtor's claim of homestead exemption. He argues that except for the debt to Wal-Mart, all the scheduled debts were in existence when Debtors

acquired their homestead in September of 1999. Such debts fall into the pre-acquisition debt exception, and therefore, Debtors are not entitled to claim the homestead exemption.

Debtors oppose Trustee's objection and argue that notwithstanding the pre-acquisition debt, they may still claim their homestead exempt pursuant to Iowa Code § 627.9. They argue that under a plain reading of the section, they are entitled to the exemption because the homestead was purchased with pension funds.

The filing of a bankruptcy petition creates an estate comprised of all "legal and equitable interests of the debtor in property...." 11 U.S.C. § 541(a)(1). Congress intended the scope of § 541(a) to be broad. United States v. Whiting Pools, Inc., 462 U.S. 198, 204 (1983); N.S. Garrott & Sons v. Union Planters Nat. Bank of Memphis, (In re N.S. Garrott & Sons), 772 F.2d 462, 466 (8th Cir. 1985). However, its reach is not limitless. The United States Supreme Court has determined that Congress intended to exclude from the estate some minor interests of the debtor in property of others such as a lien or bare legal title. Whiting Pools, 462 U.S. at 205 n.8.

The Bankruptcy Code permits a debtor to exempt certain property from the bankruptcy estate. 11 U.S.C. § 522(b). Section 522(b)(1) permits the states to "opt out" of the federal exemption scheme and require the debtor to use the exemptions provided by state law. Once a state opts out, "its debtors are limited to the exemptions provided by state law." Owen v. Owen, 500 U.S. 305, 308 (1991). A debtor in such a state may exempt any property that is exempt under federal law other than § 522(d), or state law or local law that is applicable on the date the petition is filed. 11 U.S.C. § 522(b)(2)(A). Further, the debtor may exempt "any interest in property in which the debtor had, immediately before the case, an interest as a tenant by the entirety or joint tenant to the

extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law." 11 U.S.C. § 522(b)(2)(B). "Nothing in subsection (b) (or elsewhere in the Code) limits a [s]tate's power to restrict the scope of its exemptions...." Owen, 500 U.S. at 308.

Iowa has chosen to opt out of the federal exemptions. Iowa Code § 627.10. Therefore, only the Iowa exemption scheme is available to Debtors, and the court must apply Iowa law. In the Matter of Norkus, 256 B.R. 298, 301-02 (Bankr. S.D. Iowa 2000).

Iowa Code § 561.16 provides that a person's homestead is exempt from judicial sale where there is no special declaration of statute to the contrary. Iowa Code § 561.21 creates exceptions to the homestead exemption and provides in relevant part:

The homestead may be sold to satisfy debts of each of the following classes:  
(1) those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.

The Iowa statute uses the term "debt" and does not require a judgment or lien.

In this case, the relevant facts are not in dispute. Debtors incurred a variety of debts prior to acquiring their homestead in September of 1999. Barring some other statutory provision, the homestead may be sold to satisfy the pre-acquisition debt. Debtors' reliance on Iowa Code § 627.9 as such a provision is misplaced.

"It is a well-settled rule of statutory construction that all statutes in pari material must be construed together, and the intent of the lawmakers be determined from a consideration of the whole." Cook v. Allee, 93 N.W. 93 (Iowa 1903). Iowa Code § 627.9, upon which Debtors rely, was enacted together with § 627.8 by virtue of chapter 23 of the Acts of the 20th General Assembly of the Iowa Legislature. Diamond v. Palmer, 44 N.W. 819 (Iowa 1890). The material portion of the statute provided:

Section 1. All money received by any person, resident of the state, as a pension from the United States government, whether the same shall be in the actual possession of such pensioner, or deposited, loaned, or invested by him, shall be exempt from execution or attachment or seizure by or under any legal process whatever, whether such pensioner shall be the head of a family or not.

Sec. 2. The homestead of every such pensioner, whether the head of a family or not, purchased and paid for with any such pension money, or the proceeds or accumulations of such pension money, shall also be exempt...

Id. These sections were codified at what are now Iowa Code §§ 627.8 and 627.9.

The title of the statute, “An act exempt from judicial sale the pension money paid to any person by the United States government, and certain proceeds and accumulations of the investments,” is indicative of the legislative intent to narrow the scope of the benefits to pensions derived from the United States government. Id. Indeed, in construing § 4010 of the Code of 1897 (§ 627.9), the Iowa Supreme Court stated, “‘pensioner,’ as used in our statute, must be given its usual and ordinary meaning, and has application to individuals formerly in the military service of the United States who, either on account of disability or by act of Congress, receive annually a fixed sum, payable ordinarily in quarterly installments.” Szymanski v. Szymanski, 176 N.W. 806, 807 (Iowa 1920).

In this case, there is no evidence that the pension was received from the United States government. To the contrary, it appears that the Professional Group is a private business entity. Therefore, Rosemarie’s pension is not covered by § 627.9.

Debtors argue that the court should extend the coverage of the section to all pensions. They argue that at the time of its enactment, pensions were not widely available to workers outside of government employment. The court must decline

Debtors' invitation; as to do so would put this court in the role of an enactor of legislation as opposed to its proper role of interpreting legislation.

“[W]hile the exemption statutes are to be liberally construed and in keeping with the purpose of the legislative enactment they are not to be enlarged.” In re Todd's Estate, 54 N.W.2d 521, 525 (Iowa 1952). The Iowa Supreme Court has consistently held, that in order to fall under the ambit of the pertinent code sections, the pension must be derived from the United States government. Id.; see also Smyth v. Hall, 102 N.W. 520 (Iowa 1905); Beatty v. Wardell, 105 N.W. 357 (Iowa 1905); Beatty v. Cook, 185 N.W. 360 (Iowa 1921). Therefore, the court cannot extend it to non-government pensions.

### **ORDER**

IT IS ACCORDINGLY ORDERED that the Trustee's Objection to Claim of Exemption is SUSTAINED, and the disallowed exemption shall be turned over to the trustee as an asset of the estate.

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RUSSELL J. HILL, CHIEF JUDGE  
U.S. BANKRUPTCY COURT