

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

BOBBIE JOSEPH WEBB,
SUSAN KAY WEBB,

Case No. 86-2827-D

Chapter 7

Debtors.

ORDER ON OBJECTIONS TO DEBTORS' CLAIM OF EXEMPTIONS

On April 15, 1987 a telephonic hearing on objections to debtors' claim of exemptions filed on behalf of the trustee and creditor, Clark, R. Jefferson, was held by this court in Des Moines, Iowa. Dennis D. Cohen appeared on behalf of the debtors. Gary E. Shanks appeared on behalf of creditor, Clark R. Jefferson. David P. Miller, the Chapter 7 trustee, also appeared. At the time of the hearing the Chapter 7 trustee indicated that he was withdrawing his objection to exemptions. Accordingly, only the objection filed on behalf of Clark R. Jefferson is the subject of this order.

The debtors filed a joint petition for relief under Chapter 7 on October 21, 1986. Mr. Webb's occupation is a salesman and Mrs. Webb's occupation is a salesbroker. On November 21, 1986 the debtors filed an amended Schedule B-4 claiming a motor boat valued at \$3,800.00 exempt pursuant to Iowa Code section 627.6(10)(b). The motor boat was described at the April 14, 1986 hearing as a bass fishing boat with a motor.

Creditor Clark R. Jefferson objected to the debtors' claim of exemption on the ground that a motor boat is not a motor vehicle under section 627.6(10)(b). Alternatively, he argued that the application of the 1986 amendments to the Iowa exemption statute (amendments), which raise the maximum exemption limit for motor vehicles, accrued wages, tax refunds and musical instruments from \$1,200.00 in the aggregate to \$5,000.00 in the aggregate, is impermissible under the contract clause of the U.S. Constitution.

Resolution of the creditor's argument that retrospective operation of the amendments is impermissible under the contract clause is governed by the district court's decision in In the Matter of Reiste, No. 87-153-B (S.D. Iowa, filed May 11, 1987). Chief District Judge Harold D. Vietor upheld Bankruptcy Judge Michael J. Melloy's¹ ruling that retroactive application of the amendment does not unconstitutionally impair contracts. Judge Melloy had incorporated by reference in the Reiste decision the conclusions of law set out in In re Punke, 68 B.R. 936 (Bankr. N.D. Iowa 1987). The Reiste decision and conclusions of law pertaining to the contract clause issue found in Punke are incorporated by reference in the instant case. See also, Matter of Towns, 74 B.R. 563 (Bankr. S.D. Iowa 1987).

Whether a motor boat is a motor vehicle for purposes of Iowa Code section 627.6(10)(b) requires a review of the statutory language which provides:

¹ Sitting by designation.

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

10. Any combination of the following, not to exceed a value of five thousand dollars in the aggregate:

a. Musical instruments ... held primarily for the personal, family, or household use of the debtor or dependent of the debtor.

b. One motor vehicle.

c. ...the debtor's interest in accrued wages and in state, and federal tax refunds-...not to exceed one thousand dollars in the aggregate.

Unfortunately neither the statute nor the case law interpreting the exemption statute defines "motor vehicle."² Accordingly, the court must resort to settled principles of statutory construction as well as common sense in applying this section to the situation at hand.

In interpreting Iowa's exemption statute, 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

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The court notes that Iowa Code section 627.7 which immediately follows the exemption statute states:

No motor vehicle shall be held exempt from any order, judgment, or decree for damages occasioned by the use of said motor vehicle upon a public highway of this state.

Although section 627.7 does not contain a definition of "motor vehicle" the court finds the language "use...upon a public highway" indicative of the legislative understanding of the term's common meaning.

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. Lona, 12 N.W.2d 171 (Iowa 1944). Iowa's exemption statute is based upon the premise "that it is better that the ordinary creditor's claims should remain partially unsatisfied than that a resident of the state should be placed in such an impecunious position that he and his family become charges of the state." Note, Personal Property Exemptions in Iowa: An Analysis and Some Suggestions, 36 Iowa L. Rev. 76, 77 (1950). The Iowa Supreme Court has stated that the purpose of the exemption statute "is to secure to the unfortunate debtor the means to support himself and the family; the protection of the family being the main consideration." Shepard v. Findley, 214 N.W. 676, 678 (Iowa 1927).

The debtors do not argue that their claim of a motor boat as a motor vehicle fits within any of the basic purposes of the exemption laws. Rather they claim that a motor boat is a type of motor vehicle because it is a vehicle powered by a motor. The debtors rely upon the definition set forth by former Bankruptcy Judge Richard Stageman in Matter of Hahn, 5 B.R. 242, 245 (Bankr. S.D. Iowa 1980). The often quoted decision provides:

A "vehicle" is that in or on which a person or thing is carried or may be carried. State v. Johnston, 252 Iowa 335, 105 N.W.2d 700 (1960). It is a means of conveyance. Employers' Liability Assur. Corp. v. Youghioghney & Ohio Coal Co., 214 F.2d 418

(8th Cir. 1954). A wheelbarrow, a covered wagon, a Rolls-Royce, a patient mule, a Man of War, and possibly a Pullman Car or ocean liner is a "vehicle." U.S. v. One Ford Coach, 307 U.S. 219, 59 S.Ct. 861, 83 L.Ed. 1249 (1939).

The court agrees that under this very broad definition a motor boat would qualify as a "vehicle." However, to bridge the definitional gap by asserting that a "motor boat" is a "motor vehicle" by virtue of the attached motor strains the legislative intent.

The exemption statute in effect and at issue in the Hahn decision provided:

18. If the debtor is a... farmer,...[he may hold exempt] a team, consisting of not more than two horses or mules, or two yoke of cattle, and the wagon or other vehicle, with the proper harness or tackle by the use of which he habitually earns his living....

Iowa Code section 627.6(18)(1979) (emphasis added). The exemption statute at that time did not contain a separate "motor vehicle" exemption. Accordingly, this court is not bound by the broad definition of "vehicle" as used in Iowa Code section 627.6(18)(1979) in defining a "motor vehicle" as used in section 627.6(10)(b)(1987).

Since the present section does not have a statutory nor a common law definition, the court must look to the rules of construction which provide that words and phrases shall be construed according to the context and the approved usage of

the language. Iowa Code § 4.1(2). Statutes should not be construed so as to deprive the words of their ordinary use or of the sense in which the legislation used them. McReynolds v. Municipal Court of City of Ottumwa, 207 N.W.2d 792, 794 (Iowa 1973). Ordinary usage can be gleaned from a dictionary definition. "Motor vehicle" is defined in Black's Law Dictionary as:

Any self-propelled "vehicle", defined as including every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human or muscular power or used exclusively upon stationary rails or trades. The term "motor vehicles", although sometimes regarded as synonymous with or limited to "automobiles," often has a broader meaning, and includes not only ordinary automobiles, but also motor buses and trucks, as well as motorcycles.

Black's Law Dictionary, p. 1164-65 (Rev. 4th ed. 1968). Under this definition, ordinary usage of the term "motor vehicle" does not include motor boat.

The court will not consider the definition of "motor vehicle" contained in Iowa Code section 321.1(2) and relied upon by the creditor as that section is applicable to Chapter 321 (Motor Vehicles And Law Of The Road) only. The court will consider, however, the commentary associated with the federal exemptions contained in 11 U.S.C. section 522(d). The federal exemption statute, like the Iowa statute, provides an exemption "in one motor vehicle". 11 U.S.C. 522(d)(2). Collier on Bankruptcy refers to this section as the

"automobile exemption". 3 Collier on Bankruptcy § 522.11 at 522-49 (15th ed. 1986). Moreover, case annotations refer to automobiles, trucks, motorbuses or motorcycles. No reported case has been found which allows an exemption in a motor boat under a "motor vehicle" exemption statute. Rather, a review of the reported cases which concern exemption statutes as applied to motor boats reveal that boats have been claimed as sporting goods or equipment, tools of trade, personal property or a residence. See In re LeupE, 73 B.R. 31 (Bankr. N.D. Ohio 1987) (boat allowed exempt as sporting good because objection thereto was untimely filed); In re Gibson, 69 B.R. 534 (Bankr. N.D. Tex. 1987); In re Cypert, 68 B.R. 449 (Bankr. N.D. Tex 1987) (boat not allowed exempt as athletic or sporting equipment); In re Racca, 40 B.R. 622 (Bankr. N.D. La. 1984) (boat held not exempt as tool of trade); In re Smith, 29 B.R. 10 (Bankr. D. Or. 1983) (boat allowed exempt under catch all "personal property" statute); In re Dipalma, 24 B.R. 385 (Bankr. D. Mass 1982) (boat held not exempt as household good or furnishing and unless necessary in trade would not qualify as tool of trade); In re Andreotti, 16 B.R. 28 (Bankr. E.D. Cal. 1981) (boat in which the debtor actually resided held exempt).

The above considerations lead the court to conclude that the common usage and the sense in which the legislature used the term "motor vehicle" do not include a motor boat. A motor vehicle is commonly viewed as synonymous with automobiles, trucks, busses, motorcycles or other motorized vehicles that

move along the ground. Despite the liberal construction generally accorded to exemption laws, to allow a motor boat exempt status as a motor vehicle impermissibly extends the legislative grant and the basic purpose of the statute.

WHEREFORE, based on the foregoing discussion the court finds that a motor boat is not a motor vehicle for purposes of Iowa Code section 627.6(10)(b).

THEREFORE, the creditor Clark R. Jefferson's objection to debtors' claim of exemptions is hereby sustained.

Signed and filed this 28th day of September, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE