

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

JEROME DANE HUTTON,  
FRANCES MARIE HUTTON,  
dba Hutton's Welding &  
Auto Repair,

Case No. 87-1029-C

Chapter 7

Debtors.

ORDER ON OBJECTIONS TO EXEMPTIONS AND  
MOTION TO VOID JUDICIAL LIEN

On August 18, 1987 a telephonic hearing on creditor Stephan H. Fox's objections to exemptions and to debtors' motion to void judicial lien was held in Des Moines, Iowa. The creditor's objection to exemptions was filed on July 6, 1987. The debtors filed their motion to void judicial lien on July 16, 1987. The creditor's objection to this motion was filed on July 29, 1987. Mark D. Walz appeared on behalf of the debtors and Joseph M. Galloway and Joel A. Jeffries appeared on behalf of Stephan H. Fox. The creditor has objected to a number of the debtors' exemption claims. At the hearing, the parties indicated that the only objection that required an evidentiary hearing was the objection to the pension claim. The remaining objections have been submitted on briefs, the debtors' affidavit and various documents. With the exception of the pension issue, the court considers the matter fully submitted.

FACTUAL BACKGROUND

The debtors filed a joint petition for relief under Chapter 7 on April 16, 1987. The debtors own and operate a welding and auto repair concern and a tree service. Frances Hutton is employed by the Meredith Corporation as a computer operator. The debtors claimed the following exemptions under Iowa law:

- 1966 Ford 1-ton truck
- 1975 Ford 1-ton truck
- 1972 1/2 ton pickup
- 1977 Lincoln
- Wearing apparel
- Cash value of life insurance
- Household furnishings

Whether the 1-ton trucks have been fitted specially for towing and tree trimming is somewhat disputed.

With respect to the life insurance exemption, the debtors have submitted an affidavit which shows the following:

1. On or about January 31, 1987, Jerry Hutton was the owner and insured on three American National insurance policies acquired in 1966, 1975 and 1982 in the death benefit amounts of \$1,000, \$5,000 and \$4,000, respectively.

2. On or before January 31, 1987, Frances Hutton was the owner and insured on two other American National insurance policies acquired in 1969 and 1974 in the death benefit amounts of \$1,000 and \$3,000, respectively.

3. The aggregate cash surrender value of the policies was approximately \$3,500.

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4. On January 31, 1987, the debtors consulted their insurance agent, Richard Reese of Des Moines, Iowa, regarding obtaining life insurance at a cost lower than that available from American National Life. He recommended they convert their policies to Jackson National Life Insurance Company of Lansing, Michigan. They agreed to do so and prepared the necessary applications.

5. On or about April 28, 1987, the debtors received five checks representing the cash surrender value of the American National Life insurance policies and, as agreed, endorsed them to the insurance agent in payment of the Jackson National Life Insurance Company policies.

6. Jerry Hutton is the owner and insured on Jackson National Life Insurance Company Policy No. 0010162760. The policy is dated February 16, 1987 but has an issue date of April 27, 1987. It has a zero cash surrender value and a \$10,000 death benefit. The debtors began paying monthly premiums of \$34.76 on February 16, 1987.

7. Frances Hutton is the owner and insured on Jackson National Life Insurance Company Policy No. 0010162770. The policy is dated May 7, 1987 and has an identical issuance

date. It has a \$1,833 cash surrender value and a death benefit of \$10,000. The annual premium is \$324.50. Schedule B-4 originally indicated that the debtors were claiming a \$3,500.00 cash value exemption in their American National policy. On June 18, 1987, the debtors amended their schedules

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to clarify that they claimed the Jackson National Life policy exempt.

Finally the debtors claim a homestead exemption. Apparently the debtors purchased their home on contract sometime in 1965. The deed was recorded on March 31, 1987. The debtors' obligation to Mr. Fox arose prior to March 31, 1987. This obligation was reduced to judgment on February 19, 1987.

#### DISCUSSION

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 ruled 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).

In construing exemptions, 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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language of the exemption statute or 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).

Finally, it is important to note that pursuant to Bankruptcy Rule 4003(c), the creditor has the burden of showing that the exemptions are not properly claimed. Mr. Fox has the burden in this case.

A. Trucks as Tools of the Trade

Iowa Code section 627.6(10) provides that:

If the debtor is engaged in any profession or occupation other than farming, [the debtor may claim] 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 [exempt].

Iowa Code section 627.6(a) provides that a debtor may hold the following exempt from execution:

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

a. Musical instruments, not including radios, television sets, or record or tape playing machines, held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

b. One motor vehicle.

c. 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

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the petition in bankruptcy, not to exceed one thousand dollars in the aggregate. This exemption is in addition to the limitations contained in sections 642.21 and 537.5105.

The debtors maintain that the trucks in question are tools of Jerome Hutton's trade and accordingly are exempt under section 627.6(10). In resisting this argument, the creditor points out that this court has ruled that nonfarm debtors are precluded from claiming vehicles exempt as tools of the trade. See Matter of Van Pelt, Case No. 86-2192-C (Bankr. S.D. Iowa, June 29, 1987); Matter of Brittain, Case No. 87-299-C (Bankr. S.D. Iowa, June 30, 1987); Matter of Roberts, Case No. 87-112-C (Bankr. S.D. Iowa, July 28, 1987). Guided by the "whole statute" rule of statutory construction, this court found that

Iowa's exemption statute provided separate exemption categories for tools of the trade and for vehicles which, in turn, precluded debtors from claiming vehicles as tools of the trade. Secondly, the undersigned noted that, had the legislature intended to include vehicles as tools of the trade in the nonfarm setting, it could have done so given that the legislature specifically provided under the farm exemptions that vehicles are to be included within the meaning of "implements and equipment."<sup>1</sup>

Citing decisions from other jurisdictions, the debtors

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<sup>1</sup>The farmer exemptions contained in Iowa Code section 627.6(11)(a) provide that implements and equipment reasonably related to a normal farming operation may be claimed exempt. This subsection also provides that "[t]his exemption is in addition to a motor vehicle held exempt under subsection 9.11 Id.

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contend that two of the trucks should be deemed tools of the trade because they are "uniquely suited" to towing and tree trimming. This court declines to depart from the reasoning and conclusions set out in its aforementioned decisions. The court finds no Iowa Supreme Court decisions which suggest that "uniquely suited" vehicles should be deemed tools of the trade. On the contrary, the Iowa Supreme Court's use of the "whole statute" rule of statutory construction in considering a case similar to the case at bar precludes adoption of a "uniquely suited" standard. For a discussion of the

application of this rule under Iowa's exemption statute, see Farmer's Elevator & Live Stock Co. v. Satre, 195 N.W. 1011, 1013 (Iowa 1923)("we are not warranted in saying that the truck and automobile in question, or either of them, should come under the classification of tools and instruments of a farmer, when there is in the statute a specific classification under which they belong").

B. Unmatured Life Insurance Policy

Iowa Code section 627.6(6) provides that debtors may exempt from execution "[a]ny unmaturred life insurance policy owned by the debtor other than a credit life insurance contract." Id. The creditor maintains that Frances Hutton cannot claim an exemption under this provision because the Jackson National Life insurance policy did not take effect until after the bankruptcy was filed.

There can be no dispute that the American National Life

insurance policies were exempt at the time the bankruptcy was filed. The creditor did not object to the debtors' claim of those policies as exempt property.<sup>2</sup> Frances received five checks for the cash value on April 28, 1987--that is, after the petition was filed. At that time she was free to do whatever she wanted with the money. The proceeds did not become part of the estate. See Bancohio Nat. Bank v. Walters,

724 F.2d 1081, 1083 (4th Cir. 1984) (insurance proceeds exempt by operation of section 522 are not property of the estate). That Frances used the cash value from the American National policy to purchase the Jackson National Life policy did not bring the new policy into the estate. Hence, that debtors decided to amend their schedule B-4 to claim the Jackson National Life policy exempt and that the creditor objected to that claim are irrelevant and immaterial.

C. The Homestead Exemption

As a final matter, the creditor challenges the debtors' homestead exemption by arguing that the obligation arose between 1981 and 1983, prior to the date the debtors signed and recorded the contract. Thus, the creditor contends the debtors' home does not qualify as a homestead under the antecedent debt exception to Iowa's homestead exemption. The debtors counter by arguing that the homestead was acquired in 1965 when the debtors moved into the home and

<sup>2</sup>The creditor makes no allegation that the American National Life policies in question were not unmaturred or were credit life insurance contracts.

began making installment payments.

Iowa's homestead exemption provides that "[t]he homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary...." Iowa Code section 561.16. The exception to this rule is set out in Iowa Code section 561.21 which states that "[t]he homestead may be sold to satisfy debts ... contracted prior to its acquisition...."

Homestead statutes are liberally construed in favor of the exemption. In re Marriage of Tierny, 263 N.W.2d 533, 534 (Iowa 1978). The purposes underlying homestead laws is to protect the family. Davis v. Davis, 67 N.W.2d 566, 575 (Iowa 1954). Legal title is not a requisite to acquisition of a homestead. The Iowa Supreme Court has stated:

It is not essential to the acquisition of homestead... that the claimant have a perfect or complete legal title. It is essential that we have a sufficient title to justify his occupancy. Occupancy under such a title will justify a claim of homestead right....

Rutledge v. Wright, 171 N.W. 28, 30 (Iowa 1919). The interest of a purchaser of real estate under contract can be claimed as a homestead. Stinson v. Richardson, 44 Iowa 373 (Iowa 1876).

Under these authorities and the facts of the case, the homestead was acquired prior to contracting the debt in issue.

#### D. Pension Plan

At the August 18, 1987 hearing the court noted that a

hearing on the "support" aspect of the pension plan would be set down for hearing after a decision on other objections was completed. A review of the tape of the hearing reveals that the parties were to submit documents pertaining to the issue of whether the "Non-Exempt Employees' Savings and Investment Plan" qualified as a plan "similar" to a pension or annuity under Iowa Code section 627.6(8)(e). The court intended to rule on this issue prior to hearing testimony on the support issue. The creditor submitted brief affidavits of two Meredith officials, Henry G. Wittkowski, Corporate Director of Accounting and Benefits, and Berry Brodde, Assistant General Counsel. Attached to the Brodde affidavit are two pages from the plan description for the savings and investment plan and one page from the description of the Meredith retirement plan. Attached to the Wittkowski affidavit is a statement of Frances Hutton's account under the savings and investment plan. These submissions provide insufficient information from which to determine whether the plan satisfies the requirements of section 627.6(8)(e). Moreover, the debtors' brief refers to a "Payroll Stock Ownership Plan" and asserts that it is also exempt. It is unclear whether the creditor challenges this assertion.

The court will permit the parties to submit further evidence with respect to the nature of the savings and

investment plan at the hearing on "support". Further, the parties should be prepared to put on evidence concerning the

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stock plan if its exemption status is contested.

CONCLUSION AND ORDER

WHEREFORE, based upon the foregoing discussion, the court finds that:

1. The trucks in question are not tools of the trade and therefore are not exempt under Iowa Code section 627.6(10);
2. The Jackson National Life insurance policy is exempt under Iowa Code section 627.6(7); and
3. Iowa Code section 561.21 does not apply because the debtors' homestead was acquired prior to contracting the debt in issue.

THEREFORE, the creditor's objection to exemptions is sustained as to the trucks and overruled as to the life insurance and the homestead. The debtors' motion to avoid the judicial lien on the homestead is granted.

Pursuant to the minute order dated August 18, 1987, a hearing on the "support" aspect of the objection to the pension exemption will be scheduled as soon as the court calendar permits. At the hearing, the parties will be given an opportunity to submit further evidence concerning the

nature of the savings and investment plan and the stock option plan.

Signed and filed this 31st day of March, 1988.

LEE M. JACKWIG  
CHIEF U.S. BANKRUPTCY JUDGE

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

IN RE:

CIVIL NO. 88-1341-A

JEROME DANE HUTTON and  
FRANCES MARIE HUTTON,  
d/b/a HUTTONIS WELDING &  
AUTO REPAIR,

DECISION ON APPEAL

The creditor Steven H. Fox, in this appeal from rulings of the bankruptcy court filed on March 31, 1988, presents five issues concerning the exempt status of property of the debtors. The bankruptcy court denied the creditor's objections to the exempt status of life insurance policies, a Lincoln Continental automobile, and a savings and investment plan of Frances Marie Hutton. The bankruptcy court also found the debtors' homestead was exempt and granted the debtors' motion to avoid the creditor's judicial lien on the homestead.

In this appeal pursuant to Rules 8001 and 8013 of the Bankruptcy Rules of Procedure, the bankruptcy court's findings of fact shall not be set aside unless clearly

erroneous, but the district court has the obligation to correct errors of law. See United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948).

On the several issues here presented, the court accepts the findings of fact in the bankruptcy court's decision of

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March 31, 1988, there being no clearly erroneous findings. The bankruptcy court correctly applied applicable law. The rulings of the bankruptcy court are affirmed.

1. The Life Insurance Policies. On May 1, 1987, the debtors claimed as exempt several American National life insurance policies totalling \$3,500, pursuant to Iowa Code section 627.6(6) . Fox did not object to the exempt status of these policies. On June 17, 1987, the debtors amended their Schedules to state that the American National policies had been converted post-petition into Jackson National life insurance policies. Fox then objected on July 6, 1987, contending the insurance policies had not been issued until after the debtors filed their bankruptcy petition. The bankruptcy court upheld the exempt status of the life insurance policies, reasoning that because the American National insurance was exempt at the time the bankruptcy petition was filed, the debtors were free to use the

cash value of that insurance as they wished, with its exempt status established.

The creditor has not established that the bankruptcy court's findings of fact and decision were clearly erroneous. On this record the bankruptcy court properly concluded that the insurance policies issued by American National were exempt, therefore the Jackson National policies were also exempt.

2. The Lincoln Automobile. On June 1, 1986, the Iowa law governing the exempt value of automobiles was increased from \$1,200, as provided by Iowa Code section 627.6(9)(b) (1986), to

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\$5,000. The creditor contends that this change, effective for actions filed on or after June 1, 1986, does not apply here because the creditor filed a lawsuit against the debtors in the Iowa District Court for Polk County before the effective date. Defendant debtors argued and the bankruptcy court held that the law governing exemption rights of the debtors must be determined by the law in effect at the time the bankruptcy petition was filed, here April 16, 1987, when the \$5,000 limit had taken effect. See In re Van Hove, 78 B.R. 917, 920 (Bankr. N.D. Iowa 1987).

Debtors' exemption rights are determined by exemption Statutes in effect at the time the bankruptcy petition is filed. White v. Stump, 266 U.S. 310 (1924); In re Hahn, 5 B.R. 242, 245 (Bankr. S.D. Iowa 1980). Moreover, code editors' marginal notes do not have the same force and effect as statutory provisions

themselves. This court should give liberal construction to exemption laws. See 1A Collier on Bankruptcy 6.03 (14th ed. 1978).

The bankruptcy court correctly held that the \$5,000 exemption limit in effect at the time the bankruptcy petition was filed, not the earlier \$1,200 limit, was applicable to the debtors' Lincoln automobile.

3. Frances Hutton's Savings and Investment Program.

The bankruptcy court held exempt funds the debtor Frances Hutton was entitled to receive under a "Non Exempt Savings and Investment" program at Meredith Corporation, her employer. The

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creditor argues the structure of the plan did not meet exemption requirements of Iowa Code section 627.6 (8) (e) in that the plan was not necessary for the debtors' support.

Any plan or contract exhibiting the following characteristics should be exempt under Iowa Code section 627.6(8)(e):

1. The plan is established for the debtor's benefit, usually in the employment context.

2. Benefits of the plan are intended as retirement income or deferred income to provide future support for the debtor.

3. Control of the plan is in the hands of one other than the debtor and withdrawal or distribution is expressly limited for the purpose of providing retirement or deferred income.

4. Payment under the plan is made on account of illness, disability, death, age, or length of service.

In re Pettit, 55 B.R. 394, 398 (Bankr. S.D. Iowa 1985).

The bankruptcy court, after considering written materials about the plan and after hearing the testimony of Frances Hutton, concluded the plan fell within the exemption of Iowa Code section 627.6(8)(e).

Meredith Corporation established the plan for the benefit of its employees. One of the express goals of the plan is to encourage employees "to save money for long-range goals, such as retirements Employees are able to withdraw from the plan in the event of financial hardship, with the approval of a committee responsible for administering the plan. Employees are entitled to the full value of their plans upon retirement. The

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bankruptcy court's findings of fact and ruling on that issue were not clearly erroneous.

4. Stock Ownership Plan. The creditor contends that the debtors were not entitled to an exemption for Frances Hutton's Meredith Employee Stock Ownership Plan. The matter of exempt status of the stock ownership plan, however, was neither presented to nor decided by the bankruptcy court because the plan was not listed as an exempt asset. Consequently, there is no ruling of the bankruptcy court before this court for decision on this appeal.

5. The Debtors' Homestead. The bankruptcy court found the debtors' homestead exempt and granted the debtors' application to release the homestead property from the creditor's judgment lien. The judgment had been obtained on an obligation incurred by the debtors during the years 1981 through 1983.

The bankruptcy court, on this record, did not err in finding that the debtors acquired the homestead in 1965 when they commenced making installment payments and occupied the property. Homestead statutes are liberally construed in favor of exemption. In re Marriage of Tierney, 263 N.W.2d 533, 534 (Iowa 1978). Legal title is not a prerequisite to acquisition of a homestead. Rutledge v. Wright, 171 N.W. 28, 30 (Iowa 1919).

Although the creditor argues that the 1965 installment contract had no maturity date and must have expired in 1985 pursuant to Iowa Code section 614.21, the bankruptcy court did not err in concluding that the debtors had maintained an

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ownership interest from 1965 up to the date when they filed their bankruptcy petition and claimed the homestead as exempt.

#### SUMMARY

On each issue raised in this appeal by the creditor Steven H. Fox, this court affirms the ruling of the bankruptcy court.

IT IS SO ORDERED.

Dated this 29 day of December, 1988.

CHARLES R. WOLLE, JUDGE  
UNITED STATES DISTRICT COURT

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**United States Court of Appeals**

**FOR THE EIGHTH CIRCUIT**

No. 89-1193

In Re:

Jerome Dane Hutton and Frances  
Marie Hutton, d/b/a Hutton's  
Weldin' & Auto Repair,

Debtors.

Stephan H. Fox, Creditor,

Appellant,

V.

Appeal from the United States  
District Court for  
the Southern  
District of Iowa

Jerome Dane Hutton and  
Frances Marie Hutton,

Appellees.

Submitted: October 11, 1989

Filed: January 18, 1990

Before BEAM, Circuit Judge, HEANEY and HENLEY, Senior Circuit  
Judges.

BEAM, Circuit Judge.

Stephan H. Fox appeals from a decision of the district court',  
dated December 29, 1988, affirming earlier decisions of the  
bankruptcy court which overruled Fox's objection to certain  
exemptions claimed by Jerome and Frances Hutton in their chapter 7  
bankruptcy proceeding. We affirm the judgment of the district  
court.

#### 1. BACKGROUND

Jerome and Frances Hutton filed a joint chapter 7 petition  
on April 16, 1987. They own and operate an auto repair and  
welding business, as well as a tree service. Jerome is employed  
in these concerns, while Frances works as a computer operator

for Meredith Corporation. The Huttons claimed total exemptions of \$35,949, including a 1977 Lincoln Continental, a life insurance policy, a savings and investment plan with Meredith Corporation (Frances' employer), and a homestead. Creditor Fox objected to each of these exemptions, but was overruled in each case by the bankruptcy court. The district court affirmed the allowance of all claimed exemptions.

## II. DISCUSSION

Fox argues on appeal that the savings and investment plan provided by Meredith Corporation for its employees is not exempt. This plan apparently is not the regular pension plan provided for Meredith employees, but is an additional savings plan, to which an employee may contribute a percentage of earnings which Meredith Corporation will match by fifty percent.<sup>1</sup> The employee is entitled to the value of the savings and investment plan at retirement, either in a lump sum or in installments. The plan is described by Meredith Corporation as a plan to encourage employees to "save money for long-range goals, such as retirement." 11 Appellant's App. at 48.

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<sup>1</sup> The record is not entirely clear that this plan is separate and distinct from Meredith Corporation's regular pension plan, although Fox claims that it is and the Huttons do not contend otherwise. The Huttons' exemption schedule claims an exemption, denominated as "pension," for \$3,914. No other exemption is listed for a savings and investment plan. Thus,, the record does not reveal whether the exemption listed in the schedule is for the savings and investment plan, or, if not, what contributions Frances has made, to the plan.

The Huttons claim that the plan is exempt under Iowa law, which provides an exemption for: "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. 11 Iowa Code Ann. 627.6(8)(e) (West Supp. 1989). Fox argues that the plan is not a "similar plan or contract" because of the debtor's ability to withdraw funds in the event of financial hardship.

Fox's argument implicitly relies on In re Pettit, 55 B.R. 394 (Bankr. S.D. Iowa 1985), aff'd, 57 B.R. 362 (S.D. Iowa 1985), in which the bankruptcy court determined the nature of a "similar plan or contract" under the statute. The court did so by looking at the general characteristics common to pension plans and annuities. Specifically, In re Pettit found that annuities and pension plans have a common, archetypal characteristic of access to funds being "restricted by limiting conditions (i.e. retirement, disability, death, etc.)." In re Pettit, 55 B.R. at 398. Thus, of the four characteristics for a "similar plan or contract," Fox implicitly argues that the third is not met: "Access and control of the plan or fund in the hands of someone other than the debtor with-strong limitations on withdrawal or distribution expressed in the formal plan or fund for the purpose of providing retirement or deferred income." Id. Fox argues that because the Meredith Corporation plan allows for withdrawal prior to retirement in the event of financial hardship, which may include payments for the purchase or improvement of a principal residence, the plan does not contain "strong limitations on withdrawal or distribution." The district court disagreed, affirming the bankruptcy court's finding that the plan satisfied the criteria set forth in In re Pettit.

We review de novo the judgment of the district court, since entitlement to an exemption is a question of law. Stevens v. Pike

County Bank, 829 F. 2d 693, 695 (8th Cir. 1987). Even so, we accord substantial deference to the district court in its interpretation of state law. See Bennett v. Allstate Ins. Co., No. 89-1028, slip op. at 6 (8th Cir. Nov. 13, 1989) ; Gulley v. Mayo Found., 886 F.2 161, 163-64 (Sth Cir. 1989). We agree with the district court that the Meredith Corporation plan satisfies the requirement of In re Pettit that access and control over distribution of the fund be in the hands of someone other than the debtor and that there be strong limitations an withdrawal. Thus, the plan is exempt under the Iowa statute as a "similar plan or contract."

The plan provides that an employee may make withdrawals before retirement in the event of financial hardship,<sup>2</sup> but only if "[a] committee responsible-for administering the plan decides whether withdrawal requests qualify as financial hardships." Appellant's App. at 50. Control over withdrawals is thus subject to the discretion of a third party; the employee has no absolute right to use the funds prior to retirement. Moreover, "financial hardship" is to be defined in accordance with Internal Revenue Service regulations. That the regulations may provide that "financial hardship" includes a need to buy or improve a principal residence is not enough,.as Fox argues, to deprive the plan of "strong limitations an withdrawal." Moreover, financial hardship is to be defined by objective criteria. Thus, we cannot agree with Fox that the limitations expressed in the Meredith plan are not sufficient to-qualify the plan as a "similar plan or contract" under the Iowa exemption statute. See, e.g., In re Lilienthal, 72 B.R. 277, 279 (Bankr. S.D. Iowa 1987) (withdrawal penalty of up to seven percent is not insubstantial and, therefore, annuity qualifies for exemption); In re Faulkner, 79 B.R. 362, 3.66 n.8

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<sup>2</sup>We note that withdrawals prior to retirement are subject to the financial hardship restriction only until the employee reaches age 59 1/2. Even so, the restriction is still sufficient to invest the plan with the characteristics of an annuity or pension plan.

(Bankr. E.D. Tenn. 1987) (drawing a distinction between absolute right of debtor to receive vested funds in lump sum upon termination of employment and distribution of lump sum only at sole discretion of committee administering the plan).

Fox also objects to an exemption claimed and allowed for a 1977 Lincoln Continental. The Iowa exemption statute provides an exemption "not to exceed a value of five thousand dollars" for "[o]ne motor vehicle." Iowa Code Ann. 627.6(9)(b) (West Supp. 1989). The statute was amended in 1986 to increase the value of the exemption from \$1,200 to the current \$5,000. The historical note to the statute indicates that it is to apply to actions filed on or after the effective date of the act, June 1, 1986. Fox claims that since he filed a state law action against the Huttons on February 4, 1986,, the old exemption limit of \$1,200 should apply. Since the car has an N.A.D.A. book value of \$3,100,<sup>3</sup> Fox argues that the Huttons are not entitled to an exemption for the car.

This argument is clearly wrong. The bankruptcy petition was filed on April 16, 1987, almost one year after the statute's effective date, and the filing date determines the applicable law. The bankruptcy code provides that a debtor may exempt from property of the estate "any property that is exempt under . . . State or local law that is applicable on the date of the filing of the petition." 11 U.S.C. 522(b)(2)(A) (1988). The federal statute is dispositive. When Fox filed his state action is irrelevant for purposes of determining exemptions.

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<sup>3</sup>The exemption amount claimed in the schedules is \$900.

III. CONCLUSION

We have considered Fox's other arguments on appeal and find them to be without merit. Therefore, we affirm the judgment of the district court.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

