

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of

LARRY LEE LYNCH,

Debtor.

Case No. 93-02300-C J

Chapter 7

MEMORANDUM OF DECISION AND ORDER
DENYING MOTION FOR RECONSIDERATION

On January 20, 1994 the above named Chapter 7 debtor filed a motion and brief seeking reconsideration of this court's January 7, 1994 order sustaining an objection by Mautz Paint Company (Mautz) to his claim of exemption, to the extent the claim exceeded \$1,000.00, and granting his motion to avoid Mautz's judicial lien, only as to the same \$1,000.00. On January 27, 1994 Mautz filed a response resisting the motion for reconsideration.

BACKGROUND

On September 10, 1993 debtor filed a petition for relief under Chapter 7. According to the schedules and statement of financial affairs filed with the petition, Mautz obtained a judgment against the debtor in Iowa District Court for Polk County on April 1, 1993. As of the bankruptcy petition date, the judgment plus interest and costs amounted to \$23,932.51. Mautz also pursued an execution on the debt and the county sheriff levied upon \$2,500.00 that Accurate Development, Inc. (Accurate) owed the debtor for subcontracted painting.

On October 22, 1993 debtor amended his claim of exemptions on Schedule C to include \$1,000.00 in accrued wages pursuant to Iowa

Code section 627.6(9) (c) and \$1,500.00 in disposable earnings pursuant to Iowa Code sections 642.21 and 537.5105. The wages and earnings referred to the \$2,500.00 Accurate owed the debtor.

On October 29, 1993 the debtor filed a motion to avoid the judicial lien held by Mautz. On November 9, 1993 Mautz filed an objection to the motion, and then on November 15, 1993 Mautz filed an objection to debtor's claim of exemptions in wages and earnings. On November 26, 1993 the debtor filed an objection and an affidavit in support of his objection to Mautz's objection to exemptions.

During the telephonic hearing, counsel for Mautz agreed debtor was entitled to claim \$1,000.00 exempt as accrued wages pursuant to section 627.6(9)(c) which provides:

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

...

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

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 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. ¹

Debtor's affidavit alleged his services were not performed on a material plus labor basis but rather on a flat service rate.

¹ With respect to the other subsections of Iowa Code section 627.6(9), debtor claimed nothing under (a) (musical instruments) and \$4 000.00 under (b) (motor vehicle).

Independent contractors are entitled to claim income from personal services as wages under section 627. 6 (9) (c). Matter of Sexton, 140

B.R. 742 (Bankr. S.D. Iowa 1992).

With respect to the exemption claim pursuant to section 537.5105, counsel for debtor acknowledged the debt to Mautz was incurred for commercial purposes and was not part of a consumer credit transaction. Accordingly, the debtor's exemption claim under that section was not considered further by the court.

Consequently, the parties' argument and the court's ruling focused on the interrelationship between the exemption limitations in section 627.6(9)(c) and the garnishment limitations in section 642.21. Debtor's counsel argued that the last sentence of section 627.6 (9) (c) permits a debtor to claim more than \$1, 000. 00 in compensation for personal services. He could not cite any caselaw to support his interpretation of the statute.

The court ruled the plain meaning of the sentence in issue is that section 627.6(9) (c) provides the enlargement, if any, over the earnings exemption in section 642.21. Debtor's exemption claim under section 627.6(9) (c) therefore was limited to \$1,000.00. Accordingly, he could avoid the judicial lien held by Mautz only on

the exempt amount. 11 U.S. C. section 522 (f) (1). See Owen v. Owen, 500 U.S. 305, 111 S.Ct. 1833, 114 L.Ed.2d 350 (1991). The court, however, granted debtor's counsel fourteen days to submit a motion for reconsideration if he found caselaw supporting his interpretation of the interplay between section 627. 6 (9) (c) and section 642.21.

DISCUSSION

Though debtor's counsel obviously expended quite a bit of research time and writing effort in preparing the motion for reconsideration and the brief in support of the motion, he was not able to locate any caselaw supporting his argument. Indeed, the weight of authority runs contrary to his interpretation of the statutory language in issue.

In In re Madia No. 86-00453S, slip op. at 6-8 (Bankr. N.D. Iowa, filed December 4, 1987), Judge Michael J. Melloy concluded the \$1,000.00 in accrued wages and income tax refunds under 627.6(9) (c) is neither limited nor enlarged by sections 642.21 and 537.5105. In Matter of Davis, 136 B.R. 203, 207-208 (Bankr. S.D. Iowa 1991) Judge Russell J. Hill concurred. In explaining the reasoning for the existence of the garnishment limitation language in section 627. 6 (9) (c), Judge Hill stated "[t]he reference to those sections in 627.6(9) (c) reflects the legislature's intention that

a debtor may be entitled to exempt \$1,000 in accrued wages and tax refunds regardless of statutory restrictions which would ordinarily adhere in nonbankruptcy proceedings." 136 B.R. at 209.

Clearly the Madia and Davis decisions support the undersigned's ruling and order on January 7, 1994.

CONCLUSION

Having carefully reviewed the arguments presented by debtor's counsel, the undersigned has not been persuaded to change her previous interpretation of the last sentence in Iowa Code section 627.6(9)(c).

ORDER

Therefore the debtor's motion for reconsideration is denied.

Dated this 22nd day of April, 1994

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE