

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

IN RE:) CASE NO. 89-50106-INH
L.D. ALDERSON,) CHAPTER 7
)
)
)
Debtor.)

ORDER OF CONTEMPT

Creditor Eunice I. Gull (Movant), individually and as the Administratrix of the Estate of Carl V. Gull, by and through her attorney Andrew B. Reid, having moved the Court for a determination that Debtor L.D. Alderson (Debtor) is in contempt of this Court and a hearing on this Motion for Contempt (Motion) having been held before the undersigned on June 5, 1990, with appearances by Mr. Reid, Dennis Whetzal, Chapter 7 Standing Trustee (Trustee), and Charles L. Nail, Jr., Assistant U.S. Trustee, and after consideration of the Motion, the record before the Court, and the argument of counsel, the Court enters the following:

FINDINGS OF FACT

1. On May 8, 1989, Debtor filed a Chapter 12 Petition for Relief.
2. On October 31, 1989, Debtor's case was converted to a Chapter 7 proceeding.
3. By Order Granting Objections to Exemptions and Directing Debtor to Turnover Property entered March 9, 1990, the Court directed Debtor to turnover to Trustee

all of the estate owned or possessed by

[Debtor] at the time of filing or conversion,
 . . .including but not limited to the following:

a) All livestock, including the three horses Debtor disclosed he removed to Nebraska.

b) All farm and ranch equipment and implements including tractors, trailers, panels, stock tanks, and all tools of any kind or nature.

c) Debtor's 1979 Lincoln Continental automobile.

d) All business papers, of any kind or nature, including all contracts, receipts, invoices, correspondence, insurance policies, logging records, bills, pasture rent contracts, government programs, USFS [United States Forest Service] and BLM [Bureau of Land Management] permits, livestock sales, purchase, and inspection records, etc.

e) Debtor's 1972 IHC Pickup truck.

f) All records, including all American Quarter Horse Association registration and breeding records, on any and all livestock, living or dead, which Debtor is currently in possession or has at any time possessed.

g) All horse tack, including saddles, blankets, halters, bits, bridles, etc.

h) All cash and deposits of money with any savings and loan, banks, financial institution, or other entity.

j[sic]) All other property of any kind or nature not listed above and not listed as absolutely exempt which has not been distributed by prior order of this Court.

4. The Order Granting Objections to Exemptions and Directing Debtor to Turnover Property was served on Debtor by the Clerk of this Court on March 9, 1990.

5. Subsequent to the service of the Order Granting Objections to Exemptions and Directing Debtor to Turnover Property, Debtor has

failed to turnover to Trustee the following property:

- a. all livestock, including:
 - (1) one sorrel stallion registered as Red Rock Rubys by the American Quarter Horse Association, #2342046;
 - (2) one sorrel stallion registered as Bobs Hy Beau by the American Quarter Horse Association, #1915345; and
 - (3) one sorrel mare registered as Ole Bobby Twist by the American Quarter Horse Association, #1619683;
- b. one 1979 Lincoln Mark IV automobile;
- c. one stock trailer;
- d. one cattle spraying/fire fighting unit consisting of a plastic tank, motor, and hose;
- e. four stock tanks placed by Debtor with Robert Brown;
- f. all business papers of any kind or nature;
- g. all livestock records of any kind or nature;
- h. one 30-30 rifle placed by Debtor with Leonard McElhaney;
- i. one 410 gauge shotgun placed by Debtor with Leonard McElhaney;
- j. livestock panels placed by Debtor with Leonard McElhaney;

k. all brands and branding equipment, including the brand LZ and the brand L7L; and

l. one 1988 Honda TRX 300 all-terrain vehicle.

6. As of March 9, 1990, each item of property listed in Finding number 5 above was in the possession or control of Debtor or Debtor's agents and Debtor had the power and authority to personally deliver or to have delivered each item to Trustee.

7. On April 3, 1990, Debtor attended a hearing on Trustee's Proposed Action to sell certain property. At this hearing, Debtor demonstrated to the Court that he had received service of and had knowledge of the turnover Order dated March 9, 1990. Further, at this hearing Debtor informed the Court that he intended to refuse to fully comply with the turnover Order dated March 9, 1990.

8. On May 24, 1990, Movant filed a Motion for Contempt and served the same on Debtor and provided notice of hearing thereon to Debtor on May 23, 1990.

9. Debtor did not timely respond to the Motion nor appear at the hearing held June 5, 1990.

CONCLUSIONS OF LAW

1. A civil contempt proceeding is a core matter under 28 U.S.C. § 157(b) (2).

2. By Order Granting Motion for Approval to Pursue Property of the Estate entered March 21, 1990, the Court granted Andrew B. Reid, counsel for Movant, approval to pursue and recover property of Debtor's estate and thereby authorized Mr. Reid to file the Motion for Contempt and provide notice of the hearing thereon, as required by Bankr. R. 9020(b).

3. The Motion and notice of hearing served on Debtor stated the essential facts constituting the contempt charged and described the contempt charged as civil and/or criminal, as required by Bankr. R. 9020(b).

4. Debtor received reasonable and sufficient notice of the hearing on the Motion, as required by Bankr. R. 9020(b).

5. Debtor's wilful disobedience of the Order Granting Objections to Exemptions and Directing Debtor to Turnover Property constitutes civil contempt of this Court.

6. Debtor's wilful disobedience of the Order Granting Objections to Exemptions and Directing Debtor to Turnover Property has caused and will continue to cause loss to the Chapter 7 estate.

7. It has been necessary for Movant to bring this Motion before the Court to ensure Debtor's compliance with the Order Granting Objections to Exemptions and Directing Debtor to Turnover Property and Movant has thereby become obligated to her attorney for necessary legal fees and expenses.

Therefore,

IT IS HEREBY ORDERED that Debtor is in civil contempt of this Court; and

IT IS FURTHER ORDERED that Debtor shall pay to the Chapter 7 Trustee Dennis Whetzal, on behalf of and for the benefit of the Chapter 7 estate, damages in the sum of \$100 per day beginning on the eleventh day following entry and service of this Order and continuing thereafter until Debtor shall fully comply with the Order Granting Objections to Exemptions and Directing Debtor to Turnover Property entered March 9, 1990; and

IT IS FURTHER ORDERED that the Clerk of this Court shall serve, in compliance with Bankr. R. 9020(c), forthwith a copy of this Order on Debtor and it shall be effective 10 days after service and shall have the same force and effect as an order of contempt entered by the District Court unless, within the 10 day period, Debtor serves and files with the Clerk objections prepared in the manner provided in Bankr. R. 9033(b) and if timely objections are filed, the Order shall be reviewed as provided in Bankr. R. 9033; and

IT IS FURTHER ORDERED that should Debtor fail to fully comply with the Order Granting Objections to Exemptions and Directing Debtor to Turnover Property entered March 9, 1990, on or before October 18, 1990, the Clerk of this Court shall forthwith transmit a copy of this Order to the United States Attorney for the District of South Dakota under cover letter of this Court, as required by 18 U.S.C. § 3057(a), to refer this matter for prosecution for criminal contempt; and

IT IS FURTHER ORDERED that Debtor shall pay all reasonable attorney fees and expenses incurred in this contempt matter by Movant for the employ of her counsel, Andrew B. Reid, as determined by the Court pursuant to a timely application for and itemization of the same to the Court by Movant.

So ordered this 18th day of September, 1990.

BY THE COURT:

Irvin N. Hoyt

Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____

Deputy Clerk

