

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
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June 17, 2003

Carol S. Dahlinger
910 11th Avenue
Belle Fourche, South Dakota 57717

Dennis C. Whetzal, Esq.
Chapter 7 Trustee
Post Office Box 8285
Rapid City, South Dakota 57709

Subject: *In re Vernon E. Ivers, Jr., and Carol S. Ivers,*
Chapter 7; Bankr. No. 02-50111

Dear Ms. Dahlinger and Trustee Whetzal:

The matter before the Court is Debtor Carol S. Dahlinger's amended objection to Trustee Dennis C. Whetzal's Final Report, Proposed Distribution, and Applications for Compensation. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052.¹ As discussed below, Debtor's amended objection will be overruled.

Summary. Vernon E. Ivers, Jr., and Carol S. Ivers (now known as Carol S. Dahlinger) ("Debtors") filed a Chapter 7 petition on March 11, 2002. Debtors declared exempt under S.D.C.L. § 43-45-4 personal property with a total value of \$9,510.78. Case trustee Dennis C. Whetzal filed an objection to Debtors' claimed exemptions on the grounds that some of this property may have been undervalued. He later withdrew that objection. Debtors never filed with the Court any amendments to any of their schedules.

Debtors received their discharge and the case was closed on July 15, 2002. On September 13, 2002, Trustee Whetzal filed a motion asking the Court to reopen the case because he had received assets for the bankruptcy estate. The motion was granted on September 16, 2002.

¹ No hearing was necessary since no material facts were in dispute.

Re: Vernon and Carol Ivers
June 17, 2003
Page 2

On May 5, 2003, Trustee Whetzal filed his Final Report, Proposed Distribution, and Applications for Compensation. He proposed to pay several administrative costs and to make a small distribution to unsecured claim holders. He did not propose to return any funds to Debtors.

On June 4, 2003, Debtor Carol Dahlinger filed an amended letter-objection to Trustee Whetzal's Proposed Distribution on two grounds. First, she stated that the claim held by Gary Ager was erroneously listed. Second, she argued, apparently relying on a May 12, 2003, letter that her attorney wrote to Trustee Whetzal, that she had unused exemptions that entitled her to a distribution from the funds held by Trustee Whetzal before he paid any creditors.

Attached to Debtor's amended letter-objection was the May 12, 2003, letter from her attorney to Trustee Whetzal. That letter then referenced and included as an attachment a copy of Debtors' schedule B of personal property with some handwritten notes on it; a letter to Debtor Carol Ivers from creditor Black Hills Power, which stated they held no deposit from Debtor; a note dated April 17, 2002, apparently claiming that Western Star held as collateral some personalty that Debtors had listed on their Schedule B; a "RELEASE AND ASSIGNMENT" (date appears to be around March 22, 2002) signed by Debtor Vernon Ivers that gave a 1980 Ford Fairmont to the City of Belle Fourche in exchange for the city hauling the vehicle away; a note by a Cass Heinbaugh, general manager of Hersrud's of Belle Fourche, Inc., dated March 19, 2002, that states a 1977 half ton GMC [pickup?] is worth \$400; an undated copy of a checkbook register purporting to show a bank balance on Debtors' petition date; a second letter from Debtors' bankruptcy attorney to Trustee Whetzal dated May 29, 2002, that references several enclosures; a third letter from Debtors' bankruptcy attorney to Trustee Whetzal dated September 10, 2002, that reviews previous material he had sent Trustee Whetzal and that asks him to "send any reimbursement due the debtors to my office"; and a copy of Debtors' Schedule C of exempt property with two handwritten notes on it.

Discussion - Ager's proof of claim. Gary Ager filed a proof of claim for \$40,427.20. The claim was filed on January 17, 2003, which was well before the filing deadline of January 21, 2003. No party in interest has filed an objection to Mr. Ager's claim and noticed it for hearing pursuant to Fed.R.Bankr.P. 3007 and Local Bankr. R. 2002-1(c). See also *White v. Coors Distributing Co. (In re White)*, 260 B.R. 870, 875 (B.A.P. 8th Cir. 2001)(unless a

JUN 17 2003

Re: Vernon and Carol Ivers
June 17, 2003
Page 3

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By _____

surplus will exist in the bankruptcy estate after creditors are paid in full, a Chapter 7 debtor generally does not have standing to file an objection to a proof of claim). Accordingly, under 11 U.S.C. § 502(a) the claim filed by Gary Ager is deemed allowed and Trustee Whetzal must recognize it when he distributes the bankruptcy estate assets.

Discussion - Debtor's entitlement to additional exemptions. Debtors have never filed any amendments to their bankruptcy schedules, including their Schedule C of exempt property. The assets that Trustee Whetzal recovered were not declared exempt by Debtors on their original Schedule C. Accordingly, Debtors are not entitled to any portion of them.

Further, Debtor Carol Dahlinger appears to argue that there were some errors on her original schedules that were corrected by her attorney with Trustee Whetzal and that these corrections allow her additional exempt property from the estate. Again, Debtors have never amended either their Schedule B of personal property nor their Schedule C of property claimed exempt. Trustee Whetzal's proposed distribution appropriately recognizes Debtors' schedules as they are filed with the Court. Therefore, no changes will be ordered to his Final Report and Proposed Distribution.

Even assuming that Trustee Whetzal told Debtors' counsel that Debtors did not need to file amended Schedules B and C and that Debtors did not need to give other creditors notice of their amended Schedule C, the Court would not recognize these unfiled amended schedules nor approve a final report that did recognize them. All amended schedules must be filed and noticed in compliance with Fed.R.Bankr.P. 1009 and with Local Bankr. R. 1009-3. Only amended schedules that have been filed and correctly noticed can be recognized.

An order overruling Debtor Carol Dahlinger's amended objection to the Trustee's report will be entered.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

JUN 17 2003

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

INH:sh

cc: case file (docket original; serve parties in interest)

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