

**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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October 25, 2001

Lee Ann Pierce, Esq.  
Chapter 7 Trustee  
Post Office Box 524  
Brookings, South Dakota 57006

Douglas G. Lorenzen, Esq.  
Attorney for Debtor  
Post Office Box 84435  
Sioux Falls, South Dakota 57118

Subject: *In re Nora Y. Ludwig,*  
Chapter 7; Bankr. No. 01-40473

Dear Trustee and Counsel:

The matter before the Court is Trustee Lee Ann Pierce's September 28, 2001, motion regarding the sale of non homestead real property and the resolution of her objection to Debtor's claimed exempt property and Debtor's October 19, 2001, response. 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 and 9014. As set forth below, the Court concludes that Trustee Pierce's motion as to the sale of the real property will be approved. Further, Debtor will be given an opportunity to maximize her exemptions based on the increased equity created in her two motor vehicles and the parties will be given an opportunity to work out payment terms regarding any excess equity in the vehicles.

*Summary.* Debtor filed a Chapter 7 petition in bankruptcy on May 2, 2001. Debtor claimed exempt under S.D.C.L. § 43-45-4 certain non homestead real property and two motor vehicles, among other items. Lee Ann Pierce, the case trustee, objected to Debtor's claimed exemptions on the grounds that Debtor could not exempt real property under § 43-45-4. She also argued that if Debtor were nonetheless allowed to claim the real property exempt,

Re: Nora K. Lugwig  
October 25, 2001  
Page 2

then the total value of the property claimed under that state code section would exceed the \$6,000 allowance. A September 5, 2001, hearing was continued pending the parties' settlement.

On September 28, 2001, Trustee Pierce filed a multifaceted motion. She sought approval of her sale of the non homestead real property. Trustee Pierce also stated that the State Bank of Alcester holds an assignment of interest in the proceeds on a contract for deed on the subject real property, as well as a lien on Debtor's two motor vehicles. Trustee Pierce stated that once she paid the Bank the sum it was due on the assignment, then the equity in Debtor's vehicles would increase and Debtor would thereby exceed her allowed exemptions under § 43-45-4. Thus, under her September 28th motion, Trustee Pierce also asked the Court to order Debtor to turnover to the estate \$1,800 to accommodate for her excess exempt property.

Debtor filed a response on October 19, 2001. She argued that the value of her exempt property was fixed on the petition date and that she should not have to turnover any funds to the bankruptcy estate to reflect the increase in value.

*Discussion.* Debtor is correct that the value of exempt property is determined as of the petition date. See 11 U.S.C. § 522(a)(2). On that date, Debtor valued her 1988 Ford at \$500 and her 1996 Nissan at \$5,500. Of the vehicles' total value, Debtor claimed exempt only \$3,000. The Trustee did not object to this \$3,000 that Debtor declared exempt. Therefore, any equity in the vehicles over \$3,000 remained property of the bankruptcy estate. *Soost v. Nah, Inc. (In re Soost)*, 262 B.R. 68, 72 (B.A.P. 8th Cir. 2001) (where the value of an asset exceeds the amount of the claimed exemption, the asset as a whole does not become exempt).

Trustee Pierce has now reported that the equity in the vehicles (not the value of the vehicles) will increase because the secured creditor will be paid in full from proceeds from the sale of the non homestead real property. That increase in equity remains property of the estate. Based on the current schedules then, Debtor is still entitled to only the \$3,000 in equity that she originally declared exempt.

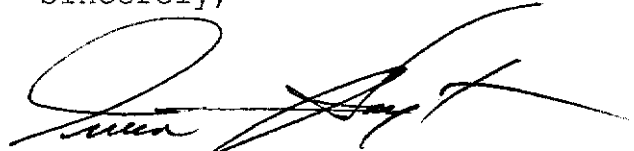
Debtor, however, has not maximized her allowed exemptions under § 43-45-4. Excluding the child support payments and the non homestead real property, Debtor has claimed exempt under § 43-45-4

Re: Nora K. Lugwig  
October 25, 2001  
Page 3

only \$4,710 in personal property. Thus, she may still amend her schedules to claim exempt an additional allowance of \$1,290 from the newly created equity in the vehicles. If the vehicles still have an actual value, as of the petition date, in excess of \$4,290, then that amount will remain property of the bankruptcy estate. Debtor will have to pay that value to the bankruptcy if she wants to keep the two vehicles or Trustee Pierce may sell the vehicles and give Debtor her exempt share of the proceeds.

It would be premature at this stage to order Debtor to turnover \$1,800 as the amount of excess equity in her vehicles. The better course is to let Debtor promptly file any amendment to her schedule of exempt property to maximize her exemptions under § 43-45-4. Debtor, through her attorney, and Trustee Pierce may then decide how the estate can best receive whatever value remains in the vehicles.<sup>1</sup> Accordingly, Trustee Pierce may prepare an order approving her sale of the real property. Final resolution of the exemption issue will await further pleadings.

Sincerely,



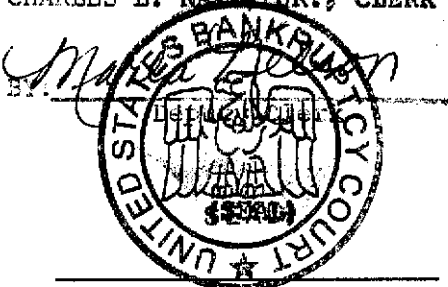
Irvin N. Hoyt  
Bankruptcy Judge

INH:sh

CC: case file (docket original; copies to parties in interest)

ATTEST:

CHARLES L. NAIL, JR., CLERK



I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

OCT 26 2001

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

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

OCT 26 2001

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

If Debtor does not timely amend her schedules, the bankruptcy estate is entitled to all equity in the vehicles less Debtor's \$3,000 exemption. Trustee Pierce may seek court approval to sell the vehicles to realize on this equity.

Case: 01-40473 Form id: 122 Ntc Date: 10/26/2001 Off: 4 Page : 1

Total notices mailed: 4

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Aty Lorenzen, Douglas G. PO Box 84435, Sioux Falls, SD 57118

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