

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
Central Division

In re: ) Bankr. No. 97-30009  
)  
MARJORIE ALVINA SCHMIDT ) Chapter 7  
f/k/a Marjorie A. Baus )  
Soc. Sec. No. [REDACTED]-6306 ) MEMORANDUM OF DECISION RE:  
) OBJECTION TO EXEMPTIONS  
Debtor. ) UNDER S.D.C.L. § 43-45-4

The matter before the Court is the OBJECTION TO CLAIMED EXEMPTIONS filed by Trustee Lovald. 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 regarding Debtor's status as a head of household. [The IRA-related objection is being resolved through Adversary Proceeding No. 97-3001.] As set forth below, the Court concludes that Debtor may not claim exemptions under S.D.C.L. § 43-45-4 as either a head of a family or a single person. Further, Debtor's schedules I and J must be amended to reflect her current financial status, including the income of her spouse, if any, and the combined expenses with her spouse.

I.

On Schedule I, Debtor acknowledged that she was married but she did not set forth her spouse's age, employment status, or income. She did not list any dependents. On schedule J, Debtor did not set forth all expenses reasonably expected with maintaining a household, including provisions for rent or mortgage payments, utilities, and taxes, and other "roof over your head" expenses. On her schedule C, Debtor claimed exemptions under S.D.C.L. § 43-45-4 as a head of household. The parties have stipulated that the value

of the property that Debtor has claimed exempt under S.D.C.L. § 43-45-4 is \$8,483.00.

The issue presented is whether Debtor is entitled to claim additional personal property exemptions under S.D.C.L. § 43-45-4 of \$4,000.00 as a head of household or of \$2,000.00 as a single person.

Trustee Lovald argues that Debtor cannot be a head of a family when she has not disclosed the financial resources available through her spouse. He further argues that Debtor does not occupy the "breadwinner" status in the home. Debtor argues that she and her husband constitute a family and thus she is entitled to claim head of family status for her exemptions. She relies the liberal interpretation to be given to exemption statutes and a dictionary definition of "family."

## II.

In addition to certain personal property that is absolutely exempt under S.D.C.L. § 43-45-2, a debtor who is a single person and not the head of a family may declare exempt another \$2,000.00 in personal property under § 43-45-4. A head of a family may declare another \$4,000.00 in personal property exempt under § 43-45-4. This additional exempt personal property is removed from the bankruptcy estate and is not liquidated by the case trustee to pay creditors. 11 U.S.C. §§ 522(b) and 522(c).

State law does not define head of a family.<sup>1</sup> Case law provides some guidance. In *Goodlad v. Smejkal*, 190 N.W. 1017, 1018 (S.D. 1922), the court stated:

It is not material how old appellant is or whether he is married or single. It appears that his mother was living with him as a member of his family, and was dependent on him for support. This constitutes defendant the head of a family.

A debtor's entitlement to an exemption is determined on the day he files his bankruptcy petition. See *Armstrong v. Peterson (In re Armstrong)*, 897 F.2d 935 (8th Cir. 1990); *Armstrong v. Harris (In re Harris)*, 886 F.2d 1011 (8th Cir. 1989) (cites therein); and *In re Myers*, 17 B.R. 339, 340 (Bankr. D.S.D. 1982).

### III.

Debtor was married on the petition date and had no children or other dependents, including her husband. The record is unclear on whether some of her living expenses are covered in part by her husband's income; that is, whether she is his dependent. Her Schedules I and J, however, lead to the inference that at least some of her expenses are paid by another.

Under definition of head of a family provided by *Goodlad*, 190 N.W. at 1018, Debtor's Schedules I and J do not support the conclusion that she is a head of a family. Her marital status alone does not render her a head of a family. Instead, to be a

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<sup>1</sup> "Family," for the purpose of the homestead laws, is defined by S.D.C.L. § 43-31-14, and includes a husband and wife without children.



head of a family she must support herself and someone else with whom she forms that family. Since Debtor has no dependents, she is not the head of a family. At most, she supports herself. Accordingly, she may not exempt additional personal property under S.D.C.L. § 43-45-4 as a head of a family. *Compare In re Dice*, Bankr. No. 96-30095, slip op. at 3 (Bankr. D.S.D. April 2, 1997) (single, non custodial parent who paid child support for minor daughter was a head of a family under S.D.C.L. § 43-45-4); *see also McCarter v. Murrell (In re Murrell)*, 588 F.2d 1207 (8th Cir. 1978).

Further, Debtor is clearly not a single person due to her marriage. Accordingly, she also may not claim additional personal property exempt under S.D.C.L. § 43-45-4. As discussed in *Holleman v. Gaynor*, 237 N.W. 827 (S.D. 1931), only two types of people can claim the alternative exemptions under § 43-45-4: a head of a family and a single person. Since Debtor is neither, she has no ability to claim any property exempt under § 43-45-4.

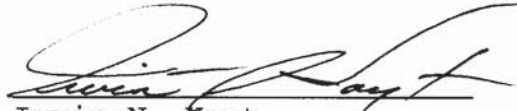
Finally, the Court directs Debtor to amend her schedules I and J to set forth any income or expense information omitted regarding her husband's financial status. A debtor may not pick and choose which information to provide on the schedules and statement of financial affairs; leaving spaces blank is not an option. *See Armstrong v. Lunday (In re Lunday)*, 100 B.R. 502, (Bankr. D.N.D. 1989). Schedule I [Official Bankruptcy Form 6] requires both the debtor's and the debtor's spouse's income to be listed. If

Debtor's husband has no income, then she should state "none." Schedule J requires a debtor to list the "average monthly expenses for the debtor and the debtor's family." Debtor may not list just her own expenses since she is a member of a family.

An order will be entered sustaining the Trustee's objection to the extent that Debtor may not claim any additional personal property exempt under S.D.C.L. § 43-45-4.

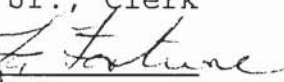
So ordered this 15<sup>th</sup> day of August, 1997.

BY THE COURT:

  
Irvin N. Hoyt  
Chief Bankruptcy Judge



ATTEST:  
Charles L. Nail, Jr., Clerk




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

**AUG 1 1997**

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

**CERTIFICATE OF SERVICE**  
I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to those creditors and other parties in interest identified on the attached service list.

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

By:   
Date: 8-1-97

Case: 97-30009 Form id: 122 Ntc Date: 08/01/97 Off: 3 Page : 1

Total notices mailed: 4

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Trustee Lovald, John S. PO Box 66, Pierre, SD 57501

Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321