

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

IRVIN N HOYT
CHIEF BANKRUPTCY JUDGE

TELEPHONE
(605) 224-0560

December 20, 1995

Rick A. Yarnall, Esq.
Chapter 7 Trustee
Post Office Box "J"
Sioux Falls, South Dakota 57101

Douglas R. Bleeker, Esq.
Counsel for Debtor
Post Office Box 279
Mitchell, South Dakota 57301

Subject: *In re Loren E. Volberding,*
Chapter 7; Bankr. No. 95-40368

Dear Trustee and Counsel:

The matter before the Court is the Objection to Claimed Exempt Property filed by Trustee Rick A. Yarnall on August 24, 1995. 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 F.R.Bankr.P. 7052. As set forth below more fully, the Court concludes that Debtor may claim exempt the \$1,260.00 cash surrender value of a life insurance policy whose beneficiary is Debtor's parents.

The parties filed a Stipulation For Statement of Facts and Issues on October 24, 1995. They are incorporated herein.¹

Section 58-12-4² of the South Dakota Codified Law provides in pertinent part:

The proceeds of a policy of life or health insurance to the total amount of twenty thousand dollars only, in the absence of any agreement or assignment to the contrary, shall inure to the separate use of the insured, his surviving spouse or children, as the case may be, independently of the creditors of any one of them and

¹ The Stipulation said that a copy of Debtor's insurance policy was attached as Exhibit A. The Court did not receive any exhibits with the Stipulation.

² Section 43-45-6 of the South Dakota Codified Laws, which was cited by the Trustee, does not apply to a debtor in bankruptcy. *In re James*, 3 B.R. 67, 69 (Bankr. D.S.D. 1983).

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shall not be subject to the payment of the debts of any one or all of such persons, notwithstanding that the proceeds may be payable directly to the insured or surviving spouse or children as the named beneficiary or beneficiaries or otherwise[.]

The "proceeds" of a life insurance policy is its surrender value. *Magnuson v. Wagner*, 1 F.2d 99, 101-02 (8th Cir. 1924). This statute exempts those proceeds only, not the policy itself. *Id.* at 102.

Further, the statute provides that the proceeds to \$20,000.00 are exempt from creditors "notwithstanding that the proceeds may be payable directly to the insured . . . or otherwise." The construction of the statute does not support the Trustee's argument that the proceeds may be exempt under § 58-12-4 only if the proceeds are payable to the debtor's spouse or children. In essence, the statute states that to whom the proceeds are payable is not determinative of whether they are exempt. The only exception is if the debtor has assigned or contractually given the proceeds to another. S.D.C.L. § 53-12-4; *Norwest Bank v. Hogg (In re Hogg)*, 76 B.R. 735, (Bankr. D.S.D. 1987), *aff'd on other grounds*, 877 F.2d 691 (8th Cir. 1989). That exception is not presented here. Therefore, Debtor may claim the life insurance proceeds of \$1,260.00 exempt.

The Trustee is correct that S.D.C.L. § 43-45-6 exempts life insurance proceeds that are payable only to a spouse or child. That statute, however, is limited to proceeds payable upon the death of the insured. Apparently, the state legislature has decided to extend similar protection to the insured while he is alive to the extent of a life insurance policy cash surrender value of \$20,000.00. A plain reading of the statute renders no other conclusion.

An order will be entered overruling the Trustee's objection.

Sincerely,



Irvin N. Hoyt
Chief Bankruptcy Judge

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

INH:sh

CC: Bankruptcy Clerk

DEC 20 1995

Clerk
U.S. Bankruptcy Court, District of S.D.