

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

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January 29, 1996

Trustee John S. Lovald
Post Office Box 66
Pierre, South Dakota 57501

Al Arendt, Esq.
Counsel for Debtor
201 North Euclid, Suite 1

Mr. Guy Williams
37147 250th Street
Baltic, South Dakota 57003

Subject: ***In re Britt E. Williams,***
Chapter 7; Bankr. No. 95-30031

Dear Gentlemen:

The matter before the Court is Trustee John S. Lovald's Objection to Claimed Exemptions and related pleadings. This is a core matter 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 the antique bedroom suite is estate property that Debtor must purchase, at least in part, from the estate if he wants to retain it as a legacy gift for his children.

Summary of Facts. Debtor filed a Chapter 7 petition and schedules on May 31, 1995. Therein, Debtor claimed exempt under S.D.C.L. § 43-45-4 household goods and furnishings valued at \$417.00 and firearms and sports, photographic, and hobby equipment valued at \$350.00. Trustee Lovald filed an objection on July 18, 1995 on the grounds that equity in the personalty Debtor had declared exempt exceeded the \$2,000.00 allowance and that some property had been omitted from the schedules. On August 2, 1995, Debtor amended his schedule of personal property and schedule of exempt property to include an antique bed valued at \$250.00 and a security deposit of \$350.00.

A hearing was held August 21, 1996. Appearances included Al Arendt for Debtor, Trustee Lovald, and Tammy Richards for Penny Williams (telephonic). Based on the arguments presented, the hearing was continued to allow the Trustee to complete his discovery. A status conference was set for October 10, 1995. The matter was not resolved by October 10, 1995 so the Court continued

it to November 30, 1995.

In the interim, Trustee Lovald settled with some interested parties and noticed it for objections. Sharon Williams, Debtor's first ex-wife, filed an objection on behalf of her and Debtor's son, Guy Williams. Sharon Williams argued the antique bed suite belonged to Guy as an intended legacy gift from Debtor's parents. A hearing on the objection was held November 30, 1995. The Trustee's Motion to Approve Settlement was denied and the Court ordered an evidentiary hearing to be held. He also advised Sharon Williams that her son Guy would have to appear in person or through counsel at the evidentiary hearing.

An evidentiary hearing was held January 11, 1995. Appearances included Attorney Arendt for Debtor, Trustee Lovald, and Guy Williams, *pro se*. Guy Williams testified that it was his understanding from conversations with his mother and paternal grandmother that he, as Debtor's eldest son, would receive the bed as a legacy gift from his paternal grandmother. He acknowledged that he had not taken possession of the bed when his father had offered it earlier but he said he refused it at the time because he had no place to put it. Guy Williams stated he now had a place to keep it and that he wanted it.

Penny Williams, Debtor's second ex-wife and the mother of Debtor's second eldest son, acknowledged that the antique bed suite was intended for Debtor's eldest son. She stated the suite was worth between \$1,500.00 and \$3,000.00.

Debtor testified that the antique bed suite was intended for his eldest son as a family legacy. He acknowledged that Guy Williams had not taken possession of it earlier because he did not have a place for it.

Penny Williams and Debtor testified that Debtor received the antique bed suite in their divorce settlement. The divorce documents submitted into evidence did not clarify that Debtor's interest was limited by a contingent or remainder interest held by his eldest son or that Debtor held the bed suite in trust for another.

All witnesses stated that a written document evidencing the grandmothers' intent did not exist.

The Court took the matter under advisement. After the hearing, Attorney Arendt by telephone advised the Court that Guy Williams wanted to change his testimony and state that he no longer wanted the bed. The Court told Attorney Arendt that Guy Williams would need to so advise the Court and other interested parties by letter. The Court never received a letter or any other documents from Guy Williams.

Applicable Law. 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 household may declare exempt another \$2,000.00 in personal property under § 43-45-4. This 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).

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) (debtor's post-petition death did not result in reversion of exempt property to estate); *Armstrong v. Harris (In re Harris)*, 886 F.2d 1011 (8th Cir. 1989) (cites therein); *In re Johnson*, 184 B.R. 141, 145 (Bankr. D. Wyo. 1995); *Martinson v. Michael (In re Michael)*, 185 B.R. 830, 837 (Bankr. D. Mont. 1995) (cites therein) (court need not consider post petition occurrences in determining a debtor's right to a homestead exemption). *In re Chadwick*, 113 B.R. 540, 542 (Bankr. W.D. Mo. 1990) (post-petition death of debtor does not terminate the debtor's right to exemptions); and *In re Myers*, 17 B.R. 339, 340 (Bankr. D.S.D. 1982). The value of exempt property, unless an exemption in the proceeds of a homestead in some states, also is determined on the date of the petition. *In re Sherbahn*, 170 B.R. 137, 140 (Bankr. N.D. Ind. 1994) (amount of exemption is controlled by value the debtor ascribes to it in the schedules); *In re Dore*, 124 B.R. 94, 96 (Bankr. S.D. Cal. 1991) (value of exempt property is determined at the time of filing); see also *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316 (9th Cir. 1992), and *Robertson v. Alsberg (In re Alsberg)*, 161 B.R. 680, 684-85 (BAP 9th Cir. 1993), *aff'd*, *Alsberg v. Robertson (In re Alsberg)*, 68 F.3d 312 (9th Cir. 1995) (where state law allows a debtor to exempt a fixed amount from the proceeds of a homestead sale, the amount of the homestead exemption is determined when the trustee actually sells the property).

Discussion. The evidence is clear that Debtor's mother intended that Debtor's eldest son would receive the antique bed suite from Debtor at some point in time. However, there is no written declaration that conditions Debtor's possession or states that Debtor holds the bed suite only in trust for another. Therefore, the antique bed suite became property of the estate on the petition date pursuant to 11 U.S.C. § 541(a) and it is not excluded from the estate under § 541(b)(1).

The Court acknowledges that Debtor wanted the bed suite to go to his second ex-wife to compensate for a divorce debt that will go unpaid because of this bankruptcy. That fact, however, does not alter how § 541(a) of the Bankruptcy Code and § 43-45-4 of the South Dakota Code are applied to the facts presented.

Debtor may declare the antique bed suite and other personalty exempt under S.D.C.L. § 43-45-4. However, the total value of this exempt property may not exceed \$2,000.00. Debtor will have to determine which personalty he wants to keep. If he wants to keep the antique bed suite and see that it is transferred to his eldest son as his mother wished, he will need to pay the estate for any difference in value over \$2,000.00 of the bed suite and any other personalty declared exempt under § 43-45-4.

If needed, Trustee Lovald shall obtain a professional appraisal of the bed suite with the value to be computed as of the petition date. Debtor then can determine what personalty he wants to exempt. If the personalty declared exempt exceeds \$2,000.00, he

shall pay to the estate the amount that exceeds \$2,000.00.

This original letter decision will be docketed. Interested parties will be served a copy. An order will be entered sustaining the Trustee's Objection to Claimed Exemptions.

Sincerely,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: Bankruptcy Clerk (for docketing)
United States Trustee