

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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December 30, 2003

John S. Lovald, Esq.
Chapter 7 Trustee
Post Office Box 66
Pierre, South Dakota 57501

Mr. Gregory D. Zike, Sr.
Debtor, *pro se*
6601 West 41st Street, No. 106
Sioux Falls, South Dakota 57106

Subject: *In re Gregory D. Zike, Sr.,*
Chapter 7; Bankr. No. 03-41477

Dear Mr. Lovald and Mr. Zike:

The matter before the Court is the Motion to Direct Clerk of Courts to Release Garnishment Funds filed by Trustee John S. Lovald, the objection to the Motion filed by Debtor, and the response filed by Trustee Lovald.¹ The issues raised by these pleadings are core proceedings under 28 U.S.C. § 157(b)(2). This letter decision shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, Debtor may not declare the garnished wages exempt and the Minnehaha County Clerk of Court must turn over these funds to Trustee Lovald.

SUMMARY OF MATERIAL FACTS. On December 8, 2003, case trustee John S. Lovald filed a motion asking the Court to direct the Minnehaha Clerk of Court to turn over to him \$1,355.15 in funds that had been garnished from Debtor Gregory Zike's wages before Debtor filed bankruptcy. On December 9, 2003, Debtor filed his schedules of assets and liabilities. He also filed a schedule of property he claimed exempt under applicable South Dakota law. Under S.D.C.L. § 15-20-12, he declared exempt the funds that had been garnished pre-petition. On December 11, 2003, Debtor filed an objection to Trustee Lovald's turnover motion. Debtor argued that under § 15-20-12, the garnished funds should be returned to him because they were necessary for the support of his family. On December 12,

¹ Trustee Lovald's response probably should have been filed and noticed as an objection to Debtor's claimed exemptions.

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2003, Trustee Lovald filed a response to Debtor's objection. He argued that S.D.C.L. §§ 21-18-51 through 53 are the only exemptions available as to garnished wages.

DISCUSSION. Trustee Lovald is correct that S.D.C.L. § 21-18-53² limits a debtor's ability to exempt his wages. This Code section provides:

The earnings of a debtor are exempt from process or levy only to the extent provided in §§ 21-18-51 and 21-18-52.

Section 21-18-51 sets forth the maximum amount of a debtor's wages that a creditor³ may have garnished. Thus, the state court already would have applied § 21-18-51 for Debtor's protection before the garnished funds were collected. Section 21-18-53 then applies to prevent Debtor from using another statute to keep more of those garnished funds.

This Court has not previously had the opportunity to rule on the issue of whether S.D.C.L. § 15-20-12 may be used as an exemption statute in bankruptcy. However, since § 21-18-53 clearly prohibits § 15-20-12 from being applied to garnished funds in any respect, the Court need not rule today on the applicability of § 15-20-12 in bankruptcy.

An order will be entered granting Trustee Lovald's turnover motion and overruling Debtor's claimed exemption in the garnished funds.



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

DEC 30 2003

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

Sincerely,

Irvin N. Hoyt
Bankruptcy Judge

CC: case file (docket original; serve parties in interest, including the Minnehaha Clerk of Court)

² Section 43-45-14 of the South Dakota code states the exact same thing.

³ The type of debt referenced under § 21-18-51 is a general debt. If the creditor is seeking to enforce an order for child support or alimony, the maximum garnishment is § 21-18-52.

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

DEC 30 2003

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

Bruce J. Gering
Office of the U.S. Trustee
230 S Phillips Ave, Suite 502
Sioux Falls, SD 57104-6321

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

Gregory Dean Zike Sr.
6601 W. 41st Street No. 106
Sioux Falls, SD 57106

Minnehaha County Clerk of Courts
425 N. Dakota Ave.
Sioux Falls, SD 57104