

FILED  
U.S. BANKRUPTCY COURT  
WESTERN DISTRICT OF NC

AUG 01 1995

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

By: BARON GROSHON  
A. WALLACE  
Deputy Clerk

In Re: MARTHA JAYNE REAVIS

Case No. 95-10101  
Chapter 7

Debtor.

JUDGEMENT ENTERED ON AUG 01 1995

ORDER DENYING TRUSTEE'S OBJECTION  
TO CLAIM OF EXEMPTIONS

This cause coming on to be heard and being heard by the undersigned United States Bankruptcy Judge on July 19, 1995 on the TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTIONS AND NOTICE OF HEARING filed on May 16, 1995. The debtor has claimed an exemption pursuant to N.C. Gen. Stat. §1-362 for wages earned within sixty (60) days of an order to sell the debtor's property. The parties have stipulated that this debtor earned the money claimed as exempt within the sixty (60) days prior to filing a petition in bankruptcy, and that the money is necessary for the use of a family supported wholly or partly by the labor of the debtor. The parties have agreed that the only issue remaining for this court is whether N.C. Gen. Stat. §1-362 is available to a Chapter 7 debtor filing in the Western District of North Carolina. For the reasons stated below, the court has determined that N.C. Gen. Stat. §1-362 is available, and the court makes the following findings of fact and conclusions of law and enters its order.

On March 13, 1995, the debtor, Martha Jayne Reavis, filed a voluntary Chapter 7 bankruptcy petition. An amendment to Schedule C indicates that the debtor had \$2,466.37 in a Nationsbank checking account at the time of filing. The debtor claimed the

in the checking account as exempt pursuant to North Carolina General Statute §1-362. The Trustee filed an objection arguing that N.C. Gen. Stat. §1-362 is applicable only to execution proceedings and is unavailable to a Chapter 7 debtor.

North Carolina General Statute §1-362 provides as follows:

§1-362 Debtor's property ordered sold.

The Court or judge may order any property, whether subject or not to be sold under execution (except the homestead and personal property exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within 60 days next preceding the order, cannot be so applied when it appears by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor.

The only reported Bankruptcy Court decision to directly address the effect of N.C. Gen. Stat. §1-362 is In re Laues, 90 B.R. 158 (Bankr. E.D.N.C. 1988). In that case, Judge Small found that where a credit union had "frozen" the debtor's checking account, the balance of which included the proceeds of a wage check which had been directly deposited by the male debtor's employer, the debtor's account could be claimed as exempt under either N.C. Gen. Stat. §1-1601(a)(2) or N.C. Gen. Stat. §1-362. Id. at 161, (emphasis added). Judge Small decided that the general rule is that North Carolina's exemption laws are to be liberally construed in favor of the exemption. Id. citing, Elmwood v. Elmwood, 295 N.C. 168, 185, 244 S.E.2d 668, 678 (1978); In re Mims, 49 B.R. 283 (Bankr. E.D.N.C. 1985).

This court finds nothing in the legislative history of N.C. Gen. Stat. §1-362 or in North Carolina case law to indicate that the statute is not available to debtors in bankruptcy or that the list of exemptions found in N.C. Gen. Stat. §1C-1601 was meant to be an exhaustive list. This court is persuaded by the reasoning of the Laues decision and by the arguments of debtor's counsel, and concludes that the wage exemption found in N.C. Gen. Stat. §1-362 is available to Chapter 7 debtors.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTIONS is DENIED.

This the 15<sup>th</sup> day of August, 1995.

  
\_\_\_\_\_  
George R. Hodges  
United States Bankruptcy Judge