

*GA Exemptions "Any Property" - Judge Davis
includes Tools of Trade.*

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

FILED

at 10 O'clock & 11 min. AM

Date 11/20/86

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia
Chapter 7 Case

Number 486-00462

In the matter of:)
STANLEY WAYNE BAZEMORE)
Debtor)

ORDER ON MOTION FOR RECONSIDERATION

Farmers Home Administration ("FmHA") has moved for reconsideration of the Order of this Court dated October 28, 1986, which overruled its objection to the Debtor's claim of exemption in three items of farm equipment, a tractor, a bottom plow and a harrow valued at \$5,900.00. FmHA now questions whether the intent of the prior order was to rule that "large items of farm equipment are now tools of the trade". Clearly that was the effect of the prior ruling but at FmHA's request I will attempt to clarify the rationale.

11 U.S.C. Section 522(d) allows a debtor to exempt certain items of property from being considered "property of the estate" and subject to administration for the benefit of creditors. The Code establishes the items and maximum amounts that can be exempted or alternatively permits the states to establish different exemptions. Georgia did so. The applicable

exemption in this state is found in O.C.G.A. Section 44-13-100 which provides in relevant part:

"Any debtor who is a natural person may exempt . . . for purposes of bankruptcy . . .

(1) The debtor's aggregate interest, not to exceed \$5,000.00 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor;

(6) The debtor's aggregate interest, not to exceed \$400.00 in value plus any unused amount of the exemption provided under paragraph (1) of this subsection, in any property;

(7) The debtor's aggregate interest, not to exceed \$500.00 in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor;

The Debtor has not elected to exempt any real property and thus has a total potential exemption of \$5,900.00 under the quoted provisions.

The extent of the Debtor's right to exemptions is a matter of state law. In re Curry, 18 B.R. 358. Georgia cases decided many years ago under a predecessor exemption statute concluded that tools of the trade would include only "simple and inexpensive" manual instruments. See

Kirksey v. Rowe, 114 Ga. 893 (1902); Burt v. Stocks Coal Co., 119 Ga. 629 (1904).

However, subsequently decided cases by some bankruptcy courts in this state have pointed out that the efficacy of those decisions is in doubt since they were rendered prior to the modern technological age we now live in. In re Schneider, 37 B.R. 747 (B.C.N.D.Ga., 1984).

I would be less comfortable in arriving at the result I reached based solely upon the argument that Georgia precedent is outmoded. However, the exemption statute I am called upon to construe has been changed during the intervening years in two material respects. First, former Georgia Code Annotated Section 51-1301 provided an exemption unlimited in amount for

"8. Common tools of trade of himself and wife."

The Courts had apparently read the word "common" as limiting the exemption to small, inexpensive hand tools to avoid the unfair result to creditors that could have resulted from a broader interpretation. The deletion of the term "common" from O.C.G.A. Section 44-13-100(7) and the addition of the word

"implements"¹ undermines the rationale of all those decisions. Second, the Georgia exemption, prior to 1980, had no "spillover" provision as is now found in O.C.G.A. Section 44-13-100(6). This provision allows up to \$5,400.00 to be exempted in "any property" without limitation as to its description. When the Georgia Legislature adopted O.C.G.A. 44-13-100 employing different language and limits it must have done so purposefully. Thus I decline to follow Kirksey and Rowe, supra, because I believe that the legislature meant to undo the existing extremely narrow interpretation of "common tools of trade", to the extent of \$500.00 in value and further intended to allow an additional exemption of up to \$5,400.00 in any property, whether it be automobiles, boats, airplanes, diamonds, fur coats or a tractor, plow and harrow, used by a debtor farmer to struggle to make a crop on rented land. This exemption was intended to eliminate any preference for debtors who owned real estate that could be exempted under subsection (1) over those who did not. The Georgia Legislature apparently felt that the \$5,400.00 available under subsections (1) and (6) was necessary to permit debtors the "fresh start" contemplated by the Bankruptcy Code and that the nature of the property was immaterial.

1 - Black's Law Dictionary 5th Ed. "Such things as are used or employed for a trade . . . tools, utensils, instruments of labor; as the implements of trade or of farming".

Thus I conclude that Debtor may exempt \$5,400.00 in the subject items as "any property" under O.C.G.A. Section 44-13-100(6). I further conclude, that to the extent of \$500.00 the tractor, harrow and plow of this Debtor constitutes "implements" or "tools of the trade" of this Debtor. He testified that he does "piece work" for other farmers, supplying his own equipment and is paid by the job. He owns no farm land but has been so employed by others since 1965. These items are essential to his livelihood and thus under the functional approach² to defining tools of the trade, I conclude that they qualify.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 18th day of November, 1986.

2 - 37 B.R. at 750. I do not necessarily adopt the reasoning of Schneider as it relates to automobiles (see for example In re Curry, 18 B.R. 358 (B.C.N.D. Ga., 1982) but the test for classification set out by Schneider, to determine whether the item is "integral" to the debtor's trade is, in my judgment, correct.