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ADV. NUMBER: None

JUDGE: M. A. Mahoney

PARTIES: Mark Dewain Schrimshire, Lisa Hays Schrimshire

CHAPTER: 7

ATTORNEYS: M. S. Lewis, B. A. Friedman

DATE: 2/9/98

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

MARK DEWAIN SCHRIMPSHIRE
LISA HAYS SCHRIMPSHIRE

Case No. 97-13651

Debtors.

ORDER

Martin S. Lewis, Mobile, Alabama, Attorney for Mark and Lisa Schrimpsire
Barry A. Friedman, Mobile, Alabama, Trustee

This matter came before the Court on the trustee's objection to the debtors' claim of exemptions. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). For the reasons indicated below, the trustee's objection is due to be overruled.

FACTS

Mark and Lisa Schrimpsire (the debtors) filed a Chapter 7 bankruptcy petition on October 10, 1997. On December 12, 1997, the trustee filed an objection to the debtors' claim of exemptions.

On their amended schedule C, the debtors claim the following property as exempt under Alabama Code Section 6-10-6:

Scott Credit Union Savings Acct. No. 977981
Value exempt: \$500

Scott Credit Union Checking Acct. No. 977981
Value exempt: \$30

1997 Federal and State Tax Refunds
Value exempt: \$300

Cash On Hand
Value exempt: \$10

1993 Toyota Corolla
Value exempt: \$1,000

1991 Plymouth Sundance
Value exempt: \$2,000

Computer Equipment
NEC Computer - \$300
Printer - \$100
Monitor - \$50
Scanner - \$50
Value exempt: \$500

Exercise Equipment
Treadmill - \$250
Bicycles - \$200
Value exempt: \$450

Miscellaneous Items
Two Televisions - \$100
Two VCRS - \$100
Stereo - \$100
Couch - \$50
Chair - \$50
Entertainment Center - \$75
Dining Room Table - \$100
Lane Chest - \$50
Buffet - \$50
Chest of Drawers - \$75
Coffee Table - \$30
End Table - \$20
Day Bed - \$100
Keyboard (synthesizer) - \$100
Value exempt: [\$1,000]

Cat
Value exempt: \$10

Mattress
Value exempt: \$1

Necklace (Platinum)
Value exempt: \$150

Engagement Ring
Value exempt: \$1,000

Miscellaneous Wearing Apparel
Value exempt: \$400

The trustee argues that under Alabama Code Section 6-10-6 each debtor is permitted to exempt \$3,000 in personal property, exclusive of clothing. The personal property the debtors claim as exempt adds up to \$6,951, not counting their \$400 clothing exemption. Therefore, the trustee requests that the Court fix the debtors' claim of exemptions at \$6,000, and consider the debtors' remaining \$951 interest in personal property as property of the bankruptcy estate.

The debtors' attorney alleges that jewelry worn everyday is exempt and such exemption is in addition to the \$3,000 limit. He contends that Mrs. Schrimshire wears her jewelry everyday; therefore, the jewelry's value should not be used when calculating the total amount of property claimed as exempt.

LAW

A case commenced under Title 11 of the United States Code creates an estate which is comprised of all the property in which the debtor has a legal or equitable interest as of the date of the filing of the petition. 11 U.S.C. § 541(a). However, the debtor is permitted to exempt certain property from the bankruptcy estate. 11 U.S.C. § 522.

Once the debtor's exemptions are designated, the trustee may object. The trustee has the burden of proving, by a preponderance of the evidence, that the debtor is not entitled to the exemptions claimed. *In re Rightmyer*, 156 B.R. 690, 692 (Bankr. M.D. Fla. 1993). After the trustee has made a prima facie showing that the claimed exemptions should be disallowed, the burden then shifts to the debtor to prove that the exemptions are valid. *Id.*

The State of Alabama has chosen its own exemption scheme rather than the federal exemptions provided in the Bankruptcy Code. 11 U.S.C. § 522(b). Alabama residents are limited to those exemptions provided under state law. Ala. Code § 6-10-11 (1993). The Alabama Code section that addresses the amount of personal property a debtor may exempt states:

The personal property of such resident, except for wages, salaries, or other compensation, to the extent of the resident's interest therein, to the amount of \$3,000 in value, to be selected by him or her, and, in addition thereto, all necessary and proper wearing apparel for himself or herself and family, all family portraits or pictures and all books used in the family shall also be exempt from levy and sale under execution or other process for the collection of debts. . . .

Ala. Code § 6-10-6 (1993).

In order to constitute a valid exemption Mrs. Schrimshire's jewelry must be 1) wearing apparel that is 2) necessary and proper. Necessary and proper apparel "includes what is merely proper, as well as what is necessary." *Sellers v. Bell*, 94 F. 801, 810-812 (5th Cir. 1899). The Alabama Supreme Court has held that the definition of wearing apparel includes jewelry. The Court adopted the following reasoning:

The definition of the word "apparel," as given by lexicographers, is not confined to clothing. The idea of ornamentation seems to be a rather prominent element in the word The phrase "wearing apparel," as used in exemption laws, has its proper sense, and includes all the articles of dress generally worn by persons in the calling and condition of life and in the locality of the residence of the person claiming the exemption. It includes whatever is necessary to a decent appearance and protection against exposure to the changes of weather, and also what is reasonably proper and customary in the way of ornament.

Phillips v. Phillips, 44 So. 391, 392 (1907); *see also Brake v. Graham*, 106 So. 188, 190 (1925).

In the absence of testimony, the Court will assume that Mrs. Schrimshire wears her engagement ring as part of her daily attire. The engagement ring is of moderate value. It is proper and customary for married women to wear an engagement ring. If the Court were to require Mrs.

Schrimshire to relinquish her engagement ring, it would be contrary to one of the traditional purposes of exemption law which is the preservation of the debtor's dignity. Resnick, Prudent Planning or Fraudulent Transfer? The Use of Nonexempt Assets to Purchase or Improve Exempt Property on the Eve of Bankruptcy, 31 Rutgers L. Rev. 615, 623 (1978). The Court concludes that Mrs. Schrimshire's engagement ring is necessary and proper wearing apparel.

With the evidence presented, the Court cannot make findings as to the platinum necklace. Based on the treatment of Mrs. Schrimshire's engagement ring as necessary and proper wearing apparel, the personal property the debtors claim as exempt adds up to \$5,951. However, that amount is below their aggregate limit of \$6,000. Therefore, the trustee's objection to the debtors' claim of exemptions is OVERRULED.

Dated: February 9, 1998

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE