

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

ENTERED
JUN 12 2001
U.S. Bankruptcy Court
Greensboro, NC
AMM

IN RE:

Carl Martin Young,
Debtor.

Case No. 01-80910-C7

ORDER

This case came before the court on June 21, 2001, for hearing upon the Objection by Trustee to Debtor's Claim for Property Exemptions. Ed Boltz appeared on behalf of the Debtor and John Northen appeared on behalf of the Trustee. Having considered the claim, the objection and the other matters of record, and having hearing the arguments of counsel, the court finds and concludes as follows:

FACTS

1. This Chapter 7 case was filed on March 30, 2001.
2. On March 30, 2001, Debtor filed a Claim for Property Exemptions in which he claimed as exempt property, among other things, cash and bank accounts totaling \$6,500.00. The amount thus claimed consisted of \$3,500.00 as Debtor's "wildcard" exemption pursuant to G.S. § 1C-1601(a)(2) and \$3,000.00 pursuant to G.S. § 1-362 as being earnings from personal services, earned within 60 days preceding bankruptcy, and necessary for the support of a family.
3. On June 4, 2001, the Trustee timely filed an Objection to Debtor's Claim for Property Exemptions, specifically objecting to

Debtor's claim to a \$3,000.00 exemption under G.S. § 1-362.

LEGAL ANALYSIS

4. In order to properly exempt cash pursuant to G.S. § 1-362,¹ the Debtor must show that the cash: (a) was earned from personal services; (b) was earned within 60 days preceding bankruptcy; and (c) is necessary for the support of a family. This provision, as with exemptions in general, should be liberally construed in favor of the exemption. In re Laues, 90 B.R. 158, 161 (Bankr. E.D.N.C. 1988) (citing Elmwood v. Elmwood, 295 N.C. 168, 185, 244 S.E.2d 668 (1978)). Nevertheless, the bare allegation by a debtor that property is necessary to support his family is insufficient to support a claim for an exemption under G.S. § 1-362 Sturgill v. Sturgill, 49 N.C. App. 580, 586, 272 S.E.2d 423, 428 (1980). The debtor is "required under G.S. 1-362 to state sufficient facts . . . to allow the trial judge to determine that the exemption was necessary." Id.

¹G.S. § 1-362 reads as follows:

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.

5. Even if it is assumed, as argued by the Debtor, that he, alone, constitutes a "family" for purposes of the statute, Debtor nonetheless is not entitled to exempt the \$3,000.00 at issue pursuant to G.S. § 1-362 because it does not appear that the \$3,000.00 claimed under G.S. § 1-362 is necessary for the support of a family, i.e., the Debtor. By virtue of his exemption pursuant to G.S. § 1C-1601(a)(2), the debtor retained cash of \$3,500.00, which presumably is available for the support of his "family." Additionally, the Debtor's schedules reflect that Debtor, a single male with a gross annual income of \$46,800.00 and no dependents, has the financial capacity to support himself from current earnings without resort to additional cash pursuant to G.S. § 1-362. Schedule I lists net income of \$2,125.63, after payroll deductions, including \$429.00 for "profit sharing." Schedule J does list \$2,446.00 in monthly expenses. However, apart from whether a number of the listed expenses are excessive for one person, the listed expenses include \$721.00 for installment payments on a 1986 Lamoborghini automobile and a 1998 Chrysler automobile, which, according to Schedule D, belong to the Debtor's brother and sister. While Debtor may prefer to shoulder this financial burden for his relatives, such familial generosity may not be utilized as a basis for claiming that other funds must be allocated for Debtor's support rather than going to creditors. G.S. § 1-362 was intended to preserve recent earnings needed for the support of a family and

was not intended to enable a debtor to continue a savings program or to voluntarily pay the debts of relatives at the expense of legitimate creditors. Accordingly, the Debtor's Claim for Property Exemptions must be denied to the extent Debtor seeks to claim any amount of money as exempt pursuant to G.S. § 1-362.

It is therefore ORDERED that the Trustee's Objection to Debtor's Claim for Property Exemption is sustained and Debtor's claim for exemption pursuant to G.S. § 1-362 is disallowed.

This 12th day of July, 2001.



WILLIAM L. STOCKS
United States Bankruptcy Judge