

SO ORDERED.

SIGNED this 10th day of November, 2014.




Janice Miller Karlin
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

**In re:
Deedric Oliver Hagans,**

**Case No. 14-40750
Chapter 7**

Debtor.

Order Sustaining Trustee's Objection to Exemption

Debtor Deedric Hagans seeks to exempt a 1997 Chevrolet truck as a "tool of the trade" under Kansas exemption law, but the chapter 7 Trustee has objected to that exemption, arguing that because the truck was not modified to specifically suit Debtor's occupation, it could not be claimed exempt as a tool of the trade.

The Court concludes that, based on the stipulated facts presented, Debtor is not entitled to a tool of the trade exemption for the 1997 Chevrolet truck, and the Trustee's objection to exemption is sustained.

I. Procedural and Factual Background

The following facts have been stipulated by the parties or are part of the record

in this case. Debtor, who is not represented by counsel, filed a chapter 7 bankruptcy petition on July 1, 2014. Debtor exempted a 1999 GMC Suburban as a “means of conveyance” under K.S.A. § 60-2304(c),¹ and the Trustee did not object to Debtor’s exemption of the 1999 GMC Suburban. Debtor also exempted a 1997 Chevrolet truck as a “tool of trade” under K.S.A. § 60-2304(e), to which exemption the Trustee timely objected. The total value of all assets Debtor seeks to exempt as tools of trade is less than \$7500.

Debtor is a self-employed metal fabricator. He testified at his § 341 meeting of creditors that the 1997 Chevrolet truck is a ½ ton pickup with 4-wheel drive and a trailer hitch. Debtor also testified that the 1997 Chevrolet truck is used in his metal fabrication business, and that the truck had not been modified in any way to specifically suit his occupation as metal fabricator. The parties have stipulated that a pickup truck is necessary to perform Debtor’s work. Debtor depreciates the 1997 Chevrolet truck as a “work only” vehicle on his federal income taxes, and those taxes have been processed and accepted by the IRS.

This matter constitutes a core proceeding over which the Court has the jurisdiction and authority to enter a final order.²

¹ Section 60-2304(c) provides debtors an exemption for “[s]uch person’s interest, not to exceed \$20,000 in value, in one means of conveyance regularly used for the transportation of the person or for transportation to and from the person’s regular place of work.” This exemption need not be discussed further, as the Trustee does not object to its use.

² See 28 U.S.C. § 157(b)(2)(B) (stating that “allowance or disallowance of . . . exemptions from property of the estate” are core proceedings); § 157(b)(1) (granting

II. Analysis

Under the Bankruptcy Code, when a debtor files a petition for bankruptcy relief, an estate is created,³ and that bankruptcy estate consists of “all legal or equitable interests of the debtor in property as of the commencement of the case.”⁴ The Bankruptcy Code does, however, permit the exemption of certain property from the estate,⁵ and permits a state to “opt-out” of the federal exemptions in favor of state-law exemptions when that state specifically excludes the use of the federal exemptions.⁶ Kansas has opted out of the federal exemption scheme,⁷ and a debtor in Kansas may exempt from the estate those “State or local law” exemptions that are “applicable as of the filing date.”⁸

The Kansas statute dealing with tools of trade exemptions is K.S.A. § 60-2304(e). Section 60-2304(e) grants an exemption for: “The books, documents, furniture,

authority to bankruptcy judges to hear core proceedings).

³ 11 U.S.C. § 541(a) (“The commencement of a case under . . . this title creates an estate.”).

⁴ *Id.* § 541(a)(1).

⁵ *See id.* § 522(b)(1) (“Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection.”).

⁶ *Id.* § 522(b)(2).

⁷ K.S.A. § 60-2312 (prohibiting, with exception, individual debtors from electing federal exemptions).

⁸ 11 U.S.C. § 522(b)(3)(A); K.S.A. §§ 60-2301 through 60-2315 (Kansas exemptions).

instruments, tools, implements and equipment, the breeding stock, seed grain or growing plants stock, or the other tangible means of production regularly and reasonably necessary in carrying on the person's profession, trade, business or occupation in an aggregate value not to exceed \$7500."

In a challenge to a claimed exemption, the objecting party—here the Trustee—has the "burden of proving that the exemptions are not properly claimed."⁹ Under Kansas law, exemption statutes are to be liberally construed for the benefit of the debtor.¹⁰ Whether or not a vehicle qualifies as a tool of the trade must be decided on a case by case basis after considering all of the facts and circumstances.¹¹

In Kansas, the test for property to qualify as a tool of the trade is that it must be "reasonably necessary, convenient, or suitable for the production of work."¹² Because K.S.A. § 60-2304 includes both a tool of the trade exemption and a means of conveyance exemption, it was not intended for an automobile to *automatically* qualify as a tool of

⁹ Fed. R. Bankr. P. 4003(c).

¹⁰ *Hodes v. Jenkins (In re Hodes)*, 308 B.R. 61, 65 (10th Cir. BAP 2004) ("Under Kansas law, exemption statutes are to be liberally construed in favor of those intended by the legislature to be benefitted."); *In re Hall*, 395 B.R. 722, 730 (Bankr. D. Kan. 2008) (stating that "the Kansas Supreme Court has directed that exemption claims are to be liberally construed in favor of debtors").

¹¹ *In re Bondank*, 130 B.R. 586, 587 (Bankr. D. Kan. 1991); *In re Meany*, 35 B.R. 3, 4 (Bankr. D. Kan. 1982).

¹² *In re Bondank*, 130 B.R. at 587; *In re Currie*, 34 B.R. 745, 748 (D. Kan. 1983) (citing *Reeves v. Bascue*, 91 P. 77 (Kan. 1907)); *In re Frierson*, 15 B.R. 157, 159 (Bankr. D. Kan. 1981).

the trade.¹³ Therefore, a debtor must show that the vehicle is in fact a tool of the trade and not just a means of conveyance to qualify for this exemption.¹⁴ A vehicle may be a tool of the trade if it is “uniquely suited” for its uses¹⁵ or if the debtor’s work is “uniquely dependent” on it.¹⁶ If the debtor primarily uses the vehicle for transportation purposes, it is exempt only as a means of conveyance and not as a tool of the trade.¹⁷

The case law interpreting this exemption is highly fact dependent. In *In re Rice*,¹⁸ a truck used for the debtor’s home remodeling business did not qualify as a tool of the trade because, “simply [held,] the truck is used and is exempt as a means of conveyance for the debtor’s transportation.”¹⁹ This finding was based on the fact the truck was primarily used for hauling materials and transporting employees, and it was not “uniquely suited for these uses.”²⁰ Additionally, the bankruptcy court noted that it was “immaterial that the truck is only used in connection with work.”²¹

¹³ *In re Bondank*, 130 B.R. at 587; *In re Rice*, 35 B.R. 431, 432 (Bankr. D. Kan. 1982).

¹⁴ *In re Rice*, 35 B.R. at 432.

¹⁵ *Id.*

¹⁶ *In re Currie*, 34 B.R. at 748; *In re Meany*, 35 B.R. at 4.

¹⁷ *In re Rice*, 35 B.R. at 433.

¹⁸ 35 B.R. 431 (Bankr. D. Kan. 1982).

¹⁹ *Id.* at 433.

²⁰ *Id.*

²¹ *Id.*

In *In re Bondank*,²² the bankruptcy court held that a real estate appraiser's vehicle was not a tool of the trade because it was primarily a source of transportation.²³ While the debtor was able to prove that he needed a vehicle to perform his duties for his employer, he was unable to prove that he needed that particular vehicle.²⁴ For similar reasons, the bankruptcy court in *In re Meany* found that a real estate agent's vehicle was not a tool of the trade.²⁵

On the other side of the coin, in *In re Currie*,²⁶ a truck used for the debtor's cattle operation did qualify as a tool of the trade.²⁷ The district court affirmed the bankruptcy court's holding that the truck fit within the "reasonably necessary, convenient, or suitable" test because the debtor "could not continue her cattle operation without the means to haul cattle to and from market."²⁸ Additionally the debtor used the four-wheel drive truck to haul hay for the cattle in the winter.²⁹ The debtor's other vehicle (a Ford Torino) was not a tool of the trade because the debtor's cattle operation was not

²² 130 B.R. 586 (Bankr. D. Kan. 1991).

²³ *Id.* at 588.

²⁴ *Id.*

²⁵ 35 B.R. 3, 4 (Bankr. D. Kan. 1982) ("[D]ebtors have not demonstrated that [debtor] cannot continue in her occupation without the use of this car.").

²⁶ 34 B.R. 745 (D. Kan. 1983).

²⁷ *Id.* at 748.

²⁸ *Id.*

²⁹ *Id.*

“uniquely dependent” on it.³⁰ In *In re Kobs*,³¹ similar to *In re Currie*, the bankruptcy court found a truck used on a farm to haul irrigation pipe, haul and feed cattle, fuel other farm vehicles, and perform other various tasks did qualify as a tool of the trade.³²

The Trustee’s sole argument supporting his objection to exemption is that Debtor’s truck is not specially modified to specifically suit his metal fabrication business. While a special modification to a vehicle is a factor that courts have mentioned would favor the vehicle qualifying as a tool of the trade,³³ it is not a conclusive factor in the required case by case analysis.³⁴ Debtor, however, in support of his claimed exemption, relies on Kansas case law from the time before the enactment of a means of conveyance exception in Kansas.³⁵ Cases before the enactment of the means of conveyance exception have no persuasive effect when determining whether a vehicle qualifies as a tool of the trade.³⁶

Additionally, Debtor has failed to stipulate to any evidence indicating the truck

³⁰ *Id.*

³¹ 163 B.R. 368 (Bankr. D. Kan. 1994).

³² *Id.* at 372.

³³ *In re Bondank*, 130 B.R. at 588; *In re Rice*, 35 B.R. at 432–33.

³⁴ *See In re Currie*, 34 B.R. at 748 (making no mention of any special modifications when finding that a truck qualified as a tool of the trade).

³⁵ Doc. 30 at ¶ 6 (citing *Dowd v. Hueson*, 122 Kan. 278 (1927)). The Kansas exemption statutes were not amended to include a specific exemption for a means of conveyance until 1965. *In re Rice*, 35 B.R. at 432.

³⁶ *See In re Rice*, 35 B.R. at 432 (noting how the analysis has changed after inclusion of the means of conveyance exception).

is “uniquely suited” for his metal fabrication business or that his business is “uniquely dependent” on the truck. While the parties stipulate that “a pick-up truck is necessary to perform Debtor’s work,”³⁷ Debtor introduced no further stipulations expanding on this statement. And the fact that “a pick up truck” is “necessary” will not qualify a *specific* vehicle as a tool of the trade.³⁸ Debtor argues that “the bed and tailgate serve as an adequate welding bench.”³⁹ Even if this argument were a stipulated fact, which it is not, this would not be enough. The truck is neither “uniquely suited” for Debtor’s business nor is Debtor’s business “uniquely dependent” on the truck—presumably, the same work could be done with an actual welding bench. With nothing more than argument that the truck serves as an “adequate welding bench,” this Court is left to conclude that the truck’s main purpose is transportation from job to job. As a result, it cannot be exempt as a tool of the trade.⁴⁰

Debtor is proceeding pro se in this case, and although his pleadings are “to be construed liberally,” the Court cannot “assume the role of advocate for the pro se litigant.”⁴¹ Debtor has not put forth sufficient facts for this Court to find that the truck

³⁷ Doc. 39 at ¶ 13.

³⁸ See *In re Bondank*, 130 B.R. at 588 (concluding that there was no evidence the specific vehicle at issue “had been modified to specifically suit the debtor’s occupation” and that just because the debtor needs ‘a vehicle’ does not mean the debtor needs the specific vehicle claimed).

³⁹ Doc. 30 at ¶ 4.

⁴⁰ *In re Rice*, 35 B.R. at 433.

⁴¹ *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

is exempt as a tool of the trade, and the Trustee's objection to exemption is therefore sustained.

III. Conclusion

For the reasons stated more fully herein, the Trustee's objection to exemption⁴² is sustained.

It is so ordered.

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⁴² Doc. 18.