UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
RICHARD O. WHEELER	§	**Case No. 00-33158-HDH-7**
	§	
Debtor	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON TRUSTEE'S MOTION TO OBTAIN TURNOVER OF PROPERTY, AND CREDITOR'S OBJECTIONS TO DEBTOR'S CLAIM OF EXEMPTIONS

On October 14, 2004 came on to be heard (i) the *Motion to Obtain Turnover of Property of the Estate* filed on behalf of Robert Milbank, the duly appointed chapter 7 trustee ("Trustee") and (ii) *Danny Walker's Objections to Debtor's Claim of Exemptions* filed on behalf of creditor Danny Walker ("Walker") and the Court finds as follows:

INTRODUCTION

1. This Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. §§ 1334 and 157, and 11 U.S.C. § 542. This matter constitutes a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Richard O. Wheeler ("Debtor") filed a petition under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Texas, San Angelo Division, on December 3, 1999 (the "Petition Date"). In 2000, the case was transferred to the Dallas Division and was assigned a new case number.

3. On February 6, 2001, the chapter 11 case was converted to one under chapter 7, and Robert Milbank, Jr. was appointed as chapter 7 Trustee.

4. The chapter 7 bankruptcy estate consists of all non-exempt property owned by Debtor on the Petition Date. Property of the estate, under Bankruptcy Code § 541(a)(1), includes every conceivable interest of a debtor in the estate; all forms of property, whether tangible or intangible, personal or real, contingent or fixed. 3 NORTON BANKRUPTCY LAW AND PRACTICE 2D § 51:4. Even possessory interests are encompassed by the provision. *Id.* To the extent any such property of the estate has increased in value, such increase belongs to the estate. To the extent any such property has been transferred by the Debtor, the Debtor owes all proceeds of such transfer to the Trustee on behalf of the estate.

5. Though filed several years ago, Walker timely objected to the Debtor's exemptions. Subsequently, Walker and the Trustee entered into an agreement regarding the prosecution of certain claims and causes of action related to the Debtor. At a late date, Debtor raised the standing of Walker to object to exemptions. Assuming that defense was timely raised, it is overruled. Walker has standing to pursue his objections to exemptions. Walker's objections were timely filed and have not been completely resolved, although they have been on file for several years. Walker's settlement with the Trustee notes his pending objections to exemptions. That settlement provides that Walker and the Trustee will work together on certain claims against the Debtor. That settlement does not resolve Walker's objections to exemptions. Therefore, Walker has standing, and may pursue his objections.

WHITE-TAILED DEER: ONLY IN TEXAS

6. Under the laws of Texas, the State is the owner of all white-tailed deer in the state.

7. The State of Texas is entitled to designate entities that may possess deer, subject to the State's ultimate ownership. For white-tailed deer, the State issues a Scientific Breeders

Permit ("Permit") which allows the permit holder to possess white-tailed deer. *See*, TEX. PARKS & WILDLIFE CODE ANN. § 43,351, *et seq.* (Vernon 1991 & Supp. 2004). Without a Permit, one is not entitled to possess such deer. With a permit, the holder is allowed to breed and sell the white-tailed deer, and Debtor has done so for many years, both before and after this case was filed. Over the years, he has received substantial sums of money for the white-tailed deer.

8. The State does not issue a Permit to corporations, only to persons who are qualified to possess such a permit after application under oath. *Id.* at § 43.354.

9. Debtor, as an individual, has been a holder of a Permit and has possessed deer continuously since 1995. When Debtor filed bankruptcy, his Permit became an asset of the bankruptcy estate. In addition, the possessory interest in the deer and the rights to the proceeds of such deer are property interests which became property of the bankruptcy estate when Debtor filed for bankruptcy.

10. Debtor should have, but did not, disclose the existence of the Permit and his interest in the deer when he filed the schedules and statement of affairs in his bankruptcy case. The Debtor failed to disclose the existence of either the Permit or his interest in the deer at several creditors' meetings.

11. The evidence at trial suggests that on the Petition Date, the Debtor owned approximately fifty-four deer (the "Estate Deer"). The Debtor's interest in the Estate Deer, to the extent they are in possession of the Debtor, is property of the estate. Debtor's interest in the offspring or proceeds of those Estate Deer is property of the estate. Debtor's interest in any

money or other property received upon disposition of the Estate Deer is property of the estate.

FIREARMS

12. Under the laws of the State of Texas, the Debtor is entitled to exempt two firearms.

13. As of the Petition Date, the Debtor owned more than two firearms, which are listed and valued in the Appraisal.

PERSONAL PROPERTY

14. Debtor's bankruptcy schedules filed in this case (the "Debtor's Schedules") claimed exemptions pursuant to § 522(b)(2) of the United States Bankruptcy Code and certain provisions of the Texas Property Code. Section 42.001 of the Texas Property Code allows a debtor to exempt personal property of a fair market value up to $60,000.00. Said provision also allows a debtor to exempt jewelry up to the amount of $15,000.00.

15. Debtor's Schedules filed in this proceeding scheduled the following values for his personal property:

Property Description	Scheduled Value
Furniture & Fixtures	$11,500.00
Collectibles	$11,500.00
Jewelry/Fur Coat	$27,500.00
Clothes	$ 2,500.00
Firearms	$ 6,250.00
	$59,250.00

16. Pursuant to Debtor's Schedules, the Debtor admits having $27,500.00 in "jewelry/fur coat," which scheduled amount is in excess of the allowance provided by the applicable section of the Texas Property Code.

17. Certain creditors, including Walker, caused an appraisal to be made of Debtor's personal property by Signet Art, which appraisal has been identified as Walker Exhibit "A" in the hearing (the "Appraisal").

18. The Appraisal identifies thirty items of jewelry owned by the Debtor, with an alleged fair market value of $25,110.00. At trial, the jewelry expert, Mr. Forrest, did not testify; however, inasmuch as the fair market value of the jewelry listed on the appraisal is less than that set forth on the Debtor's Schedules, the Court finds the value of the jewelry to be as set forth in the Appraisal.

19. The Debtor shall designate jewelry up to a fair market value that aggregates but does not exceed the sum of $15,000.00. Debtor shall provide Walker and the Trustee with a list of the jewelry he claims as exempt. All other jewelry, not so designated, shall be turned over to the Trustee within fourteen days from the date of this Order.

20. The Debtor's undisputed evidence is that the vehicle appraised for Walker is leased. The value of the vehicle does not count in the value of Debtor's personal property.

21. The Court finds that the testifying appraiser is qualified to give a value on the other items of personal property listed in the Appraisal. Her appraisal and testimony indicate that she examined those items. However, the Court finds that one area of the Appraisal appears to be on the high side – that of the Debtor's clothing at Items 538-49. The Court will reduce those values on a line by line basis by 60% because of age and nature of such property and based on Debtor's testimony. Otherwise, the appraisal and testimony of the appraiser are credible and more persuasive on value than the Debtor's evidence. The Court finds the fair

market value of the Debtor's remaining personal property to be as set forth in the Appraisal, except for Debtor's clothing.

22. Debtor shall therefore designate property identified on the Appraisal which has a total sum which aggregates but does not exceed the sum of $60,000.00, including the value of the two guns and the jewelry referred to above, but excluding the leased vehicle. Debtor is ordered to thereafter turn over the remaining property identified on the Appraisal to the Trustee within fourteen days from the date of this Order.

OWNERSHIP ISSUES

23. Debtor has claimed that some of the property sought in the turnover motion is not owned by him. Insofar as such claim may relate to Debtor's personal property, such claim is inconsistent with the information Debtor provided to the appraisers when they went to Debtor's home to appraise his property. The testimony of the appraiser is credible that Debtor identified his property and such property is included in the Appraisal.

24. No other witness offered credible evidence that Debtor does not own the property described in the Appraisal.

25. Debtor seems to claim that the corporations he owns an interest in have an interest in the white-tailed deer. The Court has reviewed that evidence and considered that testimony, but does not find it to be credible. The Permit applications are in the name of the Debtor, not one of his corporations.

Signed this 30 day of November, 2004.

Harlin D. Hale
United States Bankruptcy Judge