

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE DIXIE WINTERS,
Debtor.

BAP No. WY-00-006

DIXIE WINTERS,
Appellant,

Bankr. No. 99-21297
Chapter 7

v.

TRACY LYNNE ZUBROD,
Trustee,
Appellee.

ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the District of Wyoming

Before CLARK, BOHANON, and CORNISH, Bankruptcy Judges.

CLARK, Bankruptcy Judge.

The Chapter 7 debtor (“Debtor”) appeals an order of the United States Bankruptcy Court for the District of Wyoming sustaining the trustee’s objection to her claimed exemption of two rings. For the reasons set for below, the Court REVERSES the bankruptcy court’s order, and REMANDS the matter to the bankruptcy court.

I. Background

The Debtor claimed “2 diamond rings (inherited from mothe[r])” as exempt

* This order and judgment has no precedential value and may not be cited, except for the purposes of establishing the doctrines of law of the case, res judicata, or collateral estoppel. 10th Cir. BAP L.R. 8010-2.

under Wyoming Statutes Annotated § 1-20-105, and disclosed that the value of the claimed exemption was \$500. After the Debtor's § 341 meeting of creditors, the Debtor amended her schedules, stating that the value of the claimed exemption for the rings was \$200.

The trustee objected to the Debtor's claimed exemption in the rings, as well as to the Debtor's claimed exemptions in cash. At a hearing on the trustee's objection, it was uncontested that the Debtor was unmarried, that the rings were the Debtor's mother's "wedding rings," and that the Debtor had inherited the wedding rings from her mother.

At the close of the hearing on the trustee's objection, the bankruptcy court sustained the trustee's objections as to cash, but took the matter of the wedding rings under advisement. The bankruptcy court requested that the trustee prepare an order reflecting its oral ruling.

On January 6, 2000, the same day as the hearing on the trustee's objection, the bankruptcy court filed an Order on Objection to Exemption ("January 6th Order"), sustaining the trustee's objection as to the Debtor's claimed exemption in the rings and disallowing that exemption. The court stated:

The court will not construe the statute to the point of absurdity. On the date the debtor filed her petition, the rings were no longer wedding rings, they were inherited jewelry. As such, they do not fall within the exception in § 1-20-105. Nor were the rings ever the debtor's wedding rings. The statute is intended to protect the individual debtor's wedding rings which these rings are not.

The January 6th Order said nothing about the bankruptcy court's bench ruling, sustaining the trustee's objections to the Debtor's claimed exemption in cash.

On January 13, 2000, the trustee filed an order with the bankruptcy court memorializing the oral bench ruling ("January 13th Order"), and that Order was executed by the bankruptcy court on the same day. In the January 13th Order, the bankruptcy court sustained the trustee's objections to the Debtor's claimed exemptions in cash and, notwithstanding its January 6th Order, stated that it was

taking the trustee's objection to the Debtor's claimed exemption in the wedding rings under advisement. On January 20, 2000, the Debtor filed a notice of appeal from the January 6th Order and a motion for leave to appeal.¹

This Court later notified the Debtor of the possibility that the appeal was premature because all issues related to the trustee's objection did not appear to be resolved. In response, the Debtor filed a motion in the bankruptcy court requesting that it clarify and combine its January 6th Order and the January 13th Order. On March 17, 2000, the bankruptcy court entered an Order and Final Judgment ("Final Judgment") in which it merged or combined the January 6th Order and the January 13th Order.

II. Appellate Jurisdiction

This Court, with the consent of the parties, has jurisdiction to hear timely-filed appeals from "final judgments, orders, and decrees" of bankruptcy courts within the Tenth Circuit. 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); Fed. R. Bankr. P. 8002(a). Upon leave of Court, the Court also has jurisdiction to hear appeals from interlocutory orders. 28 U.S.C. § 158(a)(3), (b)(1), and (c)(1). "[A] decision is ordinarily considered final and appealable under § 1291 [and § 158(a)] only if it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 712 (1996) (quoting Catlin v. United States, 324 U.S. 229, 233 (1945)).

The January 6th Order, which is the Order appealed by the Debtor, was not final when it was entered, inasmuch as it only disposed of a portion of the trustee's objections to the Debtor's claimed exemptions. It became final, however, either when the bankruptcy court entered its January 13th Order or its Final Judgment. If the January 13th Order made the January 6th Order a final

¹ On April 7, 2000, the Court filed an order denying the motion for leave to appeal, inasmuch as the January 6th Order was a final order. *See discussion infra.*

order, the Debtor's January 20th notice of appeal was timely filed under Fed. R. Bankr. P. 8002(a). If the January 6th Order did not become final until the entry of the Final Judgment, the Debtor's January 20th notice of appeal was premature when filed, but under Fed. R. Bankr. P. 8002(a), became timely on March 17, 2000, the day that the Final Judgment was entered.

III. Discussion

The facts in this case are not in dispute.² Thus, the Court reviews the bankruptcy court's legal decision *de novo*.

The only statute under which the wedding rings could be claimed as exempt is the statute cited by the bankruptcy court and the Debtor in her schedules, Wyoming Statutes Annotated § 1-20-105, which states:

The necessary wearing apparel of every person not exceeding one thousand dollars (\$1,000.00) in value . . . is exempt from levy or sale upon execution, writ of attachment or any process issuing out of any court in this state. Necessary wearing apparel shall not include jewelry of any type other than wedding rings.

Wyo. Stat. Ann. § 1-20-105. This section does not state that "wedding rings" must be the "wedding rings" of a "debtor." In this case, the parties do not contest that the rings in question are "wedding rings," and that the wedding rings now belong to the Debtor. As such, the wedding rings are exempt under § 1-20-105, provided that they are "necessary wearing apparel." *See* Wyo. Stat. Ann. § 1-1-101 (title 1 of the Wyoming Statutes "shall be liberally construed to promote its object and assist the parties in obtaining justice.").³

² The Debtor contends that the bankruptcy court's conclusion that the wedding rings in question became merely inherited jewelry when the Debtor's mother died is a clearly erroneous finding of fact. The Debtor does not contest that the wedding rings belonged to her mother, and that they were given to the Debtor upon her mother's death. With these facts being uncontested, it is unnecessary to address the Debtor's argument.

³ We note that § 1-20-105 states that the "necessary wearing apparel of every person not exceeding one thousand dollars (\$1,000.00) in value" is exempt. Wyo. Stat. Ann. § 1-20-105. Our record indicates that even if the wedding rings, which
(continued...)

The term “necessary wearing apparel” is not defined in the Wyoming Statutes Annotated, and it has not been defined by the Wyoming courts. Other courts that have interpreted similar language, however, have required that the debtor actually wear the jewelry in question and that it be reasonably necessary, even if only for ornamentation. *See, e.g., Fernandez v. Seidler (In re Fernandez)*, 855 F.2d 218, 222 (5th Cir. 1988) (a wedding ring or jewelry is “clothing” or “wearing apparel” provided that it is actually worn by the debtor and not kept for investment purposes); *accord In re Hazelhurst*, 228 B.R. 199, 202 (Bankr. E.D. Tenn. 1998); *In re Eden*, 96 B.R. 895, 896 (Bankr. N.D. Iowa 1988); *In re Mims*, 49 B.R. 283, 287 (Bankr. E.D.N.C. 1985). We have no record as to whether the wedding rings in question are “necessary wearing apparel.” Thus, the present case must be remanded to the bankruptcy court to determine whether the rings are reasonably necessary and actually worn by the Debtor.

IV. Conclusion

The bankruptcy court’s January 6th Order, as merged into the Final Judgment, is REVERSED, and the matter is REMANDED to the bankruptcy court for further proceedings consistent with this Order and Judgment.

³ (...continued)
have been valued at either \$200 or \$500, are held to be exempt on remand, the Debtor will not have exceeded this dollar limitation inasmuch as the only other exemption under § 1-20-105 claimed by the Debtor is in “various clothing items” valued at \$ 250.