

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: October 31 2005

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:) Case No. 05-32780
)
Michael W. Rhuda,) Chapter 7
Miranda N. Rhuda,)
)
Debtors.) JUDGE MARY ANN WHIPPLE

ORDER OVERRULING OBJECTION TO EXEMPTION

This case came before the court for hearing on the Chapter 7 Trustee’s Objection to Exemption (“Objection”) [Doc. # 14]. The Trustee objects to exemptions totaling \$1,485 claimed under Ohio Revised Code §§ 2329.66(A)(4)(a) and (A)(18) in proceeds from the sale of a Ford Ranger truck. Under 28 U.S.C. § 157(b)(2)(B), the allowance or disallowance of an exemption is a core proceeding over which this court has the jurisdiction to enter final orders. *In re Quintero*, 253 B.R. 832, 834 (Bankr. N.D. Ohio 2000). Having considered the Objection, the testimony and evidence presented at the hearing and the arguments of counsel, the court will sustain the Objection.

FACTUAL BACKGROUND

Debtors filed a joint petition under Chapter 7 of the Bankruptcy Code on March 28, 2005. Debtor Michael Rhuda (“Rhuda”) testified at the hearing that he owned a Ford Ranger truck at the time the petition was filed. He testified that he had sold the vehicle before filing but, at the time of filing, he had not yet received payment from the buyer and had not transferred title to the buyer. Debtors did not schedule the Ford Ranger truck or the proceeds from the sale of the truck as an asset on their Schedule B, nor did they

claim the vehicle or proceeds as exempt on Schedule C. At Debtors' first meeting of creditors, Rhuda informed the Trustee that he had sold the vehicle for a price of \$1,500, which Debtors received after their petition was filed. According to Debtors' bank statement, \$1,500 was deposited in their bank account on March 29, 2005, the day after their petition was filed.

After the first meeting of creditors, the Trustee filed a Motion for Turnover of the proceeds from the sale of the Ford Ranger. Although the motion was properly served on both Debtors and Debtors' counsel, no opposition or other response to the motion was filed. The court granted the motion on July 7, 2005, ordering that Debtors "turnover the non-exempt Fifteen Hundred Dollars (\$1,500) received post petition for pre-petition sale of vehicle. . . ." On August 8, 2005, Debtors amended their Schedules B and C. The amendment to Schedule B identified the proceeds from the sale of the Ford Ranger as cash on hand in the amount of \$1,500, and the amendment to Schedule C claimed a \$775 exemption under § 2329.66(A)(4)(a) and an \$700 exemption under § 2329.66(A)(18) in the proceeds.¹ Other exemptions claimed by Debtors remain unchanged.

LAW AND ANALYSIS

The Trustee objects to the exemptions claimed under §§ 2329.66(A)(4)(a) and (A)(18) in the proceeds from the sale of the Ford Ranger based on the fact that Debtors failed to disclose this asset in their originally filed bankruptcy schedules. The Trustee also argues that by filing an amended Schedule C, Debtors are seeking to subvert the court's order for turnover of the proceeds. For the reasons that follow, the court agrees that Debtors' filing of amended schedules to claim the proceeds as exempt constitutes a procedurally deficient method of avoiding the court's turnover order. The Trustee's Objection will, therefore, be sustained.

Debtors were properly served with the Trustee's motion for turnover of the proceeds of the sale of the Ford Ranger. However, they filed no response to the motion and, thus, failed to argue in opposition to the motion that they claimed, or intended to claim, an exemption in those proceeds. The court then determined that the proceeds of the sale of the Ford Ranger were non-exempt estate assets that must be turned over to the Trustee for administration. Because the court's turnover order is appealable as of right and therefore a "judgment," the rules governing relief from judgments and final orders are implicated. *In*

¹ There is no indication in the record regarding who held title to the Ford Ranger – Michael Rhuda, Miranda Rhuda, or both Debtors jointly. The Trustee has not objected to the claimed exemptions based on the fact that both Debtors have claimed their individual exemptions in the proceeds of the sale of the vehicle. As the Trustee has the burden of proving that Debtors are not entitled to the claimed exemptions, Fed. R. Bankr. P. 4003(c), the court will assume for purposes of this motion that the vehicle was titled in the names of both Debtors.

re No-Am Corp., 223 B.R. 512, 513 n. 3 (Bankr. W.D. Mich. 1998). The Federal Rules of Bankruptcy Procedure set forth specific circumstances under which a party is entitled to relief from a judgment or order of the court. *See* Fed. R. Bankr. P. 9023 and 9024; Fed. R. Civ. P. 59(e) and 60(b). Debtors have not sought relief from the court's turnover order under Fed. R. Bankr. P. 9023 or 9024 and may not obtain such relief by simply amending their bankruptcy schedules. To hold otherwise would allow Debtors, who should have raised the exemption issue in response to the motion for turnover, to avoid the requirements of Rules 9023 and 9024. The court concludes that the turnover order is a valid order and, absent the order being vacated, constitutes the law of the case. *See Bowling v. Pfizer, Inc.*, 132 F.3d 1147, 1150 (6th Cir. 1998) (stating that "[u]nder the law of the case doctrine, a court is ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court in the same case" and quoting *Consolidation Coal Co. v. McMahon*, 77 F.3d 898, 905 (6th Cir.1996)).

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that the Trustee's Objection to Exemption be, and hereby is, **SUSTAINED**.