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## **An Agricultural Law Research Article**

### **Husband and Wife Farmers in Agricultural Bankruptcies: The “Tools of the Trade” Exemption**

by

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# Husband and Wife Farmers In Agricultural Bankruptcies: The “Tools of The Trade” Exemption

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### Background

Bankruptcy Code § 541 requires that when a debtor files a bankruptcy petition, “all legal or equitable interests of the debtor in property as of the commencement of the case” become property of the bankruptcy estate.<sup>1</sup> Bankruptcy Code § 522 allows the debtor to claim certain property as exempt from property of the estate. If a debtor successfully claims property as exempt, the bankruptcy trustee’s control over that property is terminated, title to the property vests in the debtor, and the debtor will enjoy the benefit of retaining the exempted property to the extent of the monetary value allowed by the applicable exemption statute.

This benefit, however, is subject to any liens that a creditor may hold on the exempted property. Thus, claiming an exemption is only the first step in a two-part process for the debtor. The debtor must also take the second step of avoiding any liens that are held on the exempted property to protect the exempted property. The Bankruptcy Code provides a number of provisions designed to protect a debtor’s exemptions. For example, Bankruptcy Code § 522(f) provides that a debtor may avoid any judicial lien on exempt property, subject to certain exceptions.<sup>2</sup> A debtor is also entitled to avoid a nonpossessory, nonpurchase-money security interest in certain specified property.<sup>3</sup>

Bankruptcy Code § 522 also allows a debtor to choose between the federal exemptions or the state law exemptions provided by the debtor’s state of domicile, unless the debtor’s state of domicile has “opted out” of the federal exemptions.<sup>4</sup> If the state has “opted out” of the federal exemptions, only the state law exemptions will be available to the debtor. See *id.* The debtor may be entitled to use federal exemptions other than those listed in Bankruptcy Code § 522(d) when the debtor elects his or her state law exemptions.<sup>5</sup>

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1. 11 U.S.C. § 541(a).

2. *Id.* § 522(f)(1)(A).

3. *Id.* § 522(f)(1)(B). See also RANDY ROGERS & LAWRENCE P. KING, COLLIER FARM BANKRUPTCY GUIDE, 6-4, 2-240 (1994) for a more elaborate discussion of lien avoidance tools available to the debtor and the bankruptcy trustee.

4. *Id.* § 522(b)(1),(2).

5. *Id.* § 522(b)(2).

There are a number of exemptions available to bankruptcy debtors.<sup>6</sup> For instance, some of the federal exemptions include “[t]he debtor’s interest not to exceed \$2,400.00 in value, in one motor vehicle,” and “[t]he debtor’s aggregate interest, not to exceed \$1,000.00 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.”<sup>7</sup> Similarly, there are various state law exemptions available.

## “Tools of the Trade” Exemption

The federal exemptions and nearly every state exemption statute include what is referred to as the “tools of the trade” exemption. The federal “tools of the trade” exemption provides that a debtor may claim as exempt “[t]he debtor’s aggregate interest, not to exceed \$1,500.00 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.”<sup>8</sup> The “tools of the trade” exemptions provided by various state statutes mimic the federal exemption but differ somewhat from one state to another. The state law “tools of the trade” exemption statutes are usually more advantageous to the farmer than the federal exemption.<sup>9</sup> Whether a farmer is entitled to claim exemptions in certain farm equipment and machinery, and in some instances, livestock, pursuant to the “tools of the trade” exemption is one of the most frequently litigated issues in agricultural bankruptcies.

The minority view is that farm implements can be exempted as “tools of the trade” if the implements are smaller, hand-held tools.<sup>10</sup> The majority view, however, is that “all farm equipment and implements may be exempted subject only to dollar value limitations.”<sup>11</sup>

In addition to the issue of whether an individual farmer-debtor may claim certain farm equipment and machinery as exempt under the “tools of the trade” exemption, a significant question that arises in agricultural bankruptcies is whether both a husband and a wife who are involved in a farming operation are each entitled to claim exemptions in farm equipment and machinery as “tools of the trade.”<sup>12</sup> The answer to this question has significant consequences for both the debtors and the creditors. For debtors,

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6. See *id.* § 522 (d).

7. *Id.* § 522(d)(2),(4).

8. *Id.* § 541(d)(6).

9. See HENRY J. SOMMER, CONSUMER BANKRUPTCY LAW AND PRACTICE § 16.4.4.2 (6<sup>th</sup> ed. 2000) (discussing importance of the federal and state “tools of the trade” exemptions to farmers and livestock producers). See also 3 COLLIER ON BANKRUPTCY, ¶¶ 522,21 - .24 (Matthew Bender 15<sup>th</sup> ed.) for a discussion of the types of property exempted by state law. See also *Matter of Patterson*, 825 F.2d 1140 (7<sup>th</sup> Cir. 1987); *O’Neal v. United States*, 20 B.R. 12 (Bankr. E.D. Mo. 1982; *Yparrea v. Roswell Production Credit Ass’n*, 16 B.R. 33 (Bankr. D.N.M. 1981).

10. See *id.*

11. *Id.* See also *Production Credit Ass’n of St. Cloud v. LaFond*, 791 F.2d 623 (8<sup>th</sup> Cir. 1986); *Augustine v. United States*, 675 F.2d 582 (3d Cir. 1982); *In re Mutchler*, 95 B.R. 748 (Bankr. D. Mont. 1989); (*In re Duss*, 79 B.R. 821 (Bankr. W.D. Wis. 1987); (*In re Liming*, 22 B.R. 740 (Bankr. W.D. Okla. 1982) *rev’d sub nom.* *Central Nat’l Bank & Trust Co. v. Liming*, 797 F.2d 895 (10<sup>th</sup> Cir. 1983)).

12. If the “tools of the trade” exemption is allowed for either or both the husband and wife, there will still likely be an issue of whether the debtor(s) may avoid a creditor’s lien in that property.

it can be the difference between success or failure in their post-bankruptcy farming operation. For creditors, it can be the difference between recovering the full amount of a secured claim, only a portion of that amount, or, in some instances, recovering nothing at all.<sup>13</sup>

## Recent Case Law

Two recent cases, *In re Lampe*, 278 B.R. 205 (B.A.P. 10<sup>th</sup> Cir. 2002) and *In re Kieffer*, 279 B.R. 290 (Bankr.D.Kan. 2002), dealt with the issue of whether husband and wife farmers were each allowed to claim certain farm equipment as exempt under the Kansas “tools of the trade” exemption. The Kansas “tools of the trade” exemption provides that:

Every person residing in this state shall have exempt from seizure and sale upon any attachment, execution or other process issued from any court in this state, the following articles of personal property:

(e) The books, documents, furniture, 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 \$7,500.00.<sup>14</sup>

Kansas has “opted out” of the federal exemption scheme.<sup>15</sup>

### ***In re Lampe***

Donald and Sheila Lampe were husband and wife and had farmed together for nearly two decades.<sup>16</sup> Sheila performed all the various tasks on the farm except operating some of the heavy farm equipment such as the planter and the combine.<sup>17</sup> The Lampes financed their farming operation with operating loans obtained from the Iola Bank & Trust (“Bank”) and the Farm Service Agency (“FSA”).<sup>18</sup> In the late 1990's, the Lampes began to experience substantial financial hardship.<sup>19</sup> Consequently, Sheila began working part-time as a secretary off the farm to supplement the family's farm income, while maintaining her contributions to the farming operation.<sup>20</sup>

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13. For an excellent discussion of the legal issues involving property rights of farm wives in husband and wife farming operations, see Susan A. Schneider, *Who Owns the Family Farm? The Struggle to Determine the Property Rights of Farm Wives*, 14 N. ILL. UNIV. L. REV. 698 (1994).

14. Kan. Stat. Ann. § 60-2304(e).

15. See Kan. Stat. Ann. § 60-2312.

16. See *In re Lampe*, 278 B.R. at 207.

17. See *id.*

18. See *id.*

19. See *id.*

20. See *id.*

In 1999, the Lampes informed the Bank that they were unable to make their loan payments. See *id.* The Bank refused to renew the Lampes' operating loan and began foreclosing on their farm property.<sup>21</sup> The operating loan had been the source of the Lampes' operating capital.<sup>22</sup> The Lampes then increased their level of off-farm employment to help alleviate their financial problems.<sup>23</sup> Donald began working with a farm implement dealer and Sheila for a local cooperative and as a daycare provider.<sup>24</sup> The Lampes continued farming despite these setbacks, partly because they obtained the necessary financial support from a local cooperative.<sup>25</sup> Donald and Sheila Lampe filed a Chapter 7 bankruptcy petition on June 19, 2000.<sup>26</sup> Both claimed as exempt the maximum amount (\$7,500.00 each) in certain farm equipment, for a total of \$15,000.00.<sup>27</sup>

The Bank and the bankruptcy trustee argued to the bankruptcy court that neither Donald nor Sheila qualified for the Kansas "tools of the trade" exemption because farming was not their "primary occupation."<sup>28</sup> The Bank also argued that it "held valid liens on the property claimed as exempt, which the Debtors could not avoid."<sup>29</sup>

The bankruptcy court ruled that "despite the Debtors' outside employment, the Debtors' primary occupation was farming at the time that they filed for bankruptcy."<sup>30</sup> The bankruptcy court also ruled that "Sheila Lampe could not claim a \$7,500.00 exemption because she did not have a separate ownership interest therein."<sup>31</sup> The debtors appealed this decision, and the Bank filed a cross-appeal.<sup>32</sup>

The bankruptcy appellate panel first examined the arguments that the Bank raised in its cross-appeal.<sup>33</sup> The Bank argued that the bankruptcy court erroneously ruled that the Lampes were farmers "because farming was not their primary occupation when they filed their Chapter 7 petition."<sup>34</sup> The Bank

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21. See *id.* at 207-08.

22. See *id.*

23. See *id.*

24. See *id.* at 208.

25. See *id.*

26. See *id.*

27. See *id.*

28. See *id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. See *id.*

33. See *id.*

34. *Id.* at 209.

based this argument, in part, on the fact that the Lampes' did not indicate any income or expenses from farming on their bankruptcy schedules.<sup>35</sup> The Bank also argued that "because the bankruptcy court recognized in its order that any income from the Debtors' farm operation in the future would 'likely not produce gross income which exceeds their non-farm income,' the court could not have found that the Debtors were farmers entitled to a tools of the trade exemption."<sup>36</sup> The Bank's final argument was that the Lampes had abandoned farming as their primary occupation because they were working full-time off the farm, there was a pending foreclosure on the farm property, and they lacked operating funds to finance the farming operation.<sup>37</sup>

The appellate panel explained that, under Kansas law, "the tools of the trade exemption applies only to the business or profession in which the debtor is 'principally engaged.'"<sup>38</sup> The appellate panel pointed out that the bankruptcy court "recognized that '[t]he general rule is that the debtor must be engaged in the trade on the date of the petition, in order to claim the tools of the trade as exempt,'" but "that if the debtor 'only temporarily cease[s] the vocation at the time of the petition, the tools of trade may still be exemptible.'"<sup>39</sup>

The bankruptcy appellate panel concluded that the Lampes were "principally engaged" in farming.<sup>40</sup> The panel based its decision, in part, on the facts that the Lampes continued to farm at the time their bankruptcy petition was filed, even though the Bank was attempting to foreclose on the farm property, and that the Lampes also intended to lease land from Donald's mother in the near future for the purpose of farming it.<sup>41</sup> The panel noted that "[e]ven if the Debtors had not been engaged actively in farming at the moment that they filed their Chapter 7 petition, '[a] temporary abatement of work in a trade is not fatal to a claim for an exemption for tools or implements of that trade.'"<sup>42</sup> The panel added that the Lampes farmed "immediately before the petition date and in the months thereafter" and expressly stated their intent to continue farming.<sup>43</sup> The panel concluded that not only were the debtors "principally engaged" in farming for purposes of the "tools of the trade" exemption, they also had not abandoned their farming operation as the Bank contended.<sup>44</sup>

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35. *See id.*

36. *Id.* (quoting Cross Appellant's Brief at 5-6).

37. *See id.*

38. *Id.* at 210 (citing *Seel v. Wittman*, 173 B.R. 734, 736 (Bankr. D. Kan. 1994) and *In re Zink*, 177 B.R. 713, 715 (Bankr. D. Kan. 1995)).

39. *Id.* (quoting *In re Johnson*, 19 B.R. 371, 374-75 (Bankr. D. Kan. 1982)).

40. *See id.* at 209.

41. *See id.* at 210.

42. *Id.* at 211 (quoting *Central Nat'l Bank and Trust Co. v. Liming (In re Liming)*, 797 F.2d at 902 (10<sup>th</sup> Cir. 1986)).

43. *Id.* at 210.

44. *Id.*

The appellate panel next examined the Lampes' argument that the bankruptcy court erroneously concluded that Sheila was not entitled to claim exemptions in farm equipment pursuant to "tools of the trade" exemption.<sup>45</sup> The Lampes contended "in essence, that because Kan. Stat. Ann. § 23-201 recognizes that married persons can hold property as co-owners, the property they acquired during the marriage from funds that had been deposited in debtors' joint bank account is presumed to be owned equally."<sup>46</sup> Therefore, as co-owners with an equal ownership in the property, the Lampes contended that they should each be entitled to use the "tools of the trade" exemption.<sup>47</sup> The Lampes also relied on *Walnut Valley State Bank*, 574 P.2d 1382 (Kan. 1975), arguing that it established "a rebuttable presumption that jointly owned property is owned equally by the owners thereof."<sup>48</sup>

Kan. Stat. Ann. § 23-201 states, in relevant part, that:

(a) [t]he property, real and personal, which any person in [Kansas] may own at the time of the person's marriage . . . shall remain the person's sole and separate property, notwithstanding the marriage . . . ."

(b) [a]ll property owned by married persons . . . shall become marital property at the time of commencement by one spouse against the other of an action in which a final decree is entered for divorce, separate maintenance, or annulment. Each spouse has a common ownership in marital property which vests at the time of commencement of such action . . . .<sup>49</sup>

The trustee responded that the Lampes' farm equipment was, in fact, held in common ownership as the marital property of Sheila and Donald under § 23-201 because Sheila "produced no evidence that she obtained any of the farm equipment with her separate property or by either gift or inheritance."<sup>50</sup> The trustee contended, however, that "the bankruptcy court correctly determined that the Debtors' farm was a sole proprietorship run by Donald Lampe and that, if Sheila Lampe was co-owner of the farm equipment, the Debtors operated the farm as a partnership, precluding either of them from utilizing the tools of the trade exemption."<sup>51</sup>

According to the trustee, Kansas law does not allow individual partners to claim an exemption in partnership property.<sup>52</sup> Kansas law provides that "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a

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45. *See id.* at 211.

46. *Id.* at 212.

47. *See id.*

48. *Id.* at 211-12.

49. *Id.* at 212, n.7.

50. *Id.* at 212 (quoting Appellee's Brief at 12).

51. *Id.* (citing Appellee's Brief at 12).

52. *See id.* (see also *In re Kane*, 167 B.R. 224, 226 (Bankr. D. Kan. 1993)).

partnership.”<sup>53</sup> The trustee argued that if the operation was determined to be a partnership, then both Sheila and Donald would be precluded from claiming any exemptions in the farm equipment.<sup>54</sup>

The panel rejected the argument that the Lampes’ farming operation was a partnership, stating that the trustee’s argument depended on too strict an interpretation of the “tools of trade” exemption.<sup>55</sup> The panel added that “the issue of whether a partnership exists is not as clear as the bankruptcy court and trustee posit.”<sup>56</sup> The court cited *In re Griffin*, 141 B.R. 207, 211-212 (Bankr. D. Kan. 1992), which stated that “the mere fact that a wife participates in the conduct of a business with her husband [does not] necessarily establish a partnership between them, unless there exist some other indicia of partnership and the intent to form a partnership is clearly proved.”<sup>57</sup>

However, the appellate panel also concluded that the Lampes’ argument was “misplaced” because even though “a rebuttable presumption of equal ownership arises under Kansas law if a husband and wife own property as tenants in common, [the presumption of equal ownership] only arises after co-ownership is established.”<sup>58</sup> The panel reasoned that the Lampes could not rely on the presumption of equal ownership to show that they co-owned the farm equipment.<sup>59</sup> Instead, the Lampes would have to demonstrate their co-ownership in the farm equipment as an initial matter to successfully argue that there was a rebuttable presumption of equal ownership.<sup>60</sup>

Moreover, the appellate panel rejected the bankruptcy court’s ruling that “because Kansas is not a community property state, a spouse does not acquire an ownership interest in any property or business owned by the other spouse based solely on the marital relationship.”<sup>61</sup> The panel also rejected the bankruptcy court’s ruling that “a spouse may obtain an ownership interest in the other spouse’s property or business only through gift, inheritance, or an agreement to operate the business jointly as a separate entity cognizable under Kansas law.”<sup>62</sup> The appellate panel rejected the bankruptcy court’s “strict approach” that required Sheila to “demonstrate that she had obtained a distinct interest in the farm equipment ‘with her separate property, or by gift or inheritance.’”<sup>63</sup>

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53. *Id.* at 214 (quoting Kan. Stat. Ann. § 56a-2029(a)).

54. *See id.*

55. *See id.* (citing *Nohinek v. Logsdon*, 628 P.2d 257, 259 (Kan. Ct. App.1981) (stating that the “general rule regarding exemption laws is that they are to be liberally construed in favor of those intended by the legislature to be benefitted and favorable to the purposes of the enactment”)).

56. *Id.*

57. *Id.* (quoting 59A Am. Jur.2d Partnership §§ 240-242).

58. *Id.* at 213.

59. *See id.*

60. *See id.*

61. *Id.*

62. *Id.*

63. *Id.* at 213 (quoting Appellant’s Appendix at 17).



The appellate panel explained that “[w]hen interpreting exemption statutes, the interpretation must further the spirit of such laws. Specifically, the court must be ‘guided by the general principle that exemption statutes are to be liberally construed so as to effect their beneficent purposes.’”<sup>64</sup> The panel also explained that the text of § 60-2304(e) “does not identify the exact quantum of ownership required for a debtor to qualify for the exemption.”<sup>65</sup> The panel added, however, that ownership of the property claimed as exempt is implied in the language of § 60-2304.<sup>66</sup>

The panel considered case law from other bankruptcy courts that adhered to the principle that in a bankruptcy context “courts must determine co-ownership from evidence of intent and conduct of the party claiming title.”<sup>67</sup> The panel ruled that “based on the evidence of the debtors’ intent, their conduct in carrying on the farming operation, in purchasing the equipment from a joint account funded by earnings from the farm, and in pledging the equipment together as security for operating loans, Sheila Lampe co-owned the property for purposes of the tools of the trade exemption.”<sup>68</sup> The panel added that “[t]he Debtors’ farming operation was not a partnership in the legal sense, but a family business operated as a proprietorship with each Debtor as a co-owner of the equipment.”<sup>69</sup>

The panel concluded that “[w]e do not believe that the Trustee met her burden of proving that Sheila Lampe was not entitled to exempt \$7,500.00 in the farm equipment. The Debtors’ intent regarding ownership of the farm property and their conduct in operating the farm established Sheila Lampe’s co-ownership interest for purposes of the exemption.”<sup>70</sup>

### **In re Kieffer**

The facts in *In re Kieffer* were very similar to the facts in *In re Lampe*. Paula and Stephen Kieffer were husband and wife farmers.<sup>71</sup> They filed a Chapter 12 bankruptcy petition on July 9, 2001.<sup>72</sup> The Kieffers each claimed the \$7,500.00 “tools of the trade” exemption in certain farm equipment, for a total of \$15,000.00, pursuant to Kan. Stat. Ann. § 60-2304(e), and sought to avoid a lien held by Frontier Farm Credit, PCA (“Farm Credit”) in certain farm equipment.<sup>73</sup> The issues in *Kieffer* were whether Paula Kieffer was engaged in farming as her principal trade or occupation, and therefore, entitled to a “tools of the trade”

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64. *Id.* (quoting *Gregory v. Zubrod* (*In re Gregory*), 245 B.R. 171, 173 (10<sup>th</sup> Cir. BAP 2000)).

65. *Id.*

66. *See id.*

67. *Id.* at 213-14 (quoting *In re Broilier*, 165 B.R. 286, 291 (Bankr. W.D. Okla.1994)).

68. *Id.* at 213.

69. *Id.* at 214.

70. *Id.* at 215 (citing *Griffin*, 141 B.R. at 210) and *In re Broilier*, 165 B.R. 286, 291 (Bankr. W.D. Okla. 1994) and *In re Currie*, 34 B.R. 745, 748 (Bankr. D. Kan. 1983)).

71. *In re Kieffer*, 279 B.R. at 292.

72. *See id.*

73. *See id.*

exemption in certain farm equipment, and whether she was entitled to avoid Farm Credit's lien in certain farm equipment.<sup>74</sup>

Paula worked off the farm as a nurse approximately nine out of every ten days for nearly ten years before she and her husband filed their Chapter 12 bankruptcy petition.<sup>75</sup> *See id.* She earned \$21,408.00 in 2000 and \$20,068.00 in 2001 from her nursing job.<sup>76</sup> The Kieffers' 2000 and 2001 tax returns, as well as their Schedule I bankruptcy schedules, indicated Paula's profession as a nurse and Stephen's profession as a farmer.<sup>77</sup> Stephen Kieffer was the only individual listed on Schedule F (Profit or Loss From Farming) of the debtors' tax returns.<sup>78</sup>

Paula asserted that, in addition to nursing, she worked on the farm with Stephen by working cattle, moving machinery, maintaining the bookkeeping and check-writing for the farm, participating in farming decisions, signing promissory notes and security agreements to creditors for the farming operation, helping make farm financing decisions, and bringing lunch out to the farm workers, "tasks commonly performed by farm wives."<sup>79</sup> Paula also asserted that she considered herself a co-owner with Stephen of the real and personal farm property.<sup>80</sup>

The Kieffers' 2000 tax returns indicated that they earned a gross income of \$167,183.00 and a net income of \$5,300.00 from farming.<sup>81</sup> The Kieffers' tax returns also indicated that they claimed \$20,582.00 in depreciation expenses for 2000.<sup>82</sup> The bankruptcy court noted that if the depreciation expense were to be added back to their calculation of net income, the Kieffers' net income from farming in 2000 would have totaled \$25,882.00.<sup>83</sup>

The Kieffers' 2001 tax returns indicated that they earned a gross income of \$102,385.00 and a net income of \$8,141.00 from farming.<sup>84</sup> They claimed a depreciation expense of \$34,664.00 for 2001. If this amount were added back, the Kieffers' net income from farming in 2001 would have totaled \$42,805.00.<sup>85</sup> Paula acknowledged that net farm income, rather than gross income, was the amount that farming

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74. *See id.*

75. *See id.*

76. *See id.*

77. *See id.* at 293.

78. *See id.*

79. *Id.* at 293.

80. *See id.*

81. *See id.*

82. *See id.*

83. *See id.*

84. *See id.*

85. *See id.*

contributed to support the household and that depreciation was a legitimate expense to consider for calculating net income.<sup>86</sup>

The bankruptcy court explained that exemption laws are interpreted liberally in favor of exemption.<sup>87</sup>

The court also explained that the party objecting to a claimed exemption has the burden of proving that the exemption is improperly claimed.<sup>88</sup> The bankruptcy court stated that “[a] debtor may only claim a tools of the trade exemption for only one trade or occupation.”<sup>89</sup> If a debtor is “engaged in more than one trade, business or occupation, the tools of the trade exemption is applicable only to the trade or occupation in which the debtor is principally or primarily engaged.”<sup>90</sup> The court also stated that to determine in which occupation or business a debtor is principally or primarily engaged, a court “may consider from which occupation the debtor derives his or her principal support.”<sup>91</sup> Based on these precedents, the court noted that it “must make a factual determination from the evidence before it whether Paula’s principal occupation is that of a nurse or a farmer.”<sup>92</sup>

Farm Credit argued that to determine whether Paula derived her principal support from nursing or farming, the court should “compare the *net* income derived from farming activities to Paula’s wages from her nursing job.”<sup>93</sup> The court noted that in 2001, based upon her W-2 forms, Paula earned \$20,754.00 in gross income from nursing and \$102,385.00 in gross income from farming.<sup>94</sup> The court also noted that without deducting any depreciation expense, the farming operation earned \$42,805.00 in net income in 2001.<sup>95</sup>

The bankruptcy court stated that “[n]otwithstanding Paula’s testimony that depreciation expense is a legitimate business expense of farming and is properly deducted to arrive at net income, the depreciation expense is irrelevant in the Court’s determination.”<sup>96</sup> The court explained that “no clear rule has been established [as to] whether gross income or net income should be examined in comparing the

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86. *See id.*

87. *See id.* at 294 (citing *In re Mueller*, 71 B.R. 165, 167 (Bankr. D. Kan. 1987)).

88. *See id.* (citing *In re Zink*, 177 B.R. at 714 and *In re Gregory*, 245 B.R. 171, 174 (10<sup>th</sup> Cir. BAP 2000)).

89. *Id.* (quoting *Zink*, 177 B.R. at 715).

90. *Id.* (citing *Zink*, 177 B.R. at 715 and *Seel*, 173 B.R. at 736).

91. *Id.* (citing *Seel*, 173 B.R. at 737).

92. *Id.*

93. *Id.* (emphasis supplied).

94. *See id.*

95. *See id.* at 294-95.

96. *Id.* at 295.

debtor's occupations."<sup>97</sup> The court stated that the case law does not "suggest that a mathematical formula or bright-line test can be applied to determine principal support."<sup>98</sup> The court added that:

It appears to this Court that a comparison of net income from a self-employed farming operation to income earned by a wage earner is not a fair comparison due to the availability of business expenses and deductions by the farming operation. A wage earner does not typically have deductible business expenses. While the debtor's tax returns are relevant, they are not controlling in determining the tools of the trade exemption.<sup>99</sup>

The court concluded that Paula "had an ownership interest in the farm equipment, was principally engaged in farming, is entitled to a \$7,500.00 tools of the trade exemption in the farm equipment under Kansas law, and may avoid Farm Credit's lien on the subject farm equipment."<sup>100</sup> The court noted that "[w]hile Paula testified that she considered herself a co-owner of the farm equipment, that she co-signed loans and security agreements for the farming operation with her husband, did the bookkeeping, and that she actively participated in farming decisions, she also testified that she "did not perform one-half of the actual farm labor or work."<sup>101</sup> The court stated that "[e]ven if this Court finds that less than 50% of the income from farming is attributable to Paula, the calculations and comparisons of income do not support a finding that Paula derives her principal support as a nurse."<sup>102</sup> The court also stated that "[i]f only 40% of the gross farm income is attributable to Paula, she derives \$40,954.00 from her farming occupation—nearly twice that of nursing. Forty percent of the net farm income is \$17,122.00."<sup>103</sup>

Noting that actual labor or amount of time spent on the farm were not the only factors to consider in determining the amount of income to attribute to Paula, the court determined that "other farm-related activities performed by Paula, coupled with her actual farm labor, amply supports a finding that Paula contributes or jointly participates 50% in the debtors' farming endeavor."<sup>104</sup> Based on these determinations, the court ruled that Paula was principally engaged in farming and that her principal support derived from farming.<sup>105</sup>

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97. *Id.* at 294.

98. *Id.*

99. *Id.* (citing *In re Zimmel*, 185 B.R. 786, 789 (Bankr. D. Minn. 1995)).

100. *Id.* at 297.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. See *id.* (citing *Zink*, 177 B.R. at 713) (finding that a debtor farm wife who was also a licensed beautician was principally engaged in farming) and *In re Kobs*, 163 B.R. 368 (Bankr. D. Kan. 1994) (ruling that a debtor farm wife who held an off-farm job as a librarian was principally engaged in farming)).

The bankruptcy court noted that its decision was in accordance with the bankruptcy appellate panel's decision in *In re Lampe*.<sup>106</sup> The court stated that “[a]s in *Lampe*, the above evidence supports and compels the conclusion that Paula co-owned the farm equipment with Stephen. Accordingly, Paula may claim an exemption in the farm equipment as tools of the trade.”<sup>107</sup> Without any discussion of the issue of lien avoidance, the bankruptcy court ruled that Paula could avoid Farm Credit’s lien on the subject farm equipment.<sup>108</sup>

## Conclusion

*In re Lampe* and *In re Kieffer* are the two most recent decisions dealing with the issue of whether both a husband and a wife are entitled to claim certain farm machinery and equipment as exempt from property of the estate as “tools of the trade.”<sup>109</sup> Thus, the two cases are particularly helpful to husband and wife farmers, creditors, courts, and attorneys faced with this issue.

*In re Kieffer* and *In re Lampe* demonstrate some of the challenges that debtors and creditors will likely face when litigating the issue of whether husband and wife farmers are each entitled to claim farm equipment and machinery as exempt under the “tools of the trade” exemption. For instance, both cases adhered to the general principles of law that exemption laws are to be applied liberally in favor of a debtor and that the party objecting to the claimed exemption has the burden of proving that the debtor has improperly claimed an exemption. These are established principles of law that debtors and creditors will likely have to consider when preparing arguments supporting their respective points of view.

Both cases also offer guidance with respect to how co-ownership of farm equipment and machinery may be established in husband and wife farming operations. In *In re Lampe* the appellate panel stated that courts considering the issue of co-ownership “must determine co-ownership from evidence of intent and conduct of the party claiming title” at the time the bankruptcy petition is filed.<sup>110</sup> In *In re Kieffer* the bankruptcy court stated that there is no “mathematical formula or bright-line test that can be applied to determine principal support.”<sup>111</sup> These statements, and the nature of the holdings in each case, suggest that courts examining this issue will likely have to make a case-by-case determination based on the facts and evidence presented to determine whether a husband and wife are co-owners of farm equipment and machinery for purposes of the “tools of the trade” exemption.

In addition, both *In re Lampe* and *In re Kieffer* demonstrate that the issue of whether husband and wife farmers may each claim exemptions in farm equipment and machinery as “tools of the trade” centers upon whether one of the spouses, typically the wife, has a sufficient ownership interest in the farm equipment, or whether that spouse is “primarily engaged” in the farming operation. In contrast, the issue

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106. *See id.*

107. *Id.* at 296-97.

108. *See id.*

109. The two cases are the only cases since January 1, 2002, to specifically address this issue. This article was originally published on October 9, 2002.

110. *See supra* note 67.

111. *See supra* note 98.

of whether an individual farmer may exempt certain tools of the trade centers upon the *type* of tool of the trade that the debtor is claiming as exempt.

Finally, it is important to remember that the issue of whether husband and wife farmers may each be entitled to use the “tools of the trade” exemption to claim farm equipment and machinery as exempt is only the first consideration in a two-part process. The parties must also litigate the important issue of whether any liens in the exempted farm equipment and machinery may be avoided, a subject not directly addressed in this article.

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