

Office of the Attorney General
State of North Dakota

Opinion No. 85-39

Date Issued: October 11, 1985

Requested by: Robert G. Hoy
Cass County State's Attorney

--QUESTION PRESENTED--

Whether the specific automobile exemption of N.D.C.C. § 28-22-03.1 precludes a debtor from claiming additional exemptions for automobiles pursuant to N.D.C.C. § 28-22-03.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the specific automobile exemption of N.D.C.C. § 28-22-03.1 does not preclude a debtor from claiming additional exemptions for automobiles pursuant to N.D.C.C. § 28-22-03.

--ANALYSIS--

In order to facilitate a debtor's fresh start, exemption statutes were enacted to protect a debtor and his dependents and to provide them means of reasonable comfort. In re Dipalma, 24 Bankr. 385, 390 (Bankr. D. Mass. 1982). North Dakota's scheme of statutory exemptions is contained in N.D.C.C. Ch. 28-22. N.D.C.C. § 28-22-02 enumerates several absolute exemptions which are not dependent upon quantity or value. In addition to these absolute exemptions, the North Dakota Century Code provides for additional exemptions for North Dakota debtors.

N.D.C.C. § 28-22-03 provides a general exemption of \$5,000.00 for the head of a family:

28-22-03. ADDITIONAL ABSOLUTE EXEMPTION FOR HEAD OF A FAMILY. In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, the head of a family, personally or by his agent, may select from his other personal property, any goods, chattels, merchandise, money, and other personal property not exceeding in value the sum of five thousand dollars, which also shall be exempt from all attachment or mesne process, levy and sale upon execution, and any other final process issued from any court.

A single debtor is afforded a similar general exemption in the amount of \$2,500.00. N.D.C.C. § 28-22-05.

Instead of the general exemption of N.D.C.C. § 28-22-03, the head of a family may choose the alternative exemption found in N.D.C.C. § 28-22-04. The alternative exemption provided by N.D.C.C. § 28-22-04 is limited to specified personal property and corresponding dollar amounts.

Additional exemptions for all North Dakota residents, regardless of marital status, are found in N.D.C.C. § 28-22-03.1. Among the exemptions of N.D.C.C. § 28-22-03.1 is the motor vehicle exemption in the amount of \$1,200.00. N.D.C.C. § 28-22-03.1(2) provides as follows:

28-22-03.1. ADDITIONAL ABSOLUTE EXEMPTIONS FOR RESIDENTS. In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

2. A motor vehicle exemption not to exceed one thousand two hundred dollars.

Neither N.D.C.C. § 28-22-03 nor N.D.C.C. § 28-22-03.1 suggests a legislative intent that the exemptions are mutually exclusive alternatives. Rather, the unambiguous language of the statutes indicates that the exemptions are independent and cumulative. Thus, a debtor is entitled to the specific exemptions provided by N.D.C.C. § 28-22-03.1 in addition to the general exemption provided by N.D.C.C. § 28-22-03.

Such an interpretation also comports with the liberal construction of exemption statutes utilized by courts in order to give full effect to the legislative intent of providing a 'fresh start.' In re Keyworth, 47 Bankr. 966, 972 (D. Colo. 1985). A narrow exclusive reading of N.D.C.C. §§ 28-22-03 and 28-22-03.1(2) would frustrate this rule of construction and the broad societal goal of providing a debtor with a 'fresh start.'

If the Legislative Assembly of North Dakota intended the automobile exemption of N.D.C.C. § 28-22-03.1(2) to be an exclusive remedy, it would have clearly expressed such an intention. In the absence thereof, it is my opinion that the specific automobile exemption of N.D.C.C. § 28-22-03.1(2) does not preclude the exemption of additional automobiles under the general exemption provision of N.D.C.C. § 28-22-03.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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