

automobile  
vehicle  
ORS 18.345(1)(d)

In Re McMillin  
9/3/10

Case # 10-61929-aer7  
Radcliffe

Published

Joint Chapter 7 Debtors gathered miscellaneous parts from various sources, including one motor and one body, with the intent to assemble a 1926 Ford Model A automobile. Sufficient parts were assembled to construct a working Model A. However, as of the bankruptcy filing, the parts remained unassembled. Debtors advised they no longer wished to assemble them. Debtors claimed the assemblage of parts exempt under Oregon's vehicle exemption (ORS 18.345(1)(d)).

The Ch. 7 Trustee objected.

The Court traced the history of the vehicle exemption and examined the definitions of "vehicle" and "automobile" as used therein. The court found the assemblage of parts did not meet the definition of "automobile" or "vehicle." The Trustee's objection was sustained and the Debtors' exemption claim denied.

E10-7(7)



1 petition herein on April 10, 2010. As of the petition,<sup>1</sup> all parts  
2 necessary for reconstructing the Model A had been gathered. None,  
3 however, were assembled. These parts, including wheels, were  
4 significantly more than necessary to complete one Model A, although only  
5 one body and one motor were collected. Alan McMillin's father is now  
6 deceased and Debtors do not intend to reconstruct the Model A.

7 Issue/Question Presented:

8 Does a group of parts collected from various sources which have  
9 never been assembled but would, if assembled, comprise a working  
10 automobile, constitute a "vehicle" for purposes of Oregon's exemption  
11 statute?

12 Discussion:

13 The applicable statute is O.R.S. 18.345(1)(d),<sup>2</sup> which provides as  
14 follows:

15 (1) All property, including franchises, or rights or  
16 interest therein, of the judgment debtor, shall be liable  
17 to an execution, except as provided in this section and in  
18 other statutes granting exemptions from execution. The  
19 following property, or rights or interest therein of the  
20 judgment debtor, except as provided in ORS 18.305, shall  
21 be exempt from execution:

(d) A vehicle to the value of \$3,000. As used  
in this paragraph "vehicle" includes an  
automobile, truck, trailer, truck and trailer or  
other motor vehicle.<sup>3</sup>

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22 <sup>1</sup> With limited exceptions not relevant here, exemption rights are  
23 determined as of the time of petition. In re Lane, 364 B.R. 760, 762-763  
(Bankr. D. Or. 2007).

24 <sup>2</sup> As permitted by 11 U.S.C. § 522(b)(2), Oregon has "opted out" of the  
25 federal exemption scheme. ORS 18.300.

26 <sup>3</sup> Oregon's "vehicle" exemption dates back almost to statehood. It was  
(continued...)

1 Debtors argue that the statute is not limited to vehicles which  
 2 operate or those for which a specific purpose or use is intended.  
 3 Assuming *arguendo* Debtors are correct, nevertheless the property claimed  
 4 exempt must still otherwise be a "vehicle." The trustee argues that  
 5 "This is really in the nature of a vehicle parts inventory which may only  
 6 be claimed exempt under O.R.S. 18.345(1)(o)."<sup>4</sup> Trustee's Memorandum in  
 7 Support of Objection to Exemption at 2:22-23. This appears to be a  
 8 matter of first impression in this district.

9 In interpreting an Oregon statute, the court's job is to  
 10 determine the legislature's intent. State v. Gaines, 346 Or. 160, 165,  
 11 206 P.3d 1042, 1047 (2009). In so doing, the court is to first look to  
 12 the statute's text and context. Id. at 171, 206 P.3d at 1050.<sup>5</sup> Here,

13  
 14 <sup>3</sup>(...continued)  
 15 originally enacted in 1862 as part of what is commonly referred to as the  
 16 "tools of the trade" exemption. It exempted a vehicle necessary to carry on  
 17 the debtor's trade or profession up to \$400. Civ. Code Or. § 279(3) (1862). The  
 18 statute did not, however, define or illustrate the term "vehicle." In 1862 one  
 19 imagines vehicles consisted mainly of wagons, buggies, coaches, carriages etc.  
 20 With the advent and popularity of motorized travel, the legislature added in  
 21 1933, the following clause: "The word 'vehicle' shall be construed to include a  
 22 motor vehicle, automobile, truck and/or trailer, as the case may be." Sec. 3-  
 23 207(3), Oregon Code 1933 (Or. Laws 1933, ch. 383, § 1). In 1953 the "include"  
 24 clause was amended to substantially its present form yet it remained part of  
 25 the tools of the trade exemption. O.R.S. 23.160(1)(c)(1953). In 1965 the  
 26 legislature partially liberated the vehicle exemption by giving it stand-alone  
 status in the amount of \$400, but limiting it and the tools of the trade  
 exemption (then \$800) to an aggregate \$800. O.R.S. 23.160(1)(d)(1965) (Or. Laws  
 1965, ch. 577, § 1). In 1981, the legislature finally untethered vehicles from  
 tools of the trade by dropping the aggregate dollar limitation. Or. Laws 1981,  
 ch. 903, § 2. In 2003, the statute was renumbered to its present form. Over  
 the years the exemption amount has increased periodically to its present  
 \$3,000.

24 <sup>4</sup> The so-called wild card or pour-over exemption.

25 <sup>5</sup> The court also has discretion to examine any legislative history  
 26 proffered by the parties and give it whatever weight it deems appropriate.

(continued...)

1 the statute makes it clear that a "vehicle" includes an "automobile." It  
2 does not, however, define those terms. The Trustee urges the court to  
3 look to the Oregon Vehicle Code, O.R.S. 801.100 et. seq., for the  
4 pertinent definitions.<sup>6</sup> It has been held, however, that those  
5 definitions do not govern construction of Oregon's vehicle exemption. In  
6 re Dormer, Case # 685-09150 (Bankr. D. Or. April 30, 1986) (Wilhardt, J.)  
7 (unpublished). In Dormer the court construed the current statute's  
8 predecessor, O.R.S. 23.160(1)(d), which contained identical pertinent  
9 language. The court held that the "legislature intended to include in  
10 this subsection a machine which is built and used for the purpose of  
11 carrying people or products on the ground from point A to point B." Id.  
12 at 2.<sup>7</sup> Dormer did not address the question of whether never-assembled  
13 parts constitute a "vehicle." Thus it is not directly on point.

14 In its search for legislative intent, the court may ordinarily  
15 presume the legislature intended words of common usage to have their  
16 plain, natural and ordinary meaning. PGE v. Bureau of Labor and  
17 Industries, 317 Or. 606, 611, 859 P.2d 1143, 1146 (1993), superseded on  
18 other grounds by statute as stated in, State v. Gaines, 346 Or. 160, 171-  
19 172, 206 P.3d 1042, 1050-1051 (2009).

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22 <sup>5</sup>(...continued)  
23 Gaines, supra at 171-172, 206 P.3d at 1050-1051. Here, the parties have not  
24 proffered any legislative history.

25 <sup>6</sup> See, O.R.S. 801.590 (defining "Vehicle"); O.R.S. 801.360 (defining  
26 "Motor vehicle").

<sup>7</sup> In Dormer, a tractor did not meet the court's definition.

1 In interpreting a statute enacted many years ago, the  
 2 court is to seek to discern the intent of the legislature  
 3 that passed [the] statute. Dictionaries in use at the  
 time of the enactment may be particularly useful in that  
 inquiry.

4 State v. Leslie, 204 Or. App. 715, 719, 132 P.3d 37, 39 (2006) (internal  
 5 quotation and citation omitted). From the exemption statute's enactment  
 6 in 1862, to the addition of "automobile" as illustrative in 1933, to the  
 7 present, a "vehicle" has basically been defined as something that carries  
 8 goods or passengers.<sup>8</sup> Likewise, from 1933 to the present an "automobile"  
 9 has basically been defined as a self-propelled vehicle.<sup>9</sup> These  
 10 definitions would seem to presume at least partial assembly so as to be  
 11 able to carry or transport. Mere parts would not seem to qualify.

12 Debtors, however, rely on In re Bailey, 326 B.R. 750 (S.D. Iowa  
 13 2004) as persuasive authority. There, a 1932 Ford Coupe and 1938 Ford  
 14 Sedan had been assembled at some point, registered and titled, but as of  
 15 the bankruptcy petition date were in an inoperable partially disassembled  
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17 <sup>8</sup> For definitions of "vehicle" in that time-span, see, A New Dictionary of  
 18 the English Language, Vol. II. 2005 (1838) ("[a] carriage, a conveyance; the  
 19 means, instrument of carriage or conveyance . . ."); A College Standard  
 20 Dictionary of the English Language 1237 (1931) ("[t]hat in or on which anything  
 21 is carried; especially, a contrivance fitted with wheels or runners for  
 22 carrying something; a conveyance, as a car or sled"); Webster's Third New Int'l  
Dictionary 2538 (unabridged ed. 2002) ("a means of carrying or transporting  
 something: . . . a carrier of goods or passengers . . . ; a container in which  
 something is conveyed . . . ; a piece of mechanized equipment . . .").

23 <sup>9</sup> For definitions of "automobile" in that time-span see, Webster's  
Collegiate Dictionary 73 (3d ed. 1923) ("[a]n automobile vehicle or mechanism;  
 24 esp., a self-propelled vehicle suitable for general use on a street or  
 25 roadway"); A College Standard Dictionary of the English Language 90 (1931)  
 26 ("[a] self-propelling vehicle; horseless carriage"); Webster's Third New Int'l  
Dictionary 148 (unabridged ed. 2002) ("a usu. 4-wheeled automotive vehicle  
 designed for passenger transportation on streets and roadways and commonly  
 propelled by an internal-combustion engine using a volatile fuel (as gasoline)  
 . . .").

1 state to repair (32 Ford Coupe) and repaint, restyle and re-engineer (38  
2 Ford Sedan). If reassembled there were enough parts to render both  
3 vehicles operational. The Iowa exemption statutes allowed each debtor to  
4 exempt "one motor vehicle" up to a value of \$5,000. The court looked at  
5 the definitions of "vehicle" and "motor vehicle" in the Iowa Motor  
6 Vehicle Code. Although it found both vehicles fit the definitions, it  
7 nonetheless did not adopt those definitions for exemption purposes.  
8 Instead, the court looked to the common or dictionary definition,  
9 however, it did not equate the definition that a motor vehicle be self-  
10 propelled with being "currently operable" reasoning this could lead to  
11 absurd results, such as denying an exemption to a car merely because it  
12 had a flat tire or had its battery removed as of the petition date. Id.  
13 at 757. In allowing the exemption, the court concluded, that for  
14 purposes of the exemption statute, the term "motor vehicle" included an  
15 inoperable vehicle that could be made operable by reassembling or  
16 repairing one or more of its parts. Id.


17 While Bailey has similarities to this case, it also has crucial  
18 distinctions. There, the vehicles had originally been assembled and, at  
19 filing, were partially, if not mostly, assembled.<sup>10</sup> Here, the Model A  
20 has never been assembled. As such, it has never existed as an  
21 "automobile." It was not on the petition date, nor has it ever been, a  
22 "machine," Dormer, or a self-propelled carrier of goods or passengers.  
23 To the extent Bailey's holding can be read as including a never-assembled  
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25 <sup>10</sup> The hood, valve covers, air cleaner, front brake calipers, rotors and  
26 front wheels were off the 32 Ford Coupe. Bailey, supra at 755. It is unclear  
how many parts were off the 38 Ford Sedan, the court citing an investigator's  
report that "[t]he car will need to be painted and reupholstered." Id. at 756.

1 collection of automotive parts in the definition of "motor vehicle" for  
2 purposes of Iowa's exemption, this court concludes the Oregon legislature  
3 did not intend such generosity. In reaching this conclusion, this court  
4 is keenly aware that Oregon's exemption statutes are to be liberally  
5 construed, In re Stratton, 269 B.R. 716, 718 (Bankr. D. Or. 2001);  
6 Childers v. Brown, 81 Or. 1, 5, 158 P.166, 168 (1916), but a liberal  
7 construction cannot transform a pile of parts into an automobile. The  
8 Trustee's objection will be sustained. A separate order will be entered.

9 The above constitute my findings of fact and conclusions of law  
10 pursuant to FRBP 7052. They shall not be separately stated.

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17 ALBERT E. RADCLIFFE  
18 Bankruptcy Judge  
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