

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

In Re:

**In Proceedings Under
Chapter 7**

**HARTLINE, JAMES WILLIAM, SR.,
HARTLINE, BETTY L.**

BK 02-41061

ORDER

This matter is before the Court on the trustee's objection to the debtors' claim of exemption in a 1998 Chevy pickup truck and the trustee's motion for turnover. The debtors scheduled a 1998 Chevy pickup truck valued at \$12,000.00. In their amended schedule C, the debtors claimed the truck as exempt in the amount of \$5,600.00 pursuant to 42 U.S.C. § 407. The debtors argue that since the truck was purchased with social security funds, it should be exempt as social security moneys. The trustee maintains that the exemption of § 407 does not extend to the truck in question, asserting that once the debtors' social security funds were converted into a tangible asset through the purchase of the debtors' truck, they lost their exempt status as social security funds under § 407.¹

Section 407(a) of the Social Security Act provides in pertinent part:

The right of any person to any future payment under this subchapter shall not be transferable or assignable,... and none of the moneys paid or payable... under this subchapter shall be subject to execution, levy, garnishment, or other legal process[.] 42 U.S.C. § 407(a) (emphasis added).

In Fayette County Hospital v. Reavis, 523 N.E.2d 693 (Ill. App. Ct. 1988), the court ruled that social security funds held by the debtors in a checking account and a certificate of deposit were exempt under § 407(a) because they retained the "quality of money" and had not become a permanent investment. See id., at 696 (citing Philipott v. Essex County Welfare Board, 93 S.Ct. 590, 592 (1973)). Thus, the exemption afforded under § 407(a) includes property traceable to social security benefits that are held by the pensioner in the form of money. However, once the funds are converted into a permanent investment through the purchase of a tangible asset, they no longer retain the "quality of money" and are, therefore, no longer exempt under §

¹The parties do no dispute that the debtors' truck was purchased solely with social security funds. Thus, for purposes of this case, it is unnecessary to make a factual determination whether and to what extent social security funds were used to purchase the truck.

407(a).

In the present case, once the debtors' social security funds were used to purchase the truck at issue, they were converted into a tangible asset -- a "permanent investment"-- and lost their exempt status under § 407(a).² The debtors, therefore, are not entitled to the exemption claimed by them in the 1998 Chevy pickup truck. The Court, accordingly, sustains the trustee's objection to the debtors' claim of exemption under § 407(a) and finds that the vehicle should be turned over to the trustee as property of the estate.

THEREFORE, IT IS ORDERED, that the trustee's objection to exemption is SUSTAINED. IT IS FURTHER ORDERED that the 1998 Chevy pickup truck shall be surrendered to the Trustee, along with the title and keys, within seven (7) days of the date of this Order.

Counsel for the moving party shall serve a copy of this order by mail to all interested parties who were not served electronically.

ENTERED: October 15, 2002

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE

²The case of In re Radford, 265 B.R. 827 (Bankr.W.D.Mo.2000), cited by the debtors, is inapposite and does not require a contrary result. Radford involved social security disability benefits that had been paid to the debtor in a lump sum and deposited in his bank account. The court held that the exemption of § 407(a) was not limited to future benefits but applied to funds already paid. Consequently, "the lump sum payment did not lose its exempt status once it was paid to Mr. Radford and deposited in his bank account." Radford, at 829 (emphasis added). It is readily apparent that Radford does not address the issue in the present case of whether social security funds that are used to purchase a tangible asset thereby lose their exempt status.