

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Case No.: BKY 04-32609

PAUL MICHAEL KINSLEY  
KATHLEEN LINDA KINSLEY,

Debtors.

Chapter 7 Case

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**NOTICE OF HEARING  
AND  
MOTION OBJECTING TO CLAIMED EXEMPTIONS**

TO: The debtors and other entities specified in Local Rule 9013-3.

Paul W. Bucher, the trustee in bankruptcy in this case (the “trustee”), moves the Court for the relief requested below and gives notice of hearing.

1. The Court will hold a hearing on this Motion at 2:15 p.m. on September 2, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

2. Because this Motion is being delivered at least 21 days or mailed at least 24 days before the hearing date, any response to this Motion must be filed and delivered not later than August 26, 2004, which is seven days before the time set for the hearing (including Saturdays, Sundays and holidays), or filed and served by mail not later than August 23, 2004, which is ten days before the time set for the hearing (including Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. This Court has jurisdiction over this Motion pursuant to Sections 157 and 1334 of Title 28 of the United States Code, Rule 5005 of the Federal Rules of Bankruptcy Procedure, and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on April 30, 2004. This case is now pending in this court.

4. This Motion arises under Section 522 of the United States Bankruptcy Code (11 U.S.C. §522), Rule 4003 of the Federal Rules of Bankruptcy Procedure, and Local Rule 4003-1(a). This Motion is filed under Rules 9013 and 9014 of the Federal Rules of Bankruptcy Procedure and Local Rules 9013-1, 9013-2, 9013-3 and 9013-5. The trustee requests relief with respect to objections to certain property claimed as exempt by the debtors.

5. The debtors have elected to claim property as exempt under Section 522(b)(1) of the United States Bankruptcy Code. See the attached Amended Schedule C filed in this case.

6. The debtors have claimed the following assets as exempt under the following statute: 401K Plan Equitable and TRA under 11 U.S.C.§522(d)(10)(E). The statement provided by the debtor, Kathleen Kinsley, shows that the 401k account is actually a TSA (See Exhibit A). According to *Rousey v. Jacoway (In re Rousey)*, 283 B.R. 265 (8<sup>th</sup> Cir. BAP 2002), *aff'd*, 347 F.3d 689 (8<sup>th</sup> Cir. 2003), individual retirement accounts are not exempt under the statute. The trustee also objects on the grounds that the trustee has not been provided with sufficient information to determine if the retirement plans are reasonably necessary for the support of the debtor or the debtor's dependents.

7. The debtors have claimed the following asset as exempt under the following statute: Riding Lawn Mower under 11 U.S.C.§522(d)(2). This statute states that a debtor can exempt up to \$2,950 in equity in one vehicle. The trustee objects on the grounds that a riding lawn mower is not the type of asset that can be claimed as exempt under this statute.

8. If oral testimony is necessary at the hearing, the trustee will call the debtors: Paul Michael Kinsley, 1660 371<sup>st</sup> Street, Boyd, MN 56218 and Kathleen Linda Kinsley, 116 S. 4<sup>th</sup> Street, Montevideo, MN 56265, who will testify concerning the 401K Plan Equitable (actually a TSA), TRA, riding lawn mower, and any other matters, if necessary.

Wherefore, the trustee moves the Court for an order denying the above exemptions claimed by the debtors, and such other relief as the Court finds just and equitable.

DUNLAP & SEEGER, P.A.

Dated: July 22, 2004

/e/ Paul W. Bucher

By: Paul W. Bucher

Registration #123237

Attorneys for Trustee  
206 South Broadway, Suite 505  
Post Office Box 549  
Rochester, Minnesota 55903-0549  
Telephone: (507) 288-9111

## VERIFICATION

I, Paul W. Bucher, the trustee in bankruptcy in this case and the moving party named in the foregoing Notice of Hearing and Motion Objecting to Claim of Exemption, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on July 22, 2004

/e/ Paul W. Bucher

Paul W. Bucher

206 South Broadway, Suite 505

Rochester, Minnesota 55904

In re **Paul Michael Kinsley,  
Kathleen Linda Kinsley**

Case No. \_\_\_\_\_

Debtors

**SCHEDULE C. PROPERTY CLAIMED AS EXEMPT - AMENDED**

Debtor elects the exemptions to which debtor is entitled under:

[Check one box]

- 11 U.S.C. §522(b)(1): Exemptions provided in 11 U.S.C. §522(d). Note: These exemptions are available only in certain states.  
 11 U.S.C. §522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemption
<b>Cash on Hand</b>			
Cash	11 U.S.C. § 522(d)(5)	50.00	50.00
<b>Checking, Savings, or Other Financial Accounts, Certificates of Deposit</b>			
<b>Checking Accounts - First National Bank; 101 1st St. S., Montevideo, MN 56265 Account number: 843-681</b>	11 U.S.C. § 522(d)(5)	175.00	175.00
<b>Savings Account - First National Bank, 101 1st St. S., Montevideo, MN 56265 Account #: 176938</b>	11 U.S.C. § 522(d)(5)	277.20	277.20
<b>Savings account; Co-op Credit Union of Montevideo; 1507 East Highway 7, Montevideo, MN 56265 Account #: 3395</b>	11 U.S.C. § 522(d)(5)	252.36	252.36
<b>Checking; Twin Cities Co-op Credit Union; PO BOX 131450, Roseville, MN 55113-0013 Account #: 0000705653</b>	11 U.S.C. § 522(d)(5)	46.00	46.00
<b>Checking Accounts - First National Bank; 101 1st St. S., Montevideo, MN 56265 Account number: 805-140</b>	11 U.S.C. § 522(d)(5)	982.90	982.90
<b>Household Goods and Furnishings</b>			
Usual Household Goods and Furnishings	11 U.S.C. § 522(d)(3)	5,000.00	5,000.00
<b>Books, Pictures and Other Art Objects; Collectibles</b>			
Pictures, Art, Collectibles	11 U.S.C. § 522(d)(5)	1,000.00	1,000.00
<b>Wearing Apparel</b>			
Usual wearing apparel	11 U.S.C. § 522(d)(5)	1,000.00	1,000.00
<b>Furs and Jewelry</b>			
Wedding Rings	11 U.S.C. § 522(d)(4)	2,000.00	2,000.00
<b>Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans</b>			
401K Plan Equitable; Equi-Vest Prcessing Office PO BOX 2996, New York, NY 10116-2996	11 U.S.C. § 522(d)(10)(E)	1,897.01	1,897.01
<b>TRA (Teachers Retirement Account) - Kathy ERISA Qualified - not property of the estate - Section 541(c)(2) 60 Empire Drive Suite 400, St.Paul, MN 55103-4000</b>	11 U.S.C. § 522(d)(10)(E)	30,000.00	30,000.00

1 continuation sheets attached to Schedule of Property Claimed as Exempt

In re **Paul Michael Kinsley,  
Kathleen Linda Kinsley**

Case No. \_\_\_\_\_

Debtors

**SCHEDULE C. PROPERTY CLAIMED AS EXEMPT - AMENDED**  
**(Continuation Sheet)**

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemption
<u>Other Liquidated Debts Owing Debtor Including Tax Refund</u>			
2003 Tax Refund	11 U.S.C. § 522(d)(5)	7,000.00	7,000.00
<u>Automobiles, Trucks, Trailers, and Other Vehicles</u>			
<u>Chevy S-10 Pickup Truck 1987; VIN #</u>	<u>11 U.S.C. § 522(d)(2)</u>	<u>1,000.00</u>	<u>500.00</u>
<u>1GCCT14R6H2191152; 96,000 miles on</u>			
<u>odometer</u>			
Riding Lawn Mower	11 U.S.C. § 522(d)(2)	300.00	300.00



UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA

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PAUL MICHAEL KINSLEY  
KATHLEEN LINDA KINSLEY

Bky Case No. 04-32609  
Chapter 7

Debtors.

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**UNSWORN CERTIFICATE OF SERVICE**

I, Jennifer M. Albright, declare under penalty of perjury that on July 22, 2004, I mailed copies of the following:

Notice of Hearing and Motion Objecting to Claimed Exemptions and Proposed Order

by United States Mail, postage pre-paid, to each entity named below at the address stated below:

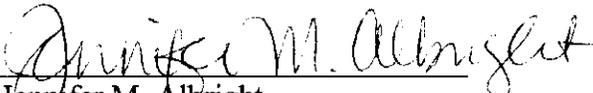
Paul M. Kinsley  
1660 371<sup>st</sup> Street  
Boyd, MN 56218

Kathleen L. Kinsley  
116 S. 4<sup>th</sup> Street  
Montevideo, MN 56265

Douglas D. Kluver  
221 N. 1<sup>st</sup> Street  
P.O. Box 656  
Montevideo, MN 56265

UNITED STATES TRUSTEE  
1015 U S COURTHOUSE  
300 SOUTH 4<sup>TH</sup> STREET  
MINNEAPOLIS MN 55415

Executed on July 22, 2004.

Signed: 

Jennifer M. Albright  
DUNLAP & SEEGER, P.A.  
P O BOX 549  
ROCHESTER MN 55903-0549  
(507) 288-9111

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Case No.: BKY 04-32609

PAUL MICHAEL KINSLEY  
KATHLEEN LINDA KINSLEY,

Debtors. Chapter 7 Case

**ORDER DENYING CLAIMED EXEMPTIONS**

This matter came before the Court on the 2 day of September, 2004, on the Motion of the Trustee Objecting to Claimed Exemptions. Appearances, if any, were noted of record. Based on the file, proceedings and record in this matter:

IT IS HEREBY ORDERED that:

The Trustee's Motion Objecting to Claimed Exemptions is sustained, and accordingly:

1. The debtors' claimed exemption of 401K Plan Equitable and TRA is denied.
2. The debtors' claimed exemption of Riding Lawn Mower is denied.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Dennis D. O'Brien  
United States Bankruptcy Judge