

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF: )  
 )  
GERALD F. JORASH, ) CASE NO. BK98-81340  
 )  
DEBTOR ) CH. 7

MEMORANDUM

Hearing was held on October 1, 1998, on the trustee's Objection to Claimed Exemptions. Appearances: Wayne Griffin for the debtor and Philip Kelly as trustee. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B).

Background

Debtor Gerald Jorash was injured in the course of his employment during 1996. In October of 1997, the debtor received his share of a Workers' Compensation settlement in the amount of \$37,000.00. In November of 1997, the debtor invested approximately \$20,000.00 of the settlement monies as a down payment on a modest residence valued at \$32,000.00. The debtor subsequently filed bankruptcy in May of 1998, and claimed the equity in the residence as exempt. The trustee objected. The debtor maintains that (1) the trustee's objection to claimed exemptions was untimely, and (2) that the equity in the residence is exempt because it was purchased with exempt Workers' Compensation settlement monies.

The issue of the extent of the exemption is a question of law.

Decision

The trustee's objection to the claimed exemption is overruled.

Discussion

A. Timeliness of the Objection to Claimed Exemptions

The Bankruptcy Code, at 11 U.S.C. § 522(1), provides that: "[u]nless a party in interest objects, the property claimed as exempt on such list is exempt." Federal Bankruptcy

Rule 4003(b) gives the trustee and creditors thirty days from the initial creditors' meeting to object. In Taylor v. Freeland & Kronz, 503 U.S. 638, 643 (1992) the United States Supreme Court stated that "[b]y negative implication, the Rule indicates that creditors may not object after thirty days 'unless, within such period, further time is granted by the court.'" Failure to object in a timely manner operates as an absolute bar. Taylor, 503 U.S. at 642-44. The Court stated that it was immaterial whether the debtor had a colorable basis for claiming the exemption, reasoning that:

"Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality. . . . If [the trustee] did not know the value of the potential proceeds of the lawsuit, he could have sought a hearing on the issue, see Rule 4003(c), or he could have asked the Bankruptcy Court for an extension of time to object, see Rule 4003(b). Having done neither, [the trustee] cannot now seek to deprive [the debtor] and respondents of the exemption."

Id. at 643-44.

In this case, the objection on record was filed by the trustee more than 40 days after the first meeting of creditors without first obtaining an extension of the time to object. The trustee, however, argues that his original objection was filed in a timely manner, but misplaced in the office of the Clerk of the Bankruptcy Court. In support of this assertion, the trustee has supplied affidavit evidence that his secretary did timely mail the original objection to the Clerk of the Bankruptcy Court, and that all other parties on the mailing list received the objection in a timely manner.

The evidence that the objection was timely mailed does not directly lead to the conclusion that it was timely received by the Clerk, and then misplaced.

Although the Eighth Circuit has not considered the question of whether an objection once mailed is presumed to have been delivered, thus constituting filing, the Bankruptcy Appellate Panel (BAP) for the Eighth Circuit did recently consider time frames allowed by the Code and Rules in a slightly different context in Stedman v. Office of Personnel Management (In re Stedman), No. 98-6078, slip op. (8th Cir.

November 20, 1998). In Stedman, the debtor filed a notice of appeal twelve days after entry of a judgment, despite the fact that Fed. Bankr. R. 8002 requires the filing of such an appeal within ten days. In rejecting the debtor's assertion that Fed. R. Civ. P. 5 and 6(e), which would have added three days for mail, the Bankruptcy Appellate Panel emphasized that Fed. Bankr. R. 8008 expressly states that filing is not timely "unless the papers are received by the clerk within the time fixed for filing. . . ." In response to the debtor's request for an enlargement of time pursuant to Fed. R. Civ. P. 6(b), the BAP noted that only the bankruptcy court had the discretion to grant an extension of time for filing, and then only to the extent specified in the Rules. Once the discretionary period has passed, there simply is no authority to grant the requested extension. Stedman.

The Third Circuit reached a similar conclusion regarding the mailbox presumption in the context of filing of proofs of claim in Chrysler Motors Corp. v. Schneiderman, 940 F.2d 911 (3rd Cir. 1991). The court concluded that "[a] mailing in itself is not a filing." Schneiderman, 940 F.2d at 914. But see In re Nimz, 505 F.2d 177 (7th Cir. 1974) (finding, under the Bankruptcy Act and Rules, that the mailbox rule did apply to claims filings). As part of its rationale, the Third Circuit noted that Fed. R. Bankr. P. 5005(a) states that proofs of claims "shall be filed with the clerk" and that Fed. R. Bankr. P. 9006(e) provides that service of certain papers by mail is considered complete on mailing. The wording of these rules thus shows that the drafters of the Rules knew how to distinguish between mailing and filing. Id. The court also noted that parties facing a filing deadline can easily protect themselves with minimal expense by filing manually at the Clerk's office or by use of certified mail, return receipt requested.

Analogous considerations are applicable in this case. Federal Rule of Bankruptcy Procedure 4003(b) permits the "filing" of an objection without reference to such action being complete on mailing. To ensure that an objection has in fact been filed, the party facing a filing deadline can protect itself by requesting a file stamped copy to prove that the thirty-day time limit for filing was met. Application of the time bar of the rule is, admittedly, harsh when, as is claimed in this case, the objection may have been delivered, but misplaced in the Clerk's office. However, application of the rule as a bar to a late-filed objection is fully in

keeping with the Supreme Court guidance provided in Taylor, supra.

The evidence of timely mailing is not sufficient to overcome the fact that no objection to exemption was filed within thirty days of the first meeting of creditors as is required by Fed. R. Bankr. P. 4003(b). The objection must, therefore, be overruled

B. Workers' Compensation Exemption

Even if the trustee's mailed objection actually reached the Clerk and was misplaced, the trustee's objection is overruled on the merits.

Section 48-149 of the Nebraska Revised Statutes provides that:

No proceeds or interest thereon from payments or lump-sum settlements under the Nebraska Workers' Compensation Act or law of another state which provides compensation and benefits for employees sustaining job-related injuries shall be assignable, subject to attachment or garnishment, or held liable in any way for any debts, except (1) as provided in section 48-108 and (2) payments under the act or any law of another state which provides compensation and benefits for employees sustaining job-related injuries shall be subject to income withholding under the Income Withholding for Child Support Act, administrative attachment and bank matching pursuant to sections 43-3328 to 43-3339, and garnishment by a county attorney or authorized attorney pursuant to section 43-512.03 or garnishment for child support as defined in section 43-1705 by an obligee as defined in section 43-1713.

Neb.Rev.Stat. § 48-149.

The statute contains no express language indicating whether the exemption extends solely to the exempt funds, or also to property purchased therewith. The Nebraska appellate courts have not yet had occasion to decide this issue.

However, one point is clear: exemption laws are to be construed liberally to effectuate the purpose for which they were adopted. This longstanding rule of construction dates back to the 1800's. See State ex rel. Stevens, 43 N.W. 361 (Neb. 1889); Bender et al. v. Bame, 59 N.W. 105 (Neb. 1894) and has been reaffirmed as recently as 1968 in In re Grassman's Estate, 183 Neb. 147 (Neb. 1968). See also Matter of Welborne, 63 B.R. 23, 26 (Bankr. D. Neb. 1986). Applying this rule in the context of a Workers' Compensation case, the Nebraska Supreme Court recently stated that "[I]t is black-letter, axiomatic law that the Nebraska Workers' Compensation Act be liberally construed to accomplish its beneficent purposes." Anderson v. Omaha Public School District, 254 Neb. 1007, 1012 (Neb. 1998) (citations omitted) (permitting suspension of payments for permanent partial disability while employee received temporary total disability, rather than reducing employee's temporary total disability payment).

Workers' Compensation is clearly intended to provide injured or disabled employees with the means to purchase the necessities of life which a paycheck would ordinarily cover in order that these individuals do not become destitute. See generally 1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 2.20, at 1-7 (1998); Jay Zitter, Annotation, Validity, Construction, and Effect of Statutory Exemptions of Proceeds of Workers' Compensation Awards, 48 A.L.R. 5th 473 (1997). Common sense dictates that such necessities would likely first include food and shelter.

The trustee bases his Objection to Claimed Exemptions on the fact that the asset (the Workers' Compensation monies) changed character from cash or cash equivalents to real property. The trustee acknowledges that the debtor could use the Workers' Compensation monies to obtain housing by paying rent. However, nothing in the statute requires an injured employee to obtain housing in this manner or limits the use of the exempt funds. If a Workers' Compensation recipient were required to use such funds for rent instead of for purchase of housing, in a very few years a recipient would be without housing and without Workers' Compensation monies to pay further rent. Such a result would be patently contrary to the avowed purposes of the Workers' Compensation Act. See generally Larson & Larson, supra.

This conclusion is consistent with recent decisions in other jurisdictions that have considered the issue of property purchased with Workers' Compensation monies. In In re Nelson, 179 B.R. 811 (Bankr. W.D. Va. 1994), the court concluded that a mobile home and lot which the debtor had purchased with Workers' Compensation benefits were exempt. The statute at issue was very similar to the Nebraska statute exempting Workers' Compensation monies. The statute stated in pertinent part that:

"[n]o claims for compensation under this title shall be assignable. All compensation and claims therefor shall be exempt from all claims of creditors, even if the compensation is used for purchase of shares in a credit union, or deposited into an account for the financial institution or other organization accepting deposits and is thereby commingled with other funds. . . ."

Va. Code § 65.2-531.

After noting that the statute did not state that once the funds were invested in other properties they lost their exempt status and the court in Nelson concluded that "it would be useless to exempt workmen's compensation benefits received by an employee who is injured . . . [if] that employee could not invest those funds in other properties without losing his exemption status." Nelson, 179 B.R. at 812.

In In re Williams, 171 B.R. 451 (D.N.H. 1994), the district court, reversing a decision of the bankruptcy court, construed an exemption statute virtually identical to the one at issue in the instant case. The New Hampshire Workers' Compensation Law provides in pertinent part that:

"Claims for compensation under this chapter shall not be assignable, and the compensation and any claim for compensation shall be exempt from all claims of creditors except as provided in this section."

N.H.Rev.Stat. Ann. Ch. 281-A:52 (1993).

Having noted that benefits paid under the New Hampshire Workers' Compensation Law are meant to compensate for loss of

earning capacity, and that such payments represent, or substitute for, future earnings which would have been available to the injured worker, the court concluded that the term "compensation" necessarily included those benefits even after deposited into an account. The court then reasoned that there was "no basis upon which to distinguish a bank deposit comprised of workers' compensation benefits from a car acquired with compensation benefits." The court stated that said benefits "are expected to be put to useful purposes, such as buying food, clothing, shelter, transportation, and other necessities for an injured employee and his or her family." Williams, 171 B.R. at 454.

In denying the trustee's Objection to Claimed Exemptions, I am not unmindful of In re Burchard, 214 B.R. 494 (Bankr. D. Neb. 1997), wherein my associate, Judge John C. Minahan, concluded that Section 25-1563.02 of the Nebraska Revised Statutes, providing for exemption for the proceeds of a personal injury claim, does not extend to vehicles acquired with the exempt proceeds. I believe, however, that the exemption contained in Section 25-1563.02 is different from the exemption pertaining to Workers' Compensation benefits contained in Section 48-149. As discussed above, the Nebraska Workers' Compensation Act is designed to ensure that injured employees do not become destitute, without food or shelter. This purpose differs entirely from the purpose of sums awarded tort victims ostensibly to make them "whole" again. See Larson & Larson, supra §2.00, at 1-5.

The exemption of Workers' Compensation benefits in Section 49-149 of the Nebraska Statutes extends to the traceable use of such funds to an investment in a home for the Workers' Compensation recipient. The trustee's objection is overruled.

Separate journal entry to be filed.

DATED: December 3, 1998

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:

05 GRIFFIN, WAYNE

51 KELLY, PHILIP

Copies mailed by the Court to:

United States Trustee

Movant (\*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

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FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:	)	
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GERALD F. JORASH,	)	CASE NO. BK98-81340
	)	A
<u>DEBTOR(S)</u>	)	
	)	CH. 7
	)	Filing No.
Plaintiff(s)	)	
vs.	)	<u>JOURNAL ENTRY</u>
	)	
	)	
	)	DATE: December 3, 1998
<u>Defendant(s)</u>	)	HEARING DATE: October 1, 1998

Before a United States Bankruptcy Judge for the District of Nebraska regarding Trustee's Objection to Claimed Exemptions.

APPEARANCES

Wayne Griffin, Attorney for the debtor  
Philip Kelly, Trustee

IT IS ORDERED:

The trustee's objection to claimed exemptions is overruled. See memorandum entered this date.

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:

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