

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
) CASE NO. BK03-41413
JOEL C. PRIEST,)
) CH. 7
Debtor(s).)
) Filing Nos. 4, 9

MEMORANDUM

Hearing was held on July 23, 2003 in Lincoln, Nebraska on the Trustee's Objection to Exemptions Under Neb. Rev. Stat. § 25-1563.01, Filing No. 4, and the Debtor's Resistance, Filing No. 9. Appearances: David P. Kyker appeared for the debtor, and Joseph H. Badami appeared as Chapter 7 Trustee. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B).

Issue

This debtor is a 32-year-old single person with no dependants. His net monthly income is \$1,848, and his net monthly expenses are approximately \$1,800. Those expenses include payment of \$248 per month for a motor vehicle in which he has several thousand dollars of equity.

Mr. Priest, by virtue of the Chapter 7 discharge, will eliminate approximately \$49,000 in credit card debt.

He has a "Roth IRA" with \$3,377.19 in the account on the petition date. The Chapter 7 Trustee has objected to his claim of exemption for the IRA under Neb. Rev. Stat. § 25-1563.01 on the basis that the funds in the IRA are not reasonably necessary for support of the debtor.

That statutory section provides:

In bankruptcy and in the collection of a money judgment, the following benefits shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors: To the extent reasonably necessary for the support of the debtor and any dependent of the debtor, an interest held under a stock bonus, pension, profit-sharing, or similar plan or contract payable on account of illness, disability, death, age, or length of service

Discussion

The Nebraska Supreme Court in Novak v. Novak, 513 N.W.2d 303 (Neb. 1994) has determined

that accounts such as the IRA in question are exempt, but only if the funds in such an IRA are reasonably necessary for the support of the debtor or his dependants. See also In re Matthew & Karla Bashara, Neb. Bkr. 03:82, Case No. BK02-83504 (Bankr. D. Neb. May 19, 2003).

Neither the statute in question nor the Novak case provides any guidance required to make a determination of whether the funds in an IRA are necessary for the support of the debtor or dependents. Recently, in the matter of Allan & Janice Reetz, Case No. BK01-43159 (July 14, 2003), this court determined, after an analysis of the financial situation of the debtors and age of the debtors, that certain funds in one of their IRA accounts did qualify as exempt under the “necessary for support” prong of the statute. In the Reetz case, the debtors were approximately 50 years old, had lost their claim of exemption to one IRA account, and presented evidence at trial concerning their working-life expectancy, the amount they would have on hand at the end of their work life, and the amount that would be necessary for their support from age 65 on.

In this case, the debtor has thirty-three years, or longer, until he reaches full retirement age for Social Security. He has no dependents and no debt, other than a debt of less than \$2,000 on his motor vehicle. He has a regular monthly income, from which Social Security taxes are withheld. The amount in the account on the petition date is relatively small. There is no evidence that he regularly makes contributions to the IRA account, nor is there evidence of the rate at which the IRA account is increasing by virtue of interest earnings.

It is clear that the debtor does not need the funds in the IRA account at this time. His wages exceed his monthly expenses. He has no debt, other than the secured car debt. It would be pure speculation to attempt to determine whether the funds represented by the IRA account will be necessary for his support more than thirty-three years from now at the normal retirement age.

Conclusion

Based upon his age, his current financial circumstances, and assuming his retirement will not occur until age 65, at the earliest, I find that the funds in the IRA account are not necessary for his support and therefore are not exempt.

The debtor is ordered to turn over the funds in the IRA account to the Chapter 7 Trustee for administration.

Separate judgment to be entered.

DATED this 29th day of July, 2003.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
David P. Kyker
*Joseph H. Badami
U.S. Trustee

Movant () is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.

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JUDGMENT

Hearing was held on July 23, 2003 in Lincoln, Nebraska on the Trustee's Objection to Exemptions Under Neb. Rev. Stat. § 25-1563.01, Filing No. 4, and the Debtor's Resistance, Filing No. 9. Appearances: David P. Kyker appeared for the debtor, and Joseph H. Badami appeared as Chapter 7 Trustee.

IT IS ORDERED that, in accordance with the Memorandum entered this date, the objection of the trustee, Filing No. 4, is sustained. The debtor is ordered to turn over to the trustee the funds in the IRA account for administration.

DATED this 29th day of July, 2003.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
David P. Kyker
*Joseph H. Badami
U.S. Trustee

Movant () is responsible for giving notice of this judgment to all other parties not listed above if required by rule or statute.