

carefully reviewed the matter and has concluded no further argument or hearing is necessary to clarify the controversy. The court, however, has determined a written memorandum of decision and order, rather than a telephonic ruling and minute order, are necessary to clarify existing caselaw.

FACTUAL BACKGROUND

Paragraphs one through three of the debtors' objection to trustee's objection to debtors' claim of exemption state:

1. On or about April 20, 1982, Margie Mitchell-Midkiff's husband, John Mitchell, Jr., was killed in a grain elevator explosion in Council Bluffs, Iowa. At the time of the explosion, Margie and John had a minor daughter, Sara.

2. On February 25, 1985 the wrongful death and consortium claims of the surviving spouse and minor child were settled as set forth in the settlement agreement, which is ... marked Exhibit A. Under the terms of the settlement agreement, Margie Mitchell-Midkiff received monthly payments of \$1,070.00 beginning on April 1, 1985. These payments are guaranteed for a period of 20 years. There are no provisions for lump sum distributions and the debtor has no discretion in the investment or management thereof. These payments are continuing and constitute a resent interest.

3. Margie Mitchell subsequently married George Midkiff. On June 1, 1993, Margie Mitchell-Midkiff and her husband George sought protection of the Bankruptcy Court under Chapter 7. As part of the above filing the debtors claimed the right to the payments described above as exempt assets under Iowa Code 627.6(8)(e).

STATEMENT OF THE ISSUE

Is the structured settlement, resulting from a wrongful death action, a "similar plan or contract" as contemplated by Iowa Code section 627. 6 (8) (e)?

DISCUSSION

As permitted by 11 U.S.C. section 522(b)(1), Iowa opted out of

the federal exemptions set forth in section 522(d) by operation of Iowa Code section 627.10. It is a well settled proposition that Iowa's exemption statute must be liberally construed. Frudden Lumber Co. v. Clifton, 183 N.W.2d 201 (Iowa 1971). That does not mean a court may depart substantially from the express language of the exemption statute or extend the legislative grant. Matter of Hahn, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980), citing Wertz v. Hale, 212 Iowa 294, 234 N.W. 534 (1931) and Iowa Methodist Hospital v. Long, 234 Iowa 843, 12 N.W.2d 171 (1944).

Pursuant to Federal Rule 4003(c) of Bankruptcy Procedure, the trustee carries the burden of proving the debtors have not properly claimed the exemption in issue.

Iowa Code section 627.6(8)(e) provides:

A debtor who is a resident of this state may hold exempt from execution the following property:

.....

8. The debtor's rights in:

e. A payment or a portion of a payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless the payment or a portion of the payment results from contributions to the plan or contract by the debtor within one year prior to the filing of a bankruptcy petition, which contributions are above the normal and customary contributions under the plan or contract, in which case the portion of the payment attributable to the contributions above the normal and customary rate is not exempt.

Matter of Pettit, 55 B.R. 394 (Bankr. S.D. Iowa 1985), aff'd 57 B.R. 362 (S.D. Iowa 1985), establishes the following four part test to determine whether a plan or a contract is similar to a

pension or an annuity as required by section 627.6(8)(e):

A formal plan or fund established for the benefit of the debtor, usually as part of a relationship with an employer or employee organization.

The benefits of the plan or fund are of a nature "akin to future earnings" of the debtor and intended as retirement income or at least income deferred during the debtor's employment to provide future support for the debtor.

Access and control of the plan or fund in the hands of someone other than the debtor with strong limitations on withdrawal or distribution expressed in the formal plan or fund for the purpose of providing retirement or deferred income.

That payment under the plan or contract is to be on account of illness, disability, death, age, or length of service.

Id. at 398.

The settlement agreement appears to meet the first requirement. Though the settlement agreement is not part of a relationship with an employer or employee organization, it is a formal contract. It does contain terms that benefit Margie Mitchell-Midkiff. Section 3(b) of the document states:

To Margie Shamblen Mitchell the sum of \$1,070.00 on the first day of each and every month beginning April 1, 1985 and continuing for the life of Margie Shamblen Mitchell. The aforesaid payments are guaranteed for a period of twenty (20) years; thus, should Margie Shamblen Mitchell die before March 1, 2005, then the payments set forth herein shall be paid, as they become due, to her estate through and including the payment due March 1, 2005. Should Margie Shamblen Mitchell die after March 1, 2005, the payments set forth herein shall then cease.

Ex. A at 4.

That the settlement agreement is not related to employment makes it difficult for Margie Mitchell-Midkiff to establish she is

receiving benefits akin to future earnings.¹ The allegation the payments provide a future income stream to compensate for the loss of income her deceased husband would have earned is not supported by the record. The settlement agreement is silent regarding any intention to replace any income stream the deceased spouse may have provided. The settlement agreement, dated February 25, 1985, did provide instead that the monthly payments of \$1,070.00 would commence on April 1, 1985 and would not be contingent on Margie Mitchell-Midkiff's employment status. The payments are not in the nature of retirement income or deferred compensation.

With respect to benefits being of a nature akin to future earnings, this case is distinguishable from Matter of Pebbles, No. 87-01454-C (Bankr. S.D. Iowa filed May 31, 1988). In that case this court found monthly payments and periodic lump sum payments, made pursuant to settlement of a liability claim, were based on the debtor's disability and were intended to supplement his income.

The Pebbles decision relied, in part, on Matter of Wommack, 80

¹ Despite the characterization on Schedule C of the exemption claim being an annuity from a workers' compensation settlement, section 4 of the settlement agreement clearly indicates that is not the case. It states:

Defendants and additional releasees acknowledge that this Settlement Agreement is exclusive of any monetary [sic] recovery realized by Plaintiffs to the effective date of this Settlement Agreement pursuant to statutory provisions of the Iowa Workers' Compensation Act, and Defendants agree to defend, indemnify and hold Plaintiffs harmless in the defense of any claims or liens filed against any sums of monies paid to Plaintiffs pursuant to the terms of this settlement.

Ex. A at 4.

B.R. 578 (Bankr. M.D. Ga. 1987) that analyzed a wrongful death settlement under a Georgia exemption statute similar to section 627.6(8)(e). The trustee in Wommach argued that funds originating from the structured settlement were not equivalent to future wages. The court, however, observed "the test for exemptibility focuses on the terms and restrictions governing the administration of the plan or contract, rather than the source of the funds in the account." Id. at 580. In addition to finding there were significant limitations on debtor's control of the annuity, the court concluded the annuity was not set up based on the death of the debtor's son, but rather in consideration of the debtor being in his retirement years.

With respect to access and control, the trustee acknowledges Margie Mitchell-Midkiff does not have control of the payments now but argues she exercised that control when she and her attorney mandated the terms of the settlement. In support of this contention, the trustee points to the following portion of section 6 of the settlement agreement:

Defendants and their insurers herein do not represent or agree as to the appropriateness of the annuity or periodic payment programs specified herein and specifically state that said annuity programs and designated assignee, First Executive Corporation, a Delaware corporation, were determined solely by Plaintiffs herein and their attorney, Lyle A. Rodenburg, without consultation or agreement of said Defendants or their insurers.

Ex. A at 5.

The debtors maintain First Executive Corporation, not Margie Mitchell-Midkiff, has access to and control over the funds. Technically the settlement agreement supports their position

because it gives no discretion regarding investment or management to Margie Mitchell-Midkiff and it does not provide for any lump sum distributions.

To satisfy the fourth prong of the Pettit test the payments under this settlement agreement must be on account of the death of John Mitchell, Jr. The debtors contend the payments were "triggered by" death. The trustee argues the payments merely arose out of the death because that event "triggered" a wrongful death claim and the resultant settlement agreement that amounted to an investment option for Margie Mitchell-Midkiff.

When this court wrote the Pebbles decision in 1988, the term "on account of" in section 627.6(8)(e) was equated with "based on," not with "triggered by." In re McCabe, 74 B.R. 119 (Bankr. N.D. Iowa 1986) and In re Gilbert 74 B.R. 1(Bankr. N.D. Iowa 1985). Accordingly, the fact no plan or contract, containing a triggering event, was in existence prior to the event causing the debtor's disability did not prevent a finding the structured settlement was based on disability. Changes in controlling caselaw and statutory language mandate a different analysis today.

That is, in In re Huebner, 141 B.R. 405 (N.D. Iowa 1992), aff'd 986 F.2d 1222 (8th Cir. 1993), the district court analyzed the same statutory term and concluded:

This court finds that "on account of" is more appropriately interpreted to mean "triggered by." The word "age" cannot be read in isolation, as the Gilbert court does. The statute reads "on account of illness, disability, death, age or length of service." The other terms in the list, particularly illness, disability, and death, connote a "triggering" event for the payment. Under a pension plan, benefit payments are generally

triggered by reaching a specified age or specified length of service. Although the amount of each payment may be based on age or length of service, the court finds that the words "on account of" are more appropriately read as "triggered by."

Id. at 409. Hence, even though the district and appellate courts' opinions otherwise focus on what is the third element in the Pettit test, the district court's interpretation of "on account of" seemingly excludes structured settlements resulting from a cause of action based on any of the events listed in the statute—regardless of any access and control terms contained in those settlements.

About the time the district court rendered its decision in Huebner, the Iowa legislature amended subsection (8)(e) of section 627.6 to its present wording.² The version of the subsection under consideration in Huebner, Pebbles, McCabe, and Gilbert exempted a debtor's rights in:

A payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. (emphasis added to deleted language).³

As noted earlier, present subsection (8)(e) exempts a debtor's rights in:

A payment or a portion of a payment under a pension, annuity, or similar plan or contract on account of

² The Governor signed the Act which amended Iowa Code section 627.6(8)(e) on April 13 1992 and the amendment was retroactive to January 1, 1992 and applied to all bankruptcy matters pending on and after that date. 1992 Iowa Acts, ch. 1061, § 1, 2.

³ The provision was cited as Iowa Code section 627.6(9)(e) in In re McCabe, 74 B.R. 119 (Bankr. N.D. Iowa 1986) and in In re Gilbert, 74 B.R. 1 (Bankr. N.D. Iowa 1985). In 1986 the exemption provision was renumbered to 627.6(8)(e). 1986 Iowa Acts, ch. 1216, § 4-6.

illness, disability, death, age, or length of service, unless the Payment or a portion of the payment results from contributions to the plan or contract by the debtor within one year prior to the filing of a bankruptcy petition, which contributions are above the normal and customary contributions under the plan or contract, in which case the portion of the payment attributable to the contributions above the normal and customary rate is not exempt. (emphasis added to inserted language).

The revised statute seemingly supports the "triggered by" interpretation.⁴ Accordingly, a plan or contract must be in existence and a payment or portion of a payment must be triggered by an event contemplated by that plan or contract. The language addressing customary contributions also supports the concept of the plan being in existence before the event occurs.

It is clear that the settlement agreement in this case was not in existence before John Mitchell, Jr., died. Since the agreement was not in place, there was no triggering event that could have resulted in the debtor's right to receive payments under the agreement. The death of John Mitchell, Jr., was only an event forming the basis for a wrongful death claim that resulted in a structured settlement.

Finally, the trustee contends Margie Mitchell-Midkiff does not have an interest in the annuity. She relies on the following portion of section 5 of the settlement agreement:

To assure the ready availability to the Defendants and their liability insurers or their assignee, should an

⁴ The district court in Huebner noted the amended subsection but did not address it in the text of its April 15, 1992 opinion because the court found it would not affect its analysis. In re Huebner, 141 B.R. 405, 408 n.1 (N.D. Iowa 1992). The court of appeals likewise did not address the amended subsection in its February 26, 1993 decision. In re Huebner, 986 F.2d 1222 (8th Cir. 1993).

assignment be made pursuant to paragraph 2 hereof, of funds payable under paragraphs 3 (a) , (b) , (c) and (d) of this Agreement; to serve as a medium for payment of said funds; the Defendants, and their liability insurers or their assignmee [sic], should such an assignment be made, will, promptly, upon the execution of this Settlement Agreement, purchase an annuity as sole owner and sole beneficiary. The entire income of the annuity will be included in the income of the Defendants and their liability insurers or their assignee should such an assignment be made. The Plaintiffs shall have no legal or equitable interest, vested or contingent, in the annuity and their rights against the Defendants and their liability insurers, or their assignee, should such an assignment be made, and against the annuity shall be solely those of a general creditor.

Ex. A at 4-5.

The debtors do not appear to contest this point, and the settlement agreement appears to support the trustee's argument. Parenthetically, it should be noted that debtors in this district no longer can rely on In re Pettit, 57 B.R. 362, 363 (S.D. Iowa 1985) to exempt all the assets in a plan or contract. That is, the court of appeals in Huebner pointed out the Iowa Legislature limited the section 627.6(8)(e) exemption to rights in a payment or a portion of a payment. 986 F.2d at 1224. The statutory exemption does not encompass the undistributed corpus of the plan or contract.

CONCLUSION

WHEREFORE, based on the foregoing discussion, the court finds the settlement agreement is not a "similar plan or contract" as contemplated by Iowa Code section 627.6(8)(e). The court further finds Margie Mitchell-Midkiff does not have an interest in an annuity but only has rights in a nonexempt payment under the settlement agreement.

ORDER

THEREFORE, the trustee's objection to debtors' claim of exemption is sustained.

Dated this 22nd day of April, 1994.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

IN RE GEORGE L. MIDKIFF,)
MARGIE JOYCE MITCHELL-MIDKIFF,)
)
) NO. 1-94-CV-80024
) BANKRUPTCY NO. 93-1444-WJ-7
)
GEORGE L. MIDKIFF and)
MARGIE J. MIDKIFF,)
)
) ORDER AFFIRMING
) BANKRUPTCY COURT DECISION
)
) vs.)
)
DEBORAH L. PETERSEN,)
Chapter 7 Trustee,)
)
) Appellee.)
)

Appellants George L. Midkiff and Margie J. Midkiff, the debtors in this bankruptcy case, appeal from the bankruptcy court's ruling denying exempt status for payments Margie Mitchell-Midkiff receives from a lawsuit settlement. The bankruptcy court found the payments were not exempt under Iowa Code section 627.6(8)(e) (1993). The court concludes that the bankruptcy court made no erroneous findings of fact and committed no error of law. The court affirms the bankruptcy court.

BACKGROUND

Margie Mitchell-Midkiff's first husband, John Mitchell, was killed in a grain elevator explosion in Council Bluffs, Iowa. She asserts claims for damages for the death against the owner of the grain elevator and other persons, apparently officers of the

owner of the elevator. She also asserted claims for consortium as surviving spouse and for her minor child's loss of its father. The record from the bankruptcy court includes as an exhibit the written "SETTLEMENT AGREEMENT." That document describes and fixes the terms of the structured settlement. It is self-explanatory.

In accordance with the terms of the settlement, Margie Mitchell-Midkiff and her daughter effectively dismissed their lawsuit and all their claims against the owner of the grain elevator, its officers, and their liability insurers. The persons released apparently paid \$850,000 to First Executive Corporation, and that corporation agreed to make periodic payments to Margie Mitchell-Midkiff, to her daughter, and to their lawyer. The only payments here at issue are monthly payments in the amount of \$1,070 beginning on April 1, 1985, that are to be paid to Margie Mitchell-Mitkiff for a guaranteed period of twenty years.

After the agreement was consummated, Margie Mitchell-Mitkiff married George Midkiff, and on June 1, 1993, they sought bankruptcy protection under Chapter 7 of the Bankruptcy Code. The Midkiffs claimed the right to the payments as exempt assets pursuant to Iowa Code section 627.6(8)(e). The appellee, bankruptcy trustee Debra L. Peterson, objected to the claim of exemption. Chief Bankruptcy Judge Lee M. Jackwig held a hearing, received briefs, and then entered the final decision in favor of the trustee on April 22, 1994.

DISCUSSION

Iowa Code section 627.6(8)(e), the statute that is here controlling, exempts a debtor's rights in:

A payment or portion of a payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless the payment or a portion of the payment results from contributions to the plan or contract by the debtor within one year prior to the filing of a bankruptcy petition, which contributions are above the normal and customary contributions under the plan or contract, in which case the portion of the payment attributable to the contributions above the normal and customary rate is not exempt.

This statute is very similar to the predecessor statute that was interpreted in several cases relied upon by the bankruptcy court in its ruling. In Matter of Pettie, 55 B.R. 394 (Bankr. S.D. Iowa 1985), aff'd, 57 B.R. 362 (S.D. Iowa 1985), the district court examined Iowa Code section 627.6(9)(e) (1983)¹ and established a four-part test to determine whether a plan or a contract is "similar" to a pension or an annuity. A plan or contract may meet the test of similarity if it has the following characteristics:

A formal plan or fund established for the benefit of the debtor, usually as part of a relationship with an employer or employee organization.

The benefits of the plan or fund are of a nature "akin to future earnings" of the debtor and intended as retirement income or at least income deferred during the debtor's employment to provide future support for the debtor.

Access and control of the plan or fund in the hands of someone other than the debtor with strong limitations on withdrawal or distribution expressed in the formal plan

¹Iowa Code § 627.6(9)(e) (1983) is not Iowa Code § 627.6(8)(3) (1993).

or fund for the purpose of providing retirement or deferred income.

That payment under the plan or contract is to be on account of illness, disability, death, age or length of service.

Id. at 398.

The settlement agreement in this case does not satisfy either the statutory language or the four-part test set forth in Pettit. For the reasons explained by the bankruptcy court in its decision in this case, the benefits payable to Margie Mitchell-Midkiff did not arise from her own future earnings or loss of earnings and are not akin to future earnings of her former husband or herself. To the contrary, the benefits resulted from a compromise settlement of what appear to be workers' compensation and wrongful death claims against the former husband's employer, its managers, and its insurers, made by the debtor and her daughter by reason of Mitchell's death. The payments she receives are not the type of deferred income payments contemplated by the Iowa statute here relied upon by the debtors. Payments under this settlement agreement were not by reason of this debtor's illness, disability, death, age, or length of service. They simply resulted from the method the claimants selected to structure their settlement of the claims arising from Mitchell's untimely accidental death.

When the district court reviews the decisions of the bankruptcy court, the district court accepts findings of fact that are not clearly erroneous and is obligated only to correct errors of law. United States v. United States Gypsum Co., 333 U.S. 364,

395 (1948). The appellants have entirely failed to identify any erroneous findings of fact or errors of law in the bankruptcy court's decision. More extended discussion is unnecessary because this court agrees entirely with the well-reasoned written decision of the bankruptcy court and its application of the law to the undisputed facts in this case.

The clerk of court shall enter judgment affirming the decision of the bankruptcy court and dismissing appellants' appeal at appellants' costs.

IT IS SO ORDERED.

Dated this 10th day of August, 1994.

CHARLES R. WOLLE, JUDGE
UNITED STATES DISTRICT COURT