

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

In the Matter of:

April Portia Dunkin,

Case No. 11-00168-als7

Debtor

Chapter 7

**MEMORANDUM OF DECISION
(date entered on docket: September 14, 2011)**

COURSE OF PROCEEDING

This matter is before the Court upon the Trustee's timely filed objection to the Debtor's claim of exemptions in bank accounts, tax refunds and wages. A telephonic hearing was conducted, and by agreement, the matter has been submitted upon stipulated facts and briefs. The Court has jurisdiction of this core proceeding pursuant to 28 U.S.C. sections 157 and 1334. For the reasons stated herein the Trustee's Objection to Exemptions is sustained in part as to the Debtor's bank accounts, garnished funds and accrued wages.

FACTS

The following facts are undisputed. April Dunkin ("Debtor" or "Dunkin") filed a voluntary chapter 7 proceeding on January 19, 2011. At that time a garnishment was in place with Dunkin's employer for which \$973.93 had been paid to the county sheriff's office from her wages. Pursuant to Iowa Code sections 642.21 and 537.5105 the Debtor claimed the following assets as exempt on Schedule C: accrued wages and disposable earnings in the amount of \$1,742; garnished funds in the amount of \$968 and total bank account balances of \$290.

The day after her bankruptcy filing, Debtor's counsel presented the Trustee with an Application for Release of Funds and an Order Releasing Funds related to the pre-petition garnishment. The Trustee executed the Order and returned it to Dunkin's attorney. On February 22, 2011 a 341 Meeting was conducted in the Debtor's case. Thereafter, a written

request directed to Debtor and her attorney requested copies of bank statements and pay advices covering the date of filing. A timely objection was filed by the Trustee disputing the Debtor's ability to claim exemptions totaling \$3000 of accrued wages, garnished funds and bank accounts pursuant to Iowa Code sections 642.21 and 537.5105.

Statements reflecting the balance of funds in the bank accounts on the filing date confirmed the total aggregate amount of \$602.84. A pay advice dated January 21, 2011 reflects wages accrued for the time period ending January 14, 2011 in the net amount of \$1,085.09. This pay advice reflects a garnishment deduction in the amount of \$341.05. A pay advice dated February 4, 2011 reflects wages earned for the time period ending on January 28, 2011. Of the total net pay, only 2 working days were accrued prior to the Debtor's bankruptcy filing.¹

Dunkin concedes that she is limited to an exemption value of \$1,000 in her tax refunds and agrees that the amount of \$1,540 will be paid to the Trustee.

DISCUSSION

Iowa has opted out of the federal exemption provisions and its residents must utilize state law exemptions in bankruptcy. See Iowa Code § 627.10 (2010). The parties disagree as to the appropriate calculation under the Iowa exemption statute and the application of the holding of In re Irish, 311 B.R. 63 (B.A.P. 8th Cir. 2004) (holding that in the context of a bankruptcy proceeding, applying Iowa garnishment provisions appearing in Iowa Code section 627.6(10) results in an increase in the total value of accrued wages that a debtor may claim as exempt) to the Debtor's garnished wages, accrued wages and bank accounts. Iowa law provides that:

In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed one thousand

¹ This is based upon the previous pay period ending on January 14, 2011 and presuming work dates of January 17 and 18 prior to the date of filing.

dollars in the aggregate. This exemption is in addition to the limitations contained in sections 642.21 and 537.5105.

Iowa Code § 627.6(10). “[D]isposable earnings of an individual are exempt from garnishment to the extent provided by the federal Consumer Credit Protection Act” (“CCPA”) pursuant to Iowa Code section 642.21. (citation omitted). Without reference to the CCPA, Iowa Code section 537.5105(2) limits the amount of disposable earnings which may be garnished on a weekly basis.² These identified statutes contain two terms which are relevant to an application of the garnishment limitations. “[E]arnings” are defined as “compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.” Iowa Code § 642.21(3)(a). “Disposable earnings” are defined as “that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld [or assigned].” Id. §§ 642.21(3)(b), 537.5105(1)(a).

In this jurisdiction, exemptions are liberally construed in favor of a debtor to confer the intended benefit. See Frudden Lumber Co. v. Clifton, 183 N.W.2d 201, 203 (Iowa 1971). It is well settled that the language of a statute is given its plain meaning to initially determine the legislative intent. See In re Fowler, 784 N.W.2d 184, 187 (Iowa 2010); Benjegerdes v. Reindl (In re Reindl), 671 N.W. 2d 466, 469 (Iowa 2003). “The court is not at liberty to read into the statute provisions which the legislature did not see fit to incorporate, nor may it enlarge the scope of its provisions by an unwarranted interpretation of the language used.” Moulton v. Iowa Emp’t Sec. Comm’n, 34 N.W.2d 211, 216 (1948).

² For purposes of this proceeding the parties appear to agree that a garnishing creditor may obtain no more than 25% of an individual’s disposable earnings.

GARNISHED FUNDS and ACCRUED WAGES

Federal Rule of Bankruptcy Procedure 4003(b) governs the time period for objections to exemptions. There is no dispute that this deadline was timely met by the Trustee. The Debtor's argument that the Trustee should not have agreed to release the garnished funds if he believed that the Debtor was not entitled to them is not persuasive. Due to the timing of the release request, the fact that the 341 Meeting of Creditors had not been conducted, and that there had been no ability to review additional detailed information, there is no basis to infer that the Trustee intended to waive his right to object to the Debtor's claim of exemptions. The record contains no information that would support a finding that the Trustee, in fact, waived his ability to challenge the Debtor's exemptions if such action was warranted upon further investigation.

The Debtor asserts that she is entitled to a percentage of pre-petition garnished funds as disposable earnings by virtue of the exemption provided for at Iowa Code sections 642.21 and 537.5105. According to the pay advice dated January 21, 2011, the garnished amount was accounted for and resulted in net disposable earnings being paid to the Debtor according to the aggregate limitation under the garnishment statutes. The exemption values available to the Debtor have been fully depleted through application of \$1,000 to her tax refunds and the appropriate withholding under the garnishment. Unlike the facts in Irish, the Debtor's wages in this case were subject to the claim of a garnishing creditor which would preclude her from protecting any additional amounts outside of bankruptcy. 311 B.R. at 70. To accept the Debtor's calculation would impermissibly expand the reasoning of Irish and the exemption value established under Iowa law.

It appears that the Trustee may also be asserting that he is entitled to a portion of accrued net wages under the pay advice dated January 21, 2010. To the extent this is the position of the Trustee, this argument is rejected as impermissibly limiting the Debtor's exemption claim. The

net paycheck received just after the bankruptcy filing appears to represent earnings and disposable earnings after application of the garnishment restrictions and therefore the Debtor is entitled to her total net pay as exempt.

The amount of \$227.21³ representing two days of accrued net and unpaid wages from the pay advice dated February 4, 2011 is subject to the limitations set forth at Iowa Code sections 642.21 and 537.5105. No garnishment was withheld from wages earned during this pay period. Accordingly, the amount owing to the Trustee totals \$56.80.

BANK ACCOUNTS

Debtor claims the balances in her bank accounts as exempt. Her position is apparently that these funds are derived from wages that were paid prior to filing and subject to the garnishment restrictions at Iowa Code section 627.6(10). The holding of Irish examined “accrued and unpaid” wages, consequently its holding is not dispositive of this issue. Wages do not lose their exempt character simply by virtue of deposit into a bank account. MidAmerica Sav. Bank v. Mische, 438 N.W.2d 837, 839-40 (Iowa 1989). The garnishment restrictions outlined at Iowa Code section 642.21 apply to bank account funds if the balances can be traced to earnings received within the 90-day time period prior to the levy. Id. at 840. Unfortunately, the stipulated facts submitted by the parties do not include the tracing element required by Iowa law or the date the levy was initiated.⁴ Based upon the record and the Trustee’s Brief, the funds

³ Calculated on a 5-day workweek: \$1,136.06/10= \$113.60 daily net pay.

⁴ The Trustee appears to assume that the funds are completely derived from wages earned within 90 days preceding the levy. Trustee’s Brief, docket number 38, page 4. Based upon the record and inferences that could be drawn from the stipulated facts, the bank account balances may actually be the amount of net wages deposited by the Debtor *after* allowance for the pending garnishment. In that case, the Debtor would have already received the benefit of the limitations set forth at Iowa Code section 627.6(10). To the extent the Trustee’s objection is for less than the amount that could have been characterized as non-exempt disposable earnings, if evidence had been presented, this argument is deemed waived.

on deposit are not subject to additional reductions under the exemption statute. The Trustee's calculation of the non-exempt value of the bank account balances is adopted.

Based upon the foregoing it is hereby ORDERED that

1. The Trustee's Objections to the exemption claimed by the Debtor in the garnished funds is sustained in the amount of \$973.93.
2. The Trustee's Objection to the exemption claimed by the Debtor in accrued, unpaid wages from the February 4, 2011 pay advice is sustained in the amount of \$56.80.
3. The Trustee's Objection to exemption in the bank account is sustained in the amount of \$150.71.
4. The Trustee's Objection to exemption in the net disposable earnings from the pay advice dated January 21, 2011 is overruled and the Debtor's Objection is sustained.
5. The income tax refund is not exempt in the amount of \$1,540.00
6. The amount of \$2,721.44 shall be remitted by the Debtor to the Trustee.

/s/ Anita L. Shodeen
Anita L. Shodeen
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:
Electronic Filers in this Chapter Case