

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of : Case No. 94-1763-CH
:
Paul Kemp, : Chapter 7
:
Debtor. :

ORDER--OBJECTION TO CLAIM OF EXEMPTION

Hearing on the Objection to Claim of Exemption was held on January 10, 1995. Thomas L. Flynn appeared as the Chapter 7 Trustee. Debtor, Paul Kemp, was represented by his attorney, Douglas R. Smalley. Upon conclusion of the hearing, the Court scheduled a briefing deadline and the matter was taken under advisement. Briefs have been filed by the parties and the matter is now considered fully submitted.

This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(B). The Court, upon review of the briefs, pleadings, and arguments, now enters its findings of fact and conclusions of law pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. On August 22, 1988, Debtor filed a petition against Leann Sue Plowman in the Iowa District Court for Polk County, claiming damage for personal injuries resulting from Plowman's alleged negligence. On January 7, 1991, Debtor dismissed the action against Plowman and her insurance carrier, United States Fidelity and Guaranty Company ("USF&G") as a result of a settlement agreement.
2. The terms of the settlement provided that USF&G would issue an annuity in favor of Debtor, payable in equal monthly installments of \$437.90 over a period of 20 years.

3. The annuity was issued September 24, 1990. The annuity states that the owner is USF&G and that Debtor is the annuitant and payee. The policy states that the date of first income payment was to be November 1, 1990. The beneficiary is listed on the policy as the executor or administrator of the annuitant's estate.

4. On July 13, 1994, Debtor filed a voluntary petition seeking relief under Chapter 7 of the Bankruptcy Code. On Schedule C of his bankruptcy schedules, Debtor sought an exemption for a "single premium annuity set out in Schedule B-10". Section 10 of Debtor's Schedule B references "USF&G annuity" with the value "unknown". On January 6, 1995, Debtor amended Schedule C deleting the prior reference to the single premium annuity and inserting in lieu thereof an exemption as to "rights to payments from annuity for personal injury, Iowa Code § 626.8(e)."

5. The Chapter 7 Trustee objected to the amended exemption claim.

DISCUSSION

11 U.S.C. § 522(b) provides that a debtor may choose between the federal exemptions of § 522(d) and state exemptions unless a state has opted out of the federal exemptions. See 3 Collier on Bankruptcy ¶ 522.02, at 522-11 (15 ed. 1992). Because Iowa has chosen to opt out of the federal exemptions, in this case Debtor's right to an exemption must be determined under Iowa law. Iowa Code § 627.10 . Under Iowa law, exemption statutes are to be liberally construed in favor of the debtor. Frudden Lumber Co. v. Clifton, 183 N.W.2d 201, 203 (Iowa 1971). However, the Court should not "depart substantially from the express language of the exemption statute or extend the legislative grant." Matter of Knight, 75 B.R. 838, 839 (Bankr.S.D.Iowa 1987) (citations omitted).

Debtor claims that the USF&G annuity is exempt pursuant to Iowa Code § 627.6(8)(e) which provides that a debtor may hold exempt from execution the following:

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 result from contributions to the plan or contract by the debtor within one year prior to the filing of the 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.

Debtor argues that the language “on account of” should be interpreted to include annuities based on personal injury settlements.

The Trustee argues that the annuity at issue in this case arose from the settlement of a personal injury action and is, therefore, not “on account of illness, disability, death, age, or length of service” so as to be exempt under Iowa Code § 627.6(8)(e). The Trustee contends that the statute requires the annuity to be “triggered by” illness, disability, death, age or lack of service. The Trustee argues that the injury to Debtor only formed the basis for a negligence claim. The settlement resulted in the right to an annuity.

In re Huebner, 141 B.R. 495 (N.D.Iowa 1992), aff’d, 986 F.2d 1222 (8th Cir. 1993), the Eighth Circuit affirmed the District Court’s ruling that two qualified individual retirement annuities were nonexempt pursuant to Iowa Code § 627.6(8)(e). In the lower court opinion, the District Court interpreted the words “on account of” found in Iowa Code § 627(6)(8)(e) finding that the words “on account of” are more appropriately read as “triggered by”. Huebner, 141 B.R. at 409. The District Court then went on to find that the annuities in question were not exempt pursuant to § 627.6(8)(e) because there had been no triggering event as the right to receive payments were not tied to or

restricted by the annuitant's age. Id. at 408-09. On appeal, the Eighth Circuit, while affirming the District Court decision, concentrated on access and control of the plan instead of the interpretation of the "on account of" language in the statute. Huebner, 986 F.2d at 1224-25. However, the Eighth Circuit appears to express approval of the District Court's interpretation of the need for a triggering event as it repeats the key term as follows:

Huebner's present right to receive annuity payments does not depend on his having reached age sixty-five, nor upon the occurrence of any of the other triggering events enumerated in § 627.6(8)(e), such as illness, disability or death. Instead, the contracts give Huebner the unfettered discretion to receive payments at any time

Id. at 1225.

The Bankruptcy Court for the Southern District of Iowa has previously found in an unpublished decision that a payment plan resulting from a settlement agreement is nonexempt pursuant to Iowa Code § 627.6(8)(e). Matter of Midkiff, Case No. 93-01444-WJ (Bankr.S.D.Iowa filed April 2, 1994). In that case, Judge Jackwig held that a structured settlement agreement was not "a similar plan or contract" pursuant to § 627.6(8)(e) in part because it was not "on account of illness, disability, death, age or length of service." In reference to the Huebner decision the court states:

. . . 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 or control terms in those settlements.

Relying on the Huebner opinions and on the April 13, 1992 amendment to the language of Iowa Code § 627.6(8)(e) which it found "seemingly supports the triggered by interpretation", the court held that

since the settlement agreement was not in place at the time of the event causing payment, there was no triggering event resulting in right to payment.

This Court agrees with the reasoning of the Midkiff opinion. Although, in Midkiff, the court analyzed the settlement plan under the “similar plan or contract” language of Iowa Code § 627.6(8)(e), this Court finds that the interpretation of the term “on account of” is relevant to a structured settlement termed as an “annuity”, as well. In this case, the annuity in question, regardless of Debtor’s right to access or control, was not triggered by an event contemplated by Iowa Code § 627.6(8)(e). The injury to Debtor gave rise to a personal injury action, but could not trigger right to payment of an annuity which was not even in existence at that time. The Court finds that the annuity arising out of the settlement of a personal injury action is not exempt pursuant to Iowa Code § 627.6(8)(e).

ORDER

IT IS THEREFORE ORDERED that The Trustee’s objection to claim of exemption is sustained.

Dated this _____ day of May, 1995.

RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT