

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In re:	:	Case No. 00-3885-CH
JASON W. OSTEN,	:	
	:	Chapter 7
Debtor.	:	
	:	

ORDER— OBJECTION TO EXEMPTION AND RESISTANCE THERETO

On June 1, 2001, a telephone hearing was held on Trustee’s Objection to Exemption and Debtor’s Resistance Thereto. Attorney Terry R. Rickers represented the debtor, Jason W. Osten, and attorney Matthew T. Cronin represented the chapter 7 trustee, Thomas L. Flynn. At the conclusion of the hearing, the court took the matter under advisement. The court considers the matter fully submitted.

The court has jurisdiction of these matters pursuant to 28 U.S. C. § 157(b)(1) and § 1334 and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Upon review of the pleadings, evidence, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 9014 and 7052.

FINDINGS OF FACT

1. On October 16, 2000, Jason W. Osten (hereinafter Debtor) filed a petition for relief under chapter 7 of title 11, the Bankruptcy Code.

2. Debtor scheduled an interest in an annuity contract identified as "Lutheran Brotherhood Contract # S0023562" on Schedule B – Personal Property. He indicated that the annuity had no surrender or withdrawal privileges. Debtor received the annuity as a distribution from his grandmother's estate.

3. On Schedule C – Property Claimed as Exempt, Debtor claimed his interest in the annuity, valued at \$10,655.24, as exempt under Iowa Code § 627.6(8)(e).

4. Alice T. Gibson, Debtor's grandmother, purchased life insurance from Lutheran Brotherhood on September 26, 1985. The policy is identified as "whole life insurance."

5. Alice Gibson designated her daughter, Roberta Lanz, as the primary beneficiary of the life insurance policy. She named her grandchildren, Allyson Osten and Debtor, as contingent beneficiaries.

6. Paragraph 1.3 of the policy provides as follows:

Death Proceeds. The amount payable on the Insured's death will be the sum of:

(1) The Face Amount (or if this contract is in force under a nonforfeiture option, the amount which applies under that option);

(2) Any Accumulated Dividends;

(3) Any insurance provided by Dividend Additions;

(4) Any insurance on the Insured's life provided by Additional Benefits in this contract; and

(5) The portion of any premium paid for the period beyond the date of the death;

Less

(6) Any Debt; and

(7) The portion of any due and unpaid premiums for the period up to the date of death.

7. Paragraph 1.9 of the policy provides as follows:

Exemptions from Claims of Creditors. To the extent permitted by law, the proceeds of this contract and any payments under it will not be subject to the claims of creditors or to any legal proceedings.

8. Paragraph 6.1 of the policy provides:

Payment of Proceeds. Proceeds from death, maturity or surrender are payable in a lump sum unless otherwise provided. On Death Proceeds, we will pay interest at the rate payable in Option 1—Interest Income. Interest is payable from the date of death until the date of settlement. Instead of a lump sum, proceeds of \$2000 or more may be paid under any settlement option in Section 6.2 by means of a supplementary contract which we will issue.

9. Paragraph 6.2, Option 3 provides as follows:

Income for a Fixed Period. We will pay an income for a fixed number of years, not to exceed 30. The income is determined from the table for this option below. The income may be increased by dividends.

10. An Amendatory Agreement captioned "Interest Income Settlement

Election" is attached to the policy. The agreement states that Lutheran Brotherhood will retain the Death Proceeds upon the death of the Insured and pay each beneficiary in the manner described in the agreement. The agreement provides, among other things, for the payment of interest, a minimum interest rate, a minimum payment amount, and a maximum interest option period.

11. On July 2, 1992, Alice T. Gibson changed the beneficiaries on the policy. Allyson Marie Osten, Granddaughter, and Jason William Osten, Grandson, were designated as the primary beneficiaries.

12. Gibson directed the benefits payable by reason of her death to be paid to the beneficiaries equally or to the survivor as provided in Option 3 as set forth above.

13. The installments were to be paid monthly for a fixed period of ten years to each grandchild. If a grandchild should die the unpaid share was to be paid to the surviving grandchild.

14. The beneficiary did not have the option to elect any other method of payment, and Alice Gibson reserved the right to revoke the settlement option and change the beneficiary designation.

DISCUSSION

This matter comes before the court on Trustee's Objection to Exemption. Trustee objects to the claim that the Lutheran Brotherhood Annuity Contract is exempt. Trustee asserts that this contract is part of an inheritance from Debtor's grandmother's estate and is not on "account of illness, disability, death, age or length of service" as required by Iowa Code § 627.6(8)(e). For the following reasons, Trustee's objection will be sustained.

The Bankruptcy Code permits a debtor to exempt certain property from the bankruptcy estate. 11 U.S.C. § 522(b). Section 522(b)(1) permits the states to "opt out" of the federal exemption scheme and require the debtor to use the exemptions provided by state law. Once a state opts out, "its debtors are limited to the exemptions provided by

state law.” Owen v. Owen, 500 U.S. 305, 308 (1991). “Nothing in subsection (b) (or elsewhere in the Code) limits a [s]tate’s power to restrict the scope of its exemptions....” Id. at 308.

Iowa has chosen to opt out of the federal exemptions. Iowa Code § 627.10. Therefore, only the Iowa exemption scheme is available to Debtors, and the court must apply Iowa law. In the Matter of Norkus, 256 B.R. 298, 301-02 (Bankr. S.D. Iowa 2000).

Iowa's exemption statutes are to be liberally construed in favor of debtors in light of the purposes of the exemption. See In re Wallerstedt, 930 F.2d 630, 631 (8th Cir. 1991); Allison-Bristow Comm. Sch. Dist. v. Iowa Civil Rights Comm'n, 461 N.W.2d 456, 458 (Iowa 1990). 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).

Iowa allows a debtor who is a resident of the state to hold exempt from execution 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.

Iowa Code § 627.6(8)(e).

The Iowa General Assembly enacted § 627.6(9) in 1981. The new provision was a substantial change in the prior exemption law. In re Pettit, 55 B.R. 394, 400 (Bankr. S.D. Iowa 1985). The provision was modeled after the federal exemption provided by 11

U.S.C. § 522(d)(10)(E), Eilbert v. Pelican (In re Eilbert), 162 F.3d 523, 526 (8th Cir. 1998), which in turn tracks with the Uniform Exemptions Act. Uniform Exemptions Act (U.L.A.) § 6 cmts. 1, 5, and prefatory note. In 1986, the Iowa General Assembly amended and renumbered the section to its current form. In re Pelican, 192 F.3d at 526.

Congress intended § 522(d)(10)(E) to provide an exemption for ““certain benefits that are akin to future earnings of the debtor.”” Id. quoting H.R. Rep. 95-595, at 362 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6318; see also Uniform Exemptions Act (U.L.A.) § 6 cmt. 5 (describing the scope of the section to cover payments received from retirement type plans). Accordingly, courts have consistently interpreted § 627.6(8)(e) to exempt payments that function as wage substitutes when the debtor's earning capacity is limited. In re Pelican, 192 F.3d at 526; In re Wiley, 184 B.R. 759, 765 (N.D. Iowa 1995); In re Caslavka, 179 B.R. 141, 143-144 (Bankr. N.D. Iowa 1995); In re Pettit, 55 B.R. at 398.

In order to determine whether a certain asset qualifies for the exemption, the court should examine the circumstances around the purchase of the contract as well as the contents of the contract. Anderson v. Ries (In re Anderson), 259 B.R. 687, 691 (B.A.P. 8th Cir. 2001). Based on the facts of this case, the court concludes that the asset in question does not qualify as a “pension, annuity, or similar plan.” Rather, the court concludes that Debtor’s interest is a right to payment of the death proceeds of a life insurance contract.

In 1985, Alice T. Gibson purchased a policy from the Lutheran Brotherhood. At the time, she was 72 years of age. The policy called for annual premium payments of

\$1503.56, which were made until Gibson's death. The record is silent as to the source of the funds used to make the premium payment. Although Debtor contends that his grandmother intended to provide a stream of income for her grandchildren, there is nothing in the record to suggest that Debtor or his sister were dependant on Gibson for support.

Turning to the contents of the contract, on its face the policy purports to be a whole life insurance plan. The policy identifies Alice T. Gibson as the "insured." It indicates a "face value" of \$16,000.00. It provides a table of values which identifies cash values and paid-up insurance values for various years. The policy provides for the payment of death proceeds. It also contains an exclusion for suicide of the Insured. An amendatory agreement titled Interest Income Settlement Election is incorporated into the policy which provides for the payment of interest on death proceeds retained by Lutheran Brotherhood before payment to the beneficiaries.

The foregoing facts lead the court to the conclusion that the contract is precisely what it purports to be, one for life insurance. The fact that Gibson elected the proceeds to be paid to the beneficiaries in payments rather than a lump sum does not alter the conclusion, nor does it transform the agreement into an annuity as contemplated by the statute.

Lutheran Brotherhood was obligated under the terms of the contract to pay the proceeds of the policy to the beneficiaries upon notification of Gibson's death. Upon the occurrence of that event, Lutheran Brotherhood became indebted to the beneficiaries for the full amount of the policy proceeds. The full amount was due to the beneficiaries,

however, payable in the manner elected by Gibson, as installments with interest. Debtor's interest in such installment payments with interest constitutes an account receivable, not an annuity. See Commonwealth v. Beisel, 13 A.2d 419, 420-21 (Penn. 1940) (distinguishing insurance proceeds payable in installments from annuity payments in the context of state taxation).

Because the court determines that Debtor's interest in the insurance proceeds is not a pension, annuity, or similar plan, Debtor is not entitled to exempt his interest under § 627.6(8)(e). Trustee's objection to claim of exemption will be sustained.

ORDER

IT IS ACCORDINGLY ORDERED that Trustee's Objection to Exemption is SUSTAINED and Debtor may not claim Lutheran Brotherhood Contract #S0023562 as exempt.

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