

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

RANDY E. PEBBLES,
REBECCA PEBBLES,

Case No. 87-1454-C

Chapter 13

Debtors.

ORDER ON OBJECTION TO DEBTORS' CLAIM OF EXEMPT

PROPERTY AND OBJECTION TO PLAN

On March 17, 1988 a rescheduled hearing on objection to debtors' claim of exempt property and objection to plan filed on behalf of Share Health Plan of Iowa (Share) was held before this court in Des Moines, Iowa. David M. Head appeared on behalf of Share and Steven C. Jayne appeared on behalf of the debtors. Joe W. Warford, the Chapter 13 trustee, was also present. The parties had previously submitted briefs. The matter was considered fully submitted on March 28, 1988 upon receipt of a transcript of the proceeding.

Factual Background

The debtor, Randy Pebbles, sustained injuries as a result of a motor vehicle accident on March 25, 1984 involving one Kevin Eddy, insured by Aetna Casualty & Surety Company (Aetna). Mr. Pebbles sustained a crushing injury to his lower left leg and was hospitalized for approximately 30 days after the accident. Mr. Pebbles underwent several

operative procedures but has lost much of the mobility and flexibility in his leg. Mr. Pebbles continues to have difficulty with the leg and must take care not to bruise or to cut the area. Future surgical procedures are anticipated.

Mr. Pebbles is 32 years old, is married and has two children ages 8 and 3. Prior to the accident Mr. Pebbles worked as a steelworker doing heavy lifting, loading and unloading trucks. Both he and his wife have high school educations. After the accident Mr. Pebbles found that his old job was no longer available and that he had difficulty doing the type of work he had done before. Mr. Pebbles now works for Stereo Sound Studios installing electronic equipment in cars. Neither he nor his wife have any type of retirement plan through their employers.

On July 5, 1984 Aetna and Mr. Pebbles entered into a release and settlement agreement, which provided for a lump sum payment of \$19,668.88 on the day of execution of the agreement, \$200.00 a month for the remainder of Mr. Pebble's life, and various lump sum payments totalling \$50,000.00 through the year 2004. Aetna purchased an annuity from Safeco Insurance to serve as the vehicle for the satisfaction of the future periodic payments.

As noted in this court's memorandum of decision and order dated September 25, 1987, two state court actions were commenced in 1986. Share filed an action against the

Pebbles and Aetna for reimbursement of medical expenses it had paid and Aetna filed an interpleader action seeking a determination of the proper party to receive the payments. This court directed the parties to return to the state court forum for a determination of the debtors' interest in funds held by the state court registry. The state court entered an order resolving the dispute on November 30, 1987. The judgment entry approved by all parties stated:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that AETNA is released and discharged from any and all liability to SHARE or to the Pebbles in the above-described cause of action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that AETNA shall pay future periodic payments called for in the subject Settlement agreement directly to the Pebbles until further order of a Court of competent jurisdiction, or until such time as AETNA'S obligation under the settlement agreement has been satisfied, whichever event shall first occur.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that SHARE has no interest in the monies which have been previously paid to the Pebbles, nor in the monies which are on deposit with the registry of the Polk County Iowa District Court, nor in the future periodic payments to be paid by AETNA to the Pebbles.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Polk County Iowa District Clerk of Court shall immediately release and deliver forthwith to the Pebbles any and all monies on deposit with the registry of the Court in either CL 64-37914 or CL 67-39531.

The state court's order further noted with respect to a

previously entered judgment in favor of Share that Share is "free to engage in any lawful effort it deems necessary to collect its judgment.

The debtors' Chapter 13 statement filed on May 29, 1987 incorporates the \$200.00 monthly annuity payment into the proposed Chapter 13 plan payment. The debtors' plan proposes a \$300.00 monthly payment for a term of 40 months. Such payments will allow unsecured creditors to receive approximately a 10-13 percent return on the dollar. The debtors' family budget reflects monthly expenses of \$1,180.00 and monthly income of \$1,481.40. After a \$300.00 monthly plan payment the anticipated excess totals \$1.40. Aside from the annuity payments claimed exempt the debtors claim only clothing, household furnishings and tax refunds as exempt property.

Discussion

The debtors originally claimed an exemption in the monthly annuity payment received from Aetna pursuant to the release and settlement agreement under Iowa Code section 627.6(9)(e). The debtors orally amended their Chapter 13 statement at a July 14, 1987 hearing to claim the payments exempt under Iowa Code section 627.6(8)(c) as well as section 627.6(8)(e). A formal written amendment was filed on August 24, 1987 and noted that the 1986 amendment to the Iowa Code renumbered the sections at issue. The provisions in question provide:

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

....

8. The debtor's rights in:

....

(c) A disability or illness benefit.

....

(e) 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.

The objection to exemption and objection to plan filed on behalf of Share both concern the debtors' interest in the release and settlement agreement. Essentially, Share asserts that it is subrogated to the right to receive the first \$14,863.69 of payments under the agreement by virtue of a judgment from the state court action. Share therefore contends that the debtors have no interest to be included in the bankruptcy estate or to be exempt under 627.6(8)(c). Share further relies upon a statement by the state court in the interpleader action that Iowa Code section 627.6(8)(e) does not apply to the funds. For its objection to the debtors' plan Share contends that the plan is not proposed in good faith "as the debtors are seeking to use the time frame of a structural settlement and the provisions of the Bankruptcy Code to specifically discharge an alleged credi-

tor who in fact has completely separate, legal, and distinct rights of subrogation totally unrelated to rights of your debtors."

Since the filing of the above objections by Share, the parties have concluded their litigation in state court at the direction of this court. Accordingly, Share's argument that the funds in question are not property of the debtors' estate has been determined. The state court ruled that Share has no interest in any of the monies which have been paid to the debtors pursuant to the settlement agreement, nor in any future periodic payments to be made. From the state court pleadings filed in this court, it is apparent that the state court considered and rejected Share's argument that it is subrogated to the debtors' right to receive payments. In essence, the state court determined that Share is a general creditor holding an unsecured judgment against the debtors in the amount of \$14,863.69. Accordingly, this court will now focus on whether the debtors' interest in the payments in question may be exempted under the relevant Iowa provisions. Resolution of the exemption issue will then impact upon Share's objection to confirmation of the plan.

Initially, the court shall address the debtors' assertion that Share's objection to exemptions was not timely filed. Bankruptcy Rule 4003(b) provides:

The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or

the filing of any amendment to the list unless, within such period, further time is granted by the court. Copies of the objections shall be delivered or mailed to the trustee and to the person filing the list and the attorney for such person.

The meeting of creditors in this case was held on June 11, 1987. An objection to debtors' claim of exempt property was filed by Aetna Casualty & Surety Company on June 19, 1987. Also on June 19, 1987 the debtors filed a motion for turnover of the funds claimed as exempt property. A resistance to the motion for turnover and a request to exclude the funds in question from the bankruptcy estate was filed by Share on June 24, 1.987. Share's motion asserted that the annuity funds were not exempt but rather were subject to the subrogation right of Share.

A hearing on the above objection, motion and resistance was held before this court on July 14, 1987. As previously noted, the debtors orally amended their claim of exemptions at the time of the hearing. That amendment was then formally filed on August 24, 1987. On August 28, 1987 Share filed a resistance to debtors' amended claim of exempt property. Share again asserted that the debtors had no interest in the subject payments to be included in the bankruptcy estate, that the state court had ruled that section 627.6(8)(e) was inapplicable to the funds and that the funds did not qualify as disability or illness benefits under section 627. 6 (8) (c)

It is apparent from the above history that this case has not been one of procedural clarity. The debtors' original claim of exemption in the annuity payments did not properly designate the applicable Iowa Code section. Share, however, apparently understood the essence of the debtors' claim of exemption and asserted its argument that the claimed property was not even property of the estate in its resistance to debtors' motion for turnover filed within 30 days of the first meeting of creditors. Thereafter the debtors amended their claim of exemption to designate correctly the statutory provision and to assert an alternative statutory basis. Within four days of the filing of an amended claim of exemptions, Share filed a resistance thereto. Clearly, the objection to the amended claim of exemptions was timely filed as rule 4003(b) allows a creditor 30 days from the filing of any amended claim to assert an objection. While, Share never filed a formal "objection" to the original claim of exemption, its arguments relative to the claim were disclosed in its resistance to the motion for turnover. Under these circumstances, this court will not overrule Share's objection to debtors' claim of exempt property on the ground that it was untimely filed.

Share objects to the debtors' claim that the annuity payments are exempt under Iowa Code section 627.6(8)(c) as a disability or illness benefit. Share contends that the source of the payments is a liability policy not a disabil-

ity or illness policy. Share asserts that the exemption provision more aptly applies to benefits under the Workers' Compensation Act or other such benefit programs. The debtors assert that the settlement agreement and annuity was structured to function like a disability benefit in that it was established on account of the debtor's disability and is to supplement the debtor's income. Both parties have failed to uncover any authority on point.

Iowa's exemption statute is based upon the premise "that it is better that the ordinary creditor's claims should remain partially unsatisfied than that a resident of the state should be placed in such an impecunious position that he and his family became charges of the state." Note, Personal Property Exemptions in Iowa: An Analysis and Some Suggestions, 36 Iowa L.Rev. 76, 77 (1950). The Iowa Supreme Court has ruled that the purpose of the exemption statute "is to secure to the unfortunate debtor the means to support himself and the family; the protection of the family being the main consideration." Shepard v. Findley, 214 N.W. 676, 678 (Iowa 1927).

In construing section 627.6(8)(c), the court is mindful of the well settled proposition that Iowa's exemption statute must be liberally construed. Frudden Lumber Co. v. Clifton, 183 N.W.2d 201, 203 (Iowa 1971). Yet, this court must be careful not to depart substantially from the express language of the exemption statute or to extend the legislative

grant. Matter of Hahn, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980), citing Wertz v. Hale, 234 N.W. 534 (Iowa 1931) and Iowa Methodist Hospital v. Long, 12 N.W.2d 171 (Iowa 1944). Pursuant to Bankruptcy Rule 4003(c) the objecting party has the burden of proving that the exemptions are not properly claimed.

Since no Iowa cases interpret the meaning of section 627.6(8)(c), the court looks to case law interpreting the virtually identical federal exemption provision. 11 U.S.C. section 522(d)(10)(c) allows a debtor to exempt his right to receive "a disability, illness, or unemployment benefit". The benefits addressed in section 522(d)(10) are akin to future earnings and are generally prescribed by state or federal law. 3 Collier on Bankruptcy § 522.19 at 522-68 (15th ed. 1987). The cases that interpret "disability benefit" involve workers' compensation benefits. See Matter of Evans, 29 B.R. 336 (Bankr. D. N.J. 1983); In re Lambert, 9 B.R. 799 (Bankr. W.D. Mich. 1981). Accordingly, despite the liberal interpretation generally accorded to exemption statutes the court seriously doubts that Iowa Code section 627.6(8)(c) was intended to encompass the private structured settlement agreement at issue here. The court need not make a definitive ruling on what qualifies as a disability benefit in this case as the debtors have also claimed their right to receive payments under Iowa Code section 627.6(8)(e).

Share objects to the debtors' claim that the annuity payments are exempt under Iowa Code section 627.6(8)(e) on two grounds. First, Share argues that the state court found this subsection inapplicable. Second, Share asserts that the structured settlement agreement fails to qualify as exempt under section 627.6(8)(e) and the case law interpreting it. The court finds neither argument convincing.

The language from the state court order relied upon by Share provides: "Defendant Pebbles' reliance upon Iowa Code section 627.6(9) [Now 627.6(8)(c)] and exempting such funds from execution appears to the court to be inappropriate in regard to an interpleader action." Clearly, the context in which the statement was made warrants the conclusion that it is not controlling for purposes of this bankruptcy case.

Share also contends that the debtors' interest in payments based on the structured settlement agreement with Aetna does not meet the requirements of a "plan or contract" similar to pension plans and annuities set forth in Matter of Pettit, 55 B.R. 394, 398 (Bankr. S.D. Iowa 1985) aff'd 57 B.R. 362 (S.D. Iowa 1985). In Pettit a creditor objected to the debtors' claim of exemption in a profit-sharing plan and asserted that a profit-sharing plan is not a "similar plan or contract within the intendment of the Iowa exemption statute." Former Judge Richard Stageman identified the following qualities of a "plan or contract" similar to pension plans and annuities:

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.

Matter of Pettit, 55 B.R. at 398. Share contends that the debtors' interest does not arise out of an employer-employee relationship, is not akin to future earnings, is not restricted and is not related to illness, disability, death, age, or length of service.

The court finds Share's interpretation of Matter of Pettit to be overly restrictive. The Pettit court noted that "the legislature's reason for including 'similar plan or contract' in the statute was to give the courts some latitude in treating varying factual situations under this exemption section." 55 B.R. at 397. Thus, plans having "pension" or "annuity" characteristics should be exempt under section 627.6(8)(e).

In this case the debtors receive payments from an

annuity purchased by Aetna which serves as the vehicle for the satisfaction of the terms contained in the settlement agreement between Aetna and the debtors. Although the actual terms of the annuity have not been put in evidence, the debtors' counsel represented that the debtors have no control over the amount and frequency of the payments. The monthly payments and periodic lump sum payments are made in settlement of a liability claim which is grounded in the debtor's disability and intended to supplement the debtor's income, Share's argument that the payments are not exempt because they arose out of a settlement agreement is not persuasive. A similar argument was rejected in Matter of Wommack, 80 B.R. 578 (Bankr. M.D. Ga. 1987) where a debtor's interest in an annuity which originated from a structured settlement of a wrongful death suit was found exempt under a Georgia exemption statute with language identical to Iowa Code section 627.6(8)(e). Accordingly, the court finds that the payments received by the debtors qualify as payments under an "annuity, or similar plan or contract on account of illness, disability, death, age or length of service" pursuant to Iowa Code section 627.6(8)(e).

The statute allows an exemption in payments only to the extent "reasonably necessary for the support of the debtor and any dependent of the debtor." In applying the "reasonably necessary" standard of section 627.6(8)(e), the court must look to the debtors' existing income and exempt

property in relation to the present and future needs, Matter of Pettit, 55 B.R. 394, 398-99 (Bankr. S.D. Iowa 1985). Share has not presented any evidence to demonstrate that the funds are not reasonably necessary for the debtors' support. Based on the record, it is the court's conclusion that the funds are not only reasonably necessary but vital to the present and future support of the debtors. Therefore, the debtors' rights in these payments qualify as exempt property.

Given the above rulings, Share's objection to the debtors' Chapter 13 plan is without merit. As noted at the outset, the state court ruled that Share has no interest in the past, present or future payments made to the debtors by Aetna. Share's assertion that the debtors' plan is not proposed in good faith therefore is not persuasive. The "good faith" requirement of 11 U.S.C. section 1325(a)(3) contemplates consideration of whether there has been an abuse of the provisions, purpose or spirit of Chapter 13 --being rehabilitation through repayment of debt. Matter of Hale, 65 B.R. 893, 894 (Bankr. S.D. Ga. 1986). Factors to be considered include:

- 1) the amount of the debtor's income from all sources;
- 2) the living expenses of the debtor and his dependents;
- 3) the amount of attorney's fees;
- 4) the probable or expected duration of the debtor's Chapter 13 plan;

5) the motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13;

6) the debtor's degree of effort;

7) the debtor's ability to earn and the likelihood of fluctuation in his earnings;

8) special circumstances such as inordinate medical expenses;

9) the frequency with which the debtor has sought relief under the Bankruptcy Reform Act and its predecessors;

10) the circumstances under which the debtor has contracted his debts and his demonstrated bona fides, or lack of same, in dealings with his creditors;

11) the burden which the plan's administration would place on the trustee.

Id. at 895. Substantiality of repayment of debt is also a factor to be considered. Id.

Application of the above factors to the circumstances of this case leads the court to conclude that the debtors' plan is proposed in good faith. The plan provides that all of the debtor's projected disposable income, including the \$200.00 per month annuity payment, will be applied to make payments under the plan. See 11 U.S.C. section 1325(b)(1)(B). Payments to unsecured creditors are not less than the amount those creditors, such as Share, would be paid if the estate were liquidated under Chapter 7. See 11 U.S.C. section 1325(a)(4). The lump sum payments to be received by the debtor in 1989 do not impact on the present determination as

they are not presently available to creditors. See Matter of Wommack, 80 B.R. 578, 580, n. 12 (Bankr. M.D. Ga. 1987). When such payment is received, however, the debtor, the trustee or an unsecured creditor may request a modification of the plan if necessary pursuant to 11 U.S.C. section 1329.

WHEREFORE based on the foregoing analysis the court hereby finds that the annuity payments received by the debtors pursuant to the settlement agreement with Aetna are exempt under Iowa Code section 627.6(8)(e) and that the debtors' Chapter 13 plan satisfies the requirements for confirmation contained in 11 U.S.C. section 1325.

THEREFORE, the objection to debtors' claim of exempt property and the objection to plan filed on behalf of Share Health Plan of Iowa are overruled.

Signed and dated this 31st day of May, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE