UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of	:	
MICHAEL DALE CALDWELL and MARGARET SUSAN CALDWELL,	:	Case No. 88-2339-C Chapter 7
Debtors.	:	

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ORDER--OBJECTION TO DEBTORS' CLAIM OF EXEMPTION

On March 20, 1989, a hearing was held on Trustee's objection to Debtors' claim of exemption. The following attorneys appeared on behalf of their respective clients: Douglas J. Reed for Debtors and Robert D. Taha as Chapter 7 Trustee. At the conclusion of said hearing, the Court took the matter under advisement subject to a briefing schedule. The Court considers the matter fully submitted.

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

FINDINGS OF FACT

1. Debtors filed a voluntary Chapter 7 petition and schedules on October 29, 1988. The Debtor, Michael Dale Caldwell,claimed a "retirement account" valued at $6,000.00 as exempt under Iowa Code §627.6. Trustee filed an objection to this claim of exemption.

2. The $6,000.00 retirement account claimed exempt by Debtors is actually two retirement accounts: the Bally Manufacturing Corporation Profit Sharing Plan ("Profit Sharing Plan") and the Bally Manufacturing Corporation Savings Plan ("Savings Plan").

3. The Profit Sharing Plan is an ERISA (Employment Retirement Income Security Act, 29 U.S.C. §1001 et seq.) plan and contains ERISA transfer restrictions. Access and control of the Profit Sharing Plan are in the hands of a trustee authorized to hold the assets of the plan for the benefit of plan participants. Under the Profit Sharing Plan, all contributions are made by Debtor's employer and this plan provides retirement, disability and death benefits. Employees covered by this plan are entitled to the vested portion of account upon termination and employees are allowed to borrow from said Plan subject to loan use requirements and loan amount limitations. Debtor is 40 percent vested in the account balance of $7,425.49.

4. The Savings Plan is an ERISA plan and contains ERISA transfer restrictions. Other provisions of the Savings Plan are similar to the Profit Sharing Plan. The Savings Plan is comprised of 50 percent contributions by the Debtor and 50 percent matching contributions by the Debtor's employer. Debtor has an account balance of $4,861.67 in the Savings Plan and is 100 percent vested in that plan.

5. At the time of the filing of this bankruptcy case, Michael Caldwell was a 25-year-old individual, in excellent health, with no dependents. Margaret Caldwell is also in good health and also in her twenties.

6. On Debtors' Schedule of Current Income and Expenses, Debtors' income of $1,280.00 exceeds Debtors' expenses of $1,158.00.

7. Margaret Caldwell was temporarily unemployed but earned $8,000.00 during 1987.

DISCUSSION

I. 11 U.S.C. §541 Property of the Estate

11 U.S.C. §541(a) provides in pertinent part:

> (a) The commencement of a case under §301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor and property as of the commencement of the case...

Congress intended the scope of the bankruptcy estate under 11 U.S.C. §541 to be quite broad. In re Graham, 726 F.2d 1268, 1270 (8th Cir. 1984).

11 U.S.C. §541(c)(1) provides generally that restrictions on the transfer of the debtor's interest in property will not

prevent

inclusion of such a property interest in the estate. Id. at 1270. However, 11 U.S.C. §541(c)(2) states the following exception to 11 U.S.C. §541(c)(1):

> A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

Congress intended 11 U.S.C. §541(c)(2) to preserve the status of traditional spendthrift trusts as recognized by state law. In re Swanson, 873 F.2d 1121, 1123 (8th Cir. 1989); In re Graham, 726 F.2d at 1271. The Eighth Circuit interprets 11 U.S.C. §541(c)(2) narrowly because a broad reading of this exclusion runs afoul of the policy sought to be furthered through the Bankruptcy Code. In re Swanson, 873 F.2d at 1124. "Section 541(c)(2) thus strikes a delicate balance between enlarging the bankruptcy estate, while still honoring the spendthrift trust owner's wishes under state law." Id. at 1124.

In Swanson, the court analyzed a non-ERISA retirement fund, containing Minnesota statutory transfer restrictions, under Minnesota spendthrift trust law. The court stated that spendthrift trusts are recognized and enforced under Minnesota law, but Minnesota law does not explicitly discuss many of the requirements typically imposed upon spendthrift trusts. Id. at 1123. The court then concluded that the retirement fund was not a spendthrift trust under Minnesota law. Id. at 1124.

In reaching this conclusion, the Eighth Circuit Court stated:

> We do not believe that the Fund has the necessary characteristics of a traditional spendthrift trust to exclude it from the bankruptcy estate pursuant to §541(c)(2). Notably, the Fund violates the rule that prohibits the beneficiary of a spendthrift trust from also being its settlor. The fact that the contributions to the Fund are made, at least in part, by the debtors compels the conclusion that the fund would not be a valid spendthrift trust under Minnesota law.
>
> In addition, our conclusion that the Fund does not qualify as a spendthrift trust under Minnesota law is compelled by the fact that the debtors are able to exercise dominion and control over the monies in the Fund. (Fund) members are entitled to a refund of their contributions to the Fund on termination of employment. While this is a very limited right of control over the funds, the ability of the beneficiary to control trust assets in any way is inimical to the policies underlying the spendthrift trust. We believe that the Fund is actually a form of deferred compensation, whereas a spendthrift trust is generally used to provide the maintenance and support of its beneficiaries.

Id. at 1124.

In the instant case, this Court must analyze the Profit Sharing Plan and Savings Plan under Iowa law. The record does not indicate that any other law would govern this plan. See In Re Montgomery, 104 B.R. 112, 114 (Bankr. N.D. Iowa 1989). Iowa law generally recognizes and upholds the validity of spendthrift trusts. Matter of Estate of Dodge, 281 N.W.2d 447, 450 (Iowa 1979). The late Honorable William W. Thinnes, U.S. Bankruptcy Judge for the Northern District of Iowa, summarized Iowa spendthrift trust law:

> Spendthrift trusts are trusts created to maintain a designated beneficiary and to insulate the fund from claims of the beneficiary's creditors. In re Graham, 24 B.R. 305, 310 (Bankr. N.D. Iowa 1982). Generally, a settlor cannot make a spendthrift trust for his own benefit. See e.g. DeRousse v. Williams, 181 Iowa 379, 389, 164 N.W. 896, 899 (1917); Harrison v. City National Bank of Clinton, Iowa, 210 F.Supp. 362, 370 (S.D. Iowa 1962); RESTATEMENT (Second) OF TRUSTS, §156.

In re Schwartz, 58 B.R. 606, 607 (Bankr. N.D. Iowa 1984).

This Court does not find a distinction between Iowa spendthrift trust law and the Eighth Circuit's interpretation of Minnesota spendthrift trust law in Swanson. Therefore, this Court's determination of whether the retirement fund is a spendthrift trust under Iowa law is controlled by the Swanson holding.

In the instant case, the Profit Sharing Plan and Savings Plan contain ERISA transfer restrictions. However, employees make contributions to the Savings Plan. Further, employees are entitled to a refund to the vested portion of their Profit Sharing Plan or Savings Plan upon termination of employment. Finally, the Profit Sharing Plan and Savings Plan allow the employee to borrow from said plans subject to loan use requirements and loan amount limitations. Therefore, the Profit Sharing Plan and Savings Plan are not spendthrift Trusts. See In re Swanson, 873 F.2d at 1123-1124. The plans thus are not excluded from the bankruptcy estate under 11 U.S.C. §541(c)(2) and are property of Debtors' estate under 11

U.S.C. §541(a).

II. <u>Exempt from the Bankruptcy Estate</u>

11 U.S.C. §522(b) provides in pertinent part:

> Notwithstanding §541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection... Such property is—
>
> (1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(a) of this subsection specifically does not so authorize; or, in the alternative,
>
> (2) (A) any property that is exempt under federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition...

A. 11 U.S.C. §522(b)(1).

As permitted by 11 U.S.C. §522(b)(1), Iowa opted out of the federal exemptions set forth in 11 U.S.C. §522(d) by operation of Iowa Code §627.10. Therefore, 11 U.S.C. §522(b)(1) is inapplicable.

B. 11 U.S.C. §522(b)(2)(A).

Concerning exemption under federal law pursuant to §522(b)(2)(A), the Eighth Circuit made it clear that any prohibition on assignment or alienation pursuant to 29 U.S.C. §1056(d) (ERISA) or 26 U.S.C. §401(a) (IRC) did not constitute

a federal exemption under 11 U.S.C. §522(b)(2)(A). In re Graham, 726 F.2d at 1273-1274. The issue therefore is whether the Profit Sharing Plan and Savings Plan are exempt under Iowa law.

The applicable exemption statute is Iowa Code §627.6(8)(e). Iowa Code §627.6(8)(e) provides in pertinent part:

> A debtor who is a resident of this state may hold exempt from execution the following property:
>
> (8) the debtors' rights in:
>
> (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.

A threshhold issue is whether ERISA §514(a), as codified at 29 U.S.C. §1144(a), preempts Iowa Code §627.6(8)(e). ERISA §514(a) preempts any and all state laws that make reference to ERISA plans even when those state laws are consistent with the federal statutory scheme. Mackey v. Lanier Collections Agency & Service, Inc., 486 U.S. 825, 100 L.Ed.2d 836, 108 S.Ct. 2182 (1988). A majority of courts appear to hold that where an exemption statute refers to ERISA or to attendant IRS provisions, ERISA §514(a) preempts said exemption. See In re Conroy, 110 B.R. 492 (Bankr. D. Montana 1990) (cites numerous

cases finding both specific and general state exemption statues preempted). In the instant case, Iowa Code §627.6(8)(e) does not make any reference to ERISA or to attendant IRS provisions. Therefore, it is not preempted by ERISA §514(a).

Trustee does not dispute that the Profit Sharing Plan and Savings Plan fit the definition of a pension, annuity, or similar plan or contract under Iowa Code §627.6(8)(e). However, Trustee asserts that the retirement plan is not "reasonably necessary" for Debtors' support under Iowa Code §627.6(8)(e).

In construing §627.6(8)(e), the court in In re Flygstad, 56 B.R. 884 (Bankr. N.D. Iowa 1986) set out numerous factors that must be considered on a case-by-case basis to determine if a plan is "reasonably necessary" for debtor's support. This Court has adopted this 11 factor test in In the Matter of Hunt, No. 87-2850, slip op. (Bankr. S.D. Iowa, September 27, 1988). The Flygstad factors factors are:

(1) Debtor's present and anticipated living expenses;

(2) Debtor's present and anticipated income from all sources;

(3) Age of the debtor and dependents;

(4) Health of the debtor and dependents;

(5 Debtor's ability to work and earn a living;

(6) Debtor's job skills, training, and education;

(7) Debtor's other assets, including exempt assets;

(8) Liquidity of other assets;

(9) Debtor's ability to save for retirement;

(10) Special needs of the debtor and dependents; and

(11) Debtor's financial obligations, e.g., alimony or support payments.

Id. at 889, 890.

In the instant case, Debtors' income of $1,280.00 exceeds their expenses of $1,158.00; Debtors' have no special health problems; Debtors have the ability to work and earn a living; Debtors are in their twenties; and Debtors have the ability to save for retirement. Therefore, the Court finds that the Profit Sharing Plan and Savings Plan are not reasonably necessary for Debtors' support.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that the Bally Profit Sharing Plan and Bally Savings Plan are property of the estate under 11 U.S.C. §541 and are not exempt under Iowa Code §627.6(8)(e).

IT IS ACCORDINGLY ORDERED that Trustee's objection to Debtors' claim of exemption is sustained.

LET JUDGMENT ENTER ACCORDINGLY.

Dated this __25th_____ day of September, 1990.

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Russell J. Hill
U.S. Bankruptcy Judge