

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

In the Matter of	:	Case No. 97 – 3649 - CH
	:	
HARLEY R. GRIFFIEON,	:	Chapter 7
	:	
	:	
Debtor.	:	
	:	

ORDER – OBJECTION TO CLAIM OF EXEMPTIONS

On August 8, 1997, Debtor, Harley R. Griffieon, filed a Voluntary Petition for Chapter 7 relief under the U.S. Bankruptcy Code. On December 11, 1997, hearing was held on the Trustee's Objection to Claim of Exemptions and Debtor's Objection thereto. Debtor, Harley R. Griffieon, was represented by attorney Joseph G. Bertogli; Donald F. Neiman appeared as the Chapter 7 Trustee. At the conclusion of the hearing, the Court took the matter under advisement. The Court now considers the matter fully submitted.

The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(1) and § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(B). The Court, upon review of the briefs, pleadings, evidence, and arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. Harley R. Griffieon acquired an interest in his ex-wife's Iowa Public Employees Retirement System ("IPERS") account by virtue of a Qualified Domestic Relations Order

("QDRO") entered in compliance with a dissolution of marriage decree entered in Decatur County Iowa in March 1996.

2. Distributions from the IPERS account will be made when Debtor's ex-wife retires.

3. Debtor's Schedule C includes his interest in IPERS and IRA accounts, valued at \$10,500, and accrued wages, valued at \$2,000. He claimed the IPERS and IRA accounts as exempt under Iowa Code § 627.6 (8)(e) and the wages as exempt under Iowa Code § 627.6 (9)(c).

4. The Trustee timely filed an Objection to Debtor's Claimed Exemptions in the IPERS account, the IRA, and accrued wages. Debtor objected to Trustee's Objection. In his objection, Debtor argues that the IPERS account and the IRA are allowable as exempt under Iowa Code § 627.6 (8)(e); he admits that the claimed exemption of accrued wages is limited to \$1,000 and states that the \$2,000 figure on Schedule C was in error.

5. Debtor filed an Amended Schedule C, which renders as moot the Trustee's objection to Debtor's claimed exemption in accrued wages.

DISCUSSION

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)(citations omitted).

The Iowa Code section under which Debtor claims his IRA and the IPERS accounts as exempt provides that a debtor may hold exempt from execution:

- "8. 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 . . ."

Iowa Code § 627.6 (8)(e) (1997).

The purpose of this type of exemption is to protect payments which serve as wage substitutes after retirement. See In re Caslavka, 179 B.R. 141, 143-44 (Bankr. N.D.Iowa 1995); Matter of Eilbert, 212 B.R. 954, 958 (B.A.P. 8th Cir. 1997).

IPERS Account

Debtor argues that his interest in his ex-wife's IPERS retirement account is exempt; Trustee argues that Debtor's rights in the IPERS account are on account of a dissolution decree, not by one of the triggering events required under the statute.

Whether Debtor's interest in his ex-wife's IPERS retirement account is exempt turns on whether the "debtor's rights" or the "payment or portion of a payment" must be "on account of" one of the triggering events. Other decisions that have interpreted this statute have not expressly analyzed the distinction made by the two possible constructions. When this Court examined the exemption issue regarding payments under a structured settlement agreement, it was not necessary to make the distinction because the asset was not exempt under either construction. See Matter of Palmerton, No. 96-222-WH (Bankr. S.D.Iowa March 25, 1997)(J.Hill Dec. Book #288). The Eighth Circuit also summarily spoke to the issue of whether, under Iowa law, payments were triggered by one of the requisite events. See In re Huebner, 986 F.2d 1222 (8th Cir. 1993). However, the Eighth Circuit recently affirmed a lower court opinion that construed a

similar Minnesota statute as requiring the debtor's rights in a pension be directly derived from the debtor's employment in order to be exempt. See Deretich v. City of St. Francis, 128 F.3d 1209 (8th Cir. 1997)(debtor's rights in ex-husband's employment benefits were obtained through divorce property settlement and were not exempt); Minn. Stat. § 550.37 (24) (1997).

In giving full effect to all words in the Iowa statute, this Court construes it to require that Debtor's rights in those payments or portions of payments be triggered by illness, disability, death, age, or length of service. Debtor received an interest in his ex-wife's IPERS account through their dissolution decree. The QDRO was entered as part of a property settlement, not as a manner of providing support for Debtor. See generally Iowa Code §§ 598.21 (1)(i), (3).

Although payments from the IPERS account will be triggered by Debtor's ex-wife's retirement based on her age and length of service, Debtor's rights in those payments are triggered by the dissolution decree. Debtor's rights in the IPERS account are not exempt.

IRA

Debtor argues that his IRA is exempt; Trustee opposes this claim. Generally, IRA's have been found to not be exempt under Iowa Code § 627.6 (8)(e). See Matter of Grimes, No. 88-25554-WH, (Bankr. S.D.Iowa Jan. 5, 1990)(J.Hill Dec. Book #115); In re Matthews, 65 B.R. 24, 15 (Bankr. N.D.Iowa 1986). Nothing in the record indicates the IRA is other than a traditional individual retirement account in which Debtor has access and control over the funds or that it was funded by a rollover from another investment vehicle that would have been exempt or would have been excluded from property of the bankruptcy estate. See, i.e. In re Caslavka, 179 B.R. at 144 (IRA fully funded by rollover from ERISA-qualified plan was exempt). On the facts in the record, the IRA is not exempt.

ORDER

IT IS THEREFORE ORDERED that Debtor's rights to payments under the IPERS account are not exempt pursuant to Iowa Code § 627.6 (8)(e);

IT IS FURTHER ORDERED that Debtor's rights to payments under the IRA are not exempt pursuant to Iowa Code § 627.6 (8)(e).

Dated this _____ day of June 1998.

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