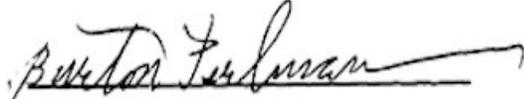


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: January 06, 2009

  
Burton Perlman  
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re: : Case No. 08-14859  
: :  
Kara K. Graham, : Judge Burton Perlman  
: :  
Debtor : Chapter 7  
Richard D. Nelson, Trustee :  
: :  
Objector :  
: :  
vs. :  
: :  
Kara K. Graham :  
: :  
Debtor :

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ORDER OVERRULING TRUSTEE'S OBJECTION TO EXEMPTION

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Richard D. Nelson, trustee, has filed an Objection to Claim of Exemptions. Debtor has filed a Response to the Objection. The Trustee objects to Debtor's claim of an exemption in a life insurance policy (the "Policy") issued by Northwestern Mutual.

## I. Jurisdiction

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the general order of reference entered in this district. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

## II. Positions of the Parties.

On September 4, 2008, the Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code. As of the petition date, Debtor had an interest in a whole life insurance policy. The primary beneficiary of the policy is Debtor's ex-husband, David W. Graham. The contingent beneficiary is the Debtor's son, Justin A. Graham. The policy has a cash surrender value of \$6,999.01.

On Debtor's Schedule C -- Exempt Property, the Debtor claims the full cash surrender value, \$6,999.01, as exempt pursuant to ORC §§ 2329.66(A)(6)(b), 3911.10, 3911.12 and 3911.14. The Trustee objects to the Debtor's claim, arguing that § 2329.66(A)(6)(b) and affiliated sections only allow for an exemption where the beneficiaries are dependents of the Debtor, such as parents, spouses or children. Ex-spouses are not included in the statutes. The Trustee asserts, therefore, that the policy is not within the exemption.

The Debtor responds that under ORC § 5815.33(B)(1) the Debtor's ex-husband is deemed to have predeceased Debtor, and his designation as beneficiary is revoked. Thus, Debtor asserts that her son is the primary beneficiary and the cash surrender value of the policy qualifies for the exemption provided under § 2329.66(A)(6)(b).

## III. Discussion

ORC § 2329.66 lists the types of property a debtor may exempt from the reach of

creditors. In re Peacock, 292 B.R. 593, 599 (Bankr. S.D. Ohio 2002). “Exemptions serve the public policy of protecting the debtor’s family and maintaining its basic needs.” In re Peacock, 292 B.R. at 599. (citing Daugherty v. Central Trust Co., 28 Ohio St. 3d 441, 447 (1986)). “The longstanding purpose of Ohio’s exemption statute is to protect from creditors’ legal process those debtors with minimal assets ‘... for the benefit of the children as well as for the parents, in order that the children ... may be protected against the dangers to which they would be exposed without those household facilities which make the family relation possible....’” In re Peacock, 292 B.R. at 599. (quoting Dennis v. Smith, 125 Ohio St. 120, 125 (1932)). “Exemption statutes are to be construed liberally and in the debtor’s favor.” In re Peacock, 292 B.R. at 599; In re Bush, 253 B.R. 863, 865 (Bankr. S.D. Ohio 2000) (“[It is a] well-established principle that exemption statutes are to be construed liberally, and in favor of the debtor.”); In re Shaffer, 228 B.R. 892, 895 (Bankr. N.D. Ohio 1998) (“When doubt exists as to the intent of the statute, the interpretation should be construed in favor of the debtor.”).

A claimed exemption is presumptively valid. In re Peacock, 292 B.R. at 599. When property is claimed to be exempt, it is the objecting party’s burden to prove that the exemption is not valid. Fed. R. Bankr. P. 4003(c); In re Parker, 219 B.R. 972, 974 (Bankr. S.D. Ohio 1998). If the objecting party produces evidence to rebut the exemption, the burden of production shifts to the debtor. In re Peacock, 292 B.R. at 599. The burden of persuasion always remains with the objecting party. *Id.*

Under ORC § 2329.66(A)(6)(b) an exemption is allowed for an “interest in contracts of life or endowment insurance or annuities, as exempted by section 3911.10 of the Revised Code.” ORC § 3911.10 provides, in relevant part:

“All contracts of life or endowment insurance or annuities upon the life of any person, or any interest therein, which may hereafter mature and which have been taken out for the benefit of, or made payable by change of beneficiary, transfer, or assignment to, the spouse or children, or any persons dependent upon such person ... shall be held, together with the proceeds or avails of such contracts, subject to a change of beneficiary if desired, free from all claims of the creditors of such insured person or annuitant.” Ohio Rev. Code Ann. § 3911.10.

An ex-husband is not specifically provided for in § 3911.10. A policy’s cash value would not qualify for the exemption if an ex-spouse, who was not a dependent, was the beneficiary to the policy. See In re Peacock, 292 B.R. at 599. (mother and aunt were determined not to be dependents where they received no financial assistance from the debtor.); Compare In re Collopy, 99 B.R. 384 (Bankr. S.D. Ohio 1989) (Decision by this Court interpreting dependent broadly and allowing an exemption for the debtor’s mother where debtor provided non-financial assistance.). The Debtor does not assert that the ex-husband is a dependent.

However ORC § 5815.33(B)(1) provides:

“Unless the designation of beneficiary or the judgment or decree granting the divorce, dissolution of marriage, or annulment specifically provides otherwise, and subject to division (B)(2) of this section, if a spouse designates the other spouse as a beneficiary or if another person having the right to designate a beneficiary on behalf of the spouse designates the other spouse as a beneficiary, and if, after either type of designation, the spouse who made the designation or on whose behalf the designation was made, is divorced from the other spouse, obtains a dissolution of marriage, or has the marriage to the other spouse annulled, then the other spouse shall be deemed to have predeceased the spouse who made the designation or on whose behalf the designation was made, and the designation of the other spouse as a beneficiary is revoked as a result of the divorce, dissolution of marriage, or annulment.”

In April of 2005, the Debtor received a decree of dissolution. Under ORC §

5815.33(B)(1), the ex-husband was revoked as a beneficiary under the policy at issue. Thus, the contingent beneficiary, the Debtor's son, becomes the beneficiary of the policy. Under ORC § 3911.10, the Debtor's son qualifies as a dependent and thus the cash value of the policy qualifies for the ORC § 2329.66(A)(6)(b) exemption.

#### IV. Conclusion

In light of the foregoing, the Court holds that the Trustee's Objection to the exemption is overruled.

#### **SO ORDERED.**

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