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IT IS SO ORDERED.



Burton Perlman
Burton Perlman
United States Bankruptcy Judge

Dated: August 13, 2010

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In Re:	:	Case No. 10-10884
	:	
Americo Marchese,	:	Judge Burton Perlman
	:	
and	:	Chapter 7
	:	
Emilia Marchese	:	
	:	
Debtors.	:	
	:	
vs.	:	
	:	
Chapter 7 Trustee,	:	
	:	
Objector.	:	

DECISION OVERRULING TRUSTEE'S OBJECTION TO EXEMPTION

In this Chapter 7 bankruptcy case, debtors with their petition included schedules which showed cash amounts in two banking accounts. In their Schedule C they claimed these to be exempt pursuant to Ohio Law. The Chapter 7 trustee filed an objection to both

claims of exemption. Debtors filed a response to the objection. The matter came on for hearing before the Court at the conclusion of which the Court reserved decision.

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

The parties jointly filed a Stipulation of Facts which in its entirety provides:

- “1. The debtors, Americo and Emilia Marchese filed a voluntary Chapter 7 petition with the Court on February 16, 2010.
2. At the time of filing, the debtor Americo Marchese, age 64, was retired, and the debtor’s spouse Emilia Marchese, age 59, was a homemaker.
3. On the date of filing, the debtors’ Chase Bank account ending in 7780, showed a balance of \$4245.74; the debtors’ Chase Bank account ending in 3047 showed a balance of \$698.15; and the debtor’s rollover IRA held at Chase Bank, showed a balance of \$143,526.00.
4. For the six months prior to filing, the debtor’s regular sources of income were monthly social security benefits in the amount of \$1596.00, and monthly unemployment benefits in the amount of \$1477.00. Both amounts were regularly deposited into Chase account 7780.
5. Approximately one week prior to filing, on February 8, 2010, the debtors’ took an IRA distribution in the amount of \$4,000.00, and electronically deposited the entire amount into Chase account 7780.
6. For the six months prior to filing, the debtors took regular monthly IRA distributions in the amount of \$4000.00 to supplement their income in order to meet ordinary living expenses, and pay medical expenses related to the joint debtor’s ongoing medical conditions, as noted in Schedule J of the petition.”

On Debtors’ Schedule C -- Exempt Property, the Debtors claimed the bank account ending in 7780 to be fully exempt based upon Ohio Rev. Code §§ 2329.66(A)(10)(c); 2329.66(A)(17); 2326.66(A)(9)(c), 4141.32, and the bank account ending in 3047 to be fully exempt based upon Ohio Rev. Code § 2329.66(A)(10)(c); 2329.66(A)(17).

Debtors claim that their funds are exempt pursuant to ORC § 2329.66(A)(10)(c),

entitled "Exempted Interests and Rights". The statute there provides:

"(A) Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, as follows:

* * *

(c) Except for any portion of the assets that were deposited for the purpose of evading the payment of any debt and except as provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 of the Revised Code, the person's right in the assets held in, or to receive any payment under, any individual retirement account, individual retirement annuity, "Roth IRA," or education individual retirement account that provides benefits by reason of illness, disability, death, or age, to the extent that the assets, payments, or benefits described in division (A)(10)(c) of this section are attributable to any of the following:

* * *

(iii) Contributions of the person that are within the applicable limits on rollover contributions..."

The Trustee objects to the Debtors' claimed exemption arguing that a distribution of funds from an IRA to personal checking accounts converts IRA funds to "non-IRA" funds, causing the funds to lose their exempt status.

There is no dispute between the parties that the IRA fund itself is exempt. They differ as to the consequences when use is made of the IRA fund. After due consideration, the Court concludes that the position of debtors is correct, and the fund which they have withdrawn from their IRA, and placed in a checking account, remains exempt.

Certain principles must be observed when discussing the subject of exemptions. 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 Sparks, 410 B.R. 602, 604 (Bankr. S.D. Ohio 2009). Ohio exemptions, applicable to bankruptcy proceedings, are to be

construed liberally in favor of the debtor. Baumgart v. Alam (In re Alam), 359 B.R. 142, 147-8 (6th Cir. B.A.P. 2006); In re Jackson, 348 B.R. 771, 772 (Bankr. S.D. Ohio 2006).

We reach the conclusion that we do because the funds withdrawn by debtors from their IRA Account and deposited in their checking accounts were used for the same purpose for which an exemption is granted to the IRA itself, maintenance and support of the family. The parties have so stipulated in their stipulation of facts. Debtors' checking account was used to supplement their income in order to meet ordinary living expenses and pay medical expenses related to the joint Debtors' ongoing medical conditions. The outcome we reach follows that reached by the Supreme Court of Ohio in Daugherty v. Central Trust Company of North-Eastern Ohio N.A., 28 Ohio St. 3d 441, 504 N. E. 2d 1100 (1986). In Daugherty, the Ohio Supreme Court found that "personal earnings exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order pursuant to R.C. 2329.66(A)(13) retain their exempt status when deposited in a personal checking account, so long as the source of the exempt funds is known or reasonably traceable." Daugherty, 504 N.E.2d at 1103. While in Daugherty it was wages, not IRA funds being considered by the court, the principles involved in that case are the same as here. In each instance the fund for which exemption was claimed was devoted to the maintenance and support of debtors' family. The court held that exemption followed moneys deposited from exempt wages into debtors' checking account. See also In re Cook, 406 B.R. 770, 775 (Bankr. S.D. Ohio 2009); In re Sparks, 410 B.R. at 606.

In arguing for a contrary holding Plaintiff relies primarily on In re Roberts, 326 B.R. 424 (Bankr. S.D. Ohio 2004). Roberts is distinguishable from the case before us, and in

fact is not inconsistent with Daugherty. In Roberts, the debtors pledged stocks in IRA accounts as security for business debts. The Roberts court held that pledging IRA funds constituted a distribution of those portions of the IRA and that such a distribution rendered the property non-exempt. The court said that,

“a debtor’s pledge of his IRA as collateral for a loan, *especially a business loan*, is inconsistent with the need to protect that money as a future income stream for the debtor as against the debtor’s creditors.” In re Roberts, 326 B.R. at 426 (emphasis added).

The facts in the case here before the court are agreed to be that the funds withdrawn from debtors' IRA were used for "ordinary living expenses" and "medical expenses", very different from the facts in Roberts.

In view of the foregoing discussion, Trustee’s objection to debtors' claim of exemption will be overruled.

SO ORDERED.

Copies to:

Default List

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