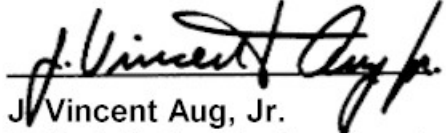


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.




J. Vincent Aug, Jr.
United States Bankruptcy Judge

Dated: November 20, 2009

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

In re
Charles Carter
Cathy Carter

Case No. 09-14801

Debtors

Chapter 7
Judge Aug

**ORDER OVERRULING TRUSTEE'S
OBJECTION TO CLAIM OF EXEMPTIONS**

This matter is before the Court on the Chapter 7 Trustee's Objection to Claim of Exemptions (Doc. 14) and the Debtor's Response (Doc. 22).

Debtor, Cathy Carter, has claimed as fully exempt an annuity through First Colony Life Insurance Company pursuant to Ohio Rev. Code §2329.66(A)(6)(e) and §3923.19. The annuity stems from her former husband, who suffered brain damage in the 1990's. Ms. Carter was not the party injured, but receives the annuity payment as part of a settlement with the annuity carrier. The Debtor receives \$1,782 monthly from this annuity, which began in 1997 and has a term of 30 years.

The Trustee has the burden of proving that the exemptions are not properly claimed by a preponderance of the evidence. Fed. R. Bankr. Proc. 4003(c); *In re Hamo*, 233 B.R. 718, 723 (6th Cir. BAP 1999).

The Trustee objects to the Debtor's exemption because it was not properly claimed since the basis for the annuity payment was an injury to the Debtor's former husband, and not the Debtor herself. Therefore, the Trustee contends, the exemption does not apply. In addition, the

Trustee objects to the exemption because it was not properly scheduled. Schedule B lists the value of the annuity at \$0, however the Trustee believes the annuity has a value of \$385,000 (monthly payment of \$1,782 for the remaining 216 payments).

The Debtor contends that the annuity is a spendthrift trust which cannot be attached by the Trustee pursuant to 11 U.S.C. §541(c)(2). The Court agrees with the Debtor and holds that the annuity is outside of the reach of the Trustee.

Section 541(c)(2) provides “[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.” “Applicable nonbankruptcy law” refers to spendthrift trusts, as defined by state law. *Matter of Abbott*, 123 B.R. 784, 786 (Bankr. S.D. Ohio 1991); *In re Eley*, 331 B.R. 353 (Bankr. S.D. Ohio 2005). Spendthrift trusts are effective to bar a beneficiary’s creditors from reaching the distributions, and are valid and enforceable in Ohio. *In re Eley*, 331 B.R. at 356.

The annuity contains a spendthrift provision which provides that payments made under the annuity “are held in trust for the payee and are not subject to the claims of creditors of any payee”. *See* Doc. 22, Exhibit A. Since the annuity contains a valid spendthrift provision enforceable under state law and bankruptcy law, the annuity is beyond the reach of the Debtor’s creditors and the Trustee pursuant to 11 U.S.C. §541(c)(2). For the same reason, the Debtor’s valuation of the annuity at \$0 is not inappropriate in this case.

The Debtor also claims that the annuity payment is exempt under Ohio law because it is an annuity on account of illness or disability and is reasonably necessary for her support pursuant to Ohio Rev. Code §2329.66(A)(6)(e) and §3923.19. Because we conclude that the annuity is outside of the reach of the Trustee based on the spendthrift provision, we do not need to address this issue.

Accordingly, the Chapter 7 Trustee’s Objection to Claim of Exemptions is OVERRULED.

IT IS SO ORDERED.

Distribution list:

Debtors
Paul Minnillo, Esq.
Chapter 7 Trustee
U.S. Trustee

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