

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

**In Re:**

**In Proceedings Under Chapter 7**

**LAURA L. VANCE,**

**Case No.: 05-95046**

**Debtor.**

**CHIEF JUDGE RANDOLPH BAXTER**

**MEMORANDUM OF OPINION AND ORDER**

This matter before the Court is an objection of the Chapter 7 Trustee the “Trustee”) to Laura L. Vance’s (the “Debtor”) claims of exemption. The Debtor opposes the Trustee’s requested relief.

The Court acquires core matter jurisdiction over the instant matter pursuant to 28 U.S.C. §§ 157(a) and (b), 28 U.S.C. § 1334 and General Order No. 84 of this district. Upon examination of the parties’ respective briefs and supporting documentation, and after conducting an evidentiary on the matter, the following findings of fact and conclusions of law are hereby rendered:

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On October 15, 2005 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”). Pre-petition, the Debtor entered into a settlement agreement and release with her former employer and the Ohio Bureau of Workers’ Compensation representing a resolution of a work-related injury she sustained in 2002 (the “Settlement Agreement”).

Originally, the Debtor claimed the funds on deposit in an Ohio Savings Bank checking account (the “Account”) as exempt pursuant to O.R.C. §§ 2329.66(A)(9)(b),

2329.66(A)(4)(a) and 4123.67, to the extent of \$8,687.00. See Debtor's Schedule C (Property Claimed as Exempt). The Trustee filed an objection to the Debtor's claims of exemption that were asserted by the Debtor pursuant to O.R.C. §§ 2329.66(A)(9)(b) and 4123.67 to the extent of \$8,400.00, requesting that the claims be disallowed in their entirety. The Debtor responded to the Trustee's objection by altering the legal basis for her claims of exemption as it related to the funds on deposit in the Account.

Subsequently, the Debtor filed an amendment to her Schedule C, wherein she claimed an exemption in the funds on deposit in the Account pursuant to O.R.C. 2329.66(A)(12)(d), to the extent of \$8,400.00. See Debtor's Schedule C Property Claimed as Exempt – Amended (“Amended Exemption”).

The Trustee objects to the Debtor's Amended Exemption and requests that his objection be sustained and that the Debtor's Amended Exemption be disallowed in its entirety (the “Objection”).

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The Trustee asserts that the funds on deposit in the Account are a result of the workers' compensation settlement obtained by the Debtor pre-petition that stemmed from a work-related injury she sustained in 2002. He contends that a workers' compensation claim settlement is not a settlement of a tort claim. He also asserts that O.R.C. § 2329.66(A) (12)(d) is intended to deal with tort claims and recoveries, as otherwise the language makes little sense. He further contends that the Debtor's assertion of exemption is flawed when she requests that this Court accept that the Ohio Legislature expressly provided for the partial exemption of workers' compensation benefits under O.R.C. § 2329.66(A)(9)(b), and then provide another exemption in another sub-part of the same

section, specifically § 2329.66(A)(12)(d). The Trustee contends that the rules of statutory construction prevent this Court from accepting and adopting the Debtor's construction of the aforementioned sub-parts of O.R.C. § 2329.66.

The Debtor contends that the funds on deposit in the Account are funds from a settlement for future earnings from her previous employer made in a lump sum payment, not a settlement of her workers' compensation claim. She asserts that the funds in dispute represent a settlement that she received in exchange for her agreement not to seek re-employment with her previous employer and waiver of any other claims against the previous employer regardless of whether or not such claim originated from the workers' compensation claim. She also argues that Ohio's exemption statute O.R.C. § 2329.66(A)(12)(d) allows a debtor to retain payments in compensation for loss of future earnings of the debtor to the extent reasonably necessary for the support of the debtor. The Debtor asserts that the § 2329.66(A)(12)(d) exemption continues to apply even though she received the lump sum payment pre-petition and deposited said funds into the Account.

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The dispositive issue before this Court is whether the funds on deposit in the Debtor's Account are exempt property and not property of the bankruptcy estate.

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All property in which a debtor has a legal or equitable interest at the commencement of the case is included in the bankruptcy estate. 11 U.S.C. § 541. Section 541(a)(1) provides "all legal or equitable interests of the debtor in property as of the commencement of the case." See Johnston v. Hazlett (In re Johnston), 222 B.R. 552

(B.A.P. 6th Cir.1998), aff'd, 209 F.3d 611 (6th Cir.2000); In Baer v. Montgomery (In re Montgomery), 219 B.R. 913 (B.A.P. 10th Cir.1998), aff'd, 224 F.3d 1193 (10th Cir.2000); In re McCourt, 217 B.R. 998 (Bankr. S.D. Ohio 1997); In re Kurilich, 199 B.R. 161 (Bankr. N.D. Ohio 1996). A debtor, however, may exempt certain property from the bankruptcy estate pursuant to § 522 of the Bankruptcy Code. Section 522 (b) provides:

(b)(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

11 U.S.C. § 522(b)(1) and (2). Under the Bankruptcy Code, either the applicable state or the federal exemptions may be selected pursuant to § 522 of the Bankruptcy Code unless a state chooses to “opt out” of the federal exemption scheme. See 11 U.S.C. § 522(b)(1). The Ohio General Assembly “opted out” by enacting O.R.C. § 2329.66. Hence, Ohio debtors are required to use the exemptions provided by Ohio Law.

If a party in interest does object to a debtor’s claim of exemption, Bankruptcy Rule 4003(c) provides:

In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

FED. R. BANKR. P. 4003(c). The burden of proof is upon the objecting party. Herein, that burden lies with the Trustee. That burden of proof is to be established by a preponderance of the evidence. See In re Hamo, 233 B.R. 718 (B.A.P 6th Cir.1999); In re Hoppes, 202 B.R. 595 (Bankr. N.D. Ohio 1996).

The Debtor, herein, originally claimed an exemption in a remnant of settlement proceeds (\$8,687.00) on deposit in the Account pursuant to Ohio Rev. Code 2329.66(A)(9)(b). See Debtor's Schedule C (Property Claimed as Exempt). Section 2329.66(A)(9)(b) provides:

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

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(9) The person's interest in the following:

(b) workers' compensation, as exempted by section 4123.67 of the Ohio Revised Code.

OHIO REV. CODE ANN. § 2329.66 (West 2006). O.R.C. § 4123.67 provides, in relevant part:

Except as otherwise provided in sections 3119.80, 3119.81, 3121.02, 3121.03 and 3123.06 of the Revised Code, compensation before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to the employees or their dependents.

OHIO REV. CODE ANN. § 4123.67 (West 2006).

After the Trustee filed an objection to the Debtor's original claim of exemption, the Debtor amended her claim of exemption and asserted that the funds on deposit, in the amount of \$8,400.00, were exempt property pursuant to Ohio Rev. Code § 2329.66(A)(12)(d). See Debtor's Schedule C Property Claimed as Exempt – Amended. Section 2329.66(A)(12)(d) 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:

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(12) The person's right to receive, or moneys received during the preceding twelve calendar months from, any of the following:

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(d) A payment in compensation for loss of future earnings of the person or an individual of whom the person is or was a dependent, to the extent reasonably necessary for the support of the debtor and any of the debtor's dependents.

OHIO REV. CODE ANN. § 2329.66 (West 2006). The Court notes that there is no Ohio legislative history or Ohio case law that interprets the “future earnings” exemption created by O.R.C. § 2329.66(12)(d).

Workers’ compensation, pursuant to O.R.C. 4123.67, is exempt property before payment to a claimant under O.R.C. § 2329.66(A)(9)(b); after payment, no exemption attaches. Ohio Bell Telephone Co. v. Antonelli, 29 Ohio St. 3d 9, 504 N.E.2d 717 (1987). Therefore, such funds deposited into a bank account are subject to the claims of creditors and attachment or execution.

The parties do not dispute that the funds in the Account were funds awarded to the Debtor pursuant to a settlement agreement and release executed by the Debtor, her former employer and counsel for the Ohio Bureau of Workers’ Compensation in June of 2005. See Trustee’s Exhibit 1. Neither of the parties dispute that the sum total of that settlement was \$50,000.00. Id. Nor are there any contentions that the funds on deposit in the Account are proceeds from the Settlement Agreement. However, the parties do disagree on what the funds represent. The Trustee asserts that the funds on deposit represent workers’ compensation benefits, which renders the funds non-exempt property under Ohio law. The Debtor argues that the funds in the account were the result of a

settlement with the Debtor's former employer for future earnings received in a lump sum payment, which causes the funds to become exempt property under Ohio law.

“[A]ny construction or interpretation of O.R.C. § 2329.66 that *would* serve to wholly exempt workers' compensation benefits from attachment would obviate the plain language of R.C. 4123.67.” Ohio Bell Telephone Co., 504 N.E.2d at 718 (1987).

O.R.C. §§ 2329.66(A)(9)(b) and (12)(d) “must be reconciled and applied so as to render their contents operative and valid.” Id. (citing Thiel v. Allstate Ins. Co., 23 Ohio St.3d 108, 111, 491 N.E.2d 1121, 1123 (1986)). Pursuant to the rules of statutory construction statutes are to be construed together as an interrelated body of law. See Suez Co. v. Young, 195 N.E.2d 117 (6<sup>th</sup> Dist. Lucas County 1963). Statutes are considered to be in *pari materia* when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object even if they contain no reference to each other. Id. The statutory language of *pari materia* statutes should be considered in determining the spirit or meaning and intent of the legislature, which must be gathered from the entire statute. Id. In this case the Trustee and the Debtor assert various contentions of law as to how a sum of money on deposit in the Account should be treated under Ohio exemption law. O.R.C. § 2329.66(A)(9)(b) exempts workers' compensation benefits before the payment is made to the claimant. Once the payments are made to the claimant, the benefits are no longer exempt property. O.R.C. § 2329.66(A)(12)(d) exempts payment in compensation for loss of future earnings of the person to the extent reasonably necessary for the support of the person and any of the person's dependents. An examination of the statutory language of O.R.C. § 2329.66 demonstrates the Ohio Legislature's intent to render benefits and/or payments intended as compensation for

workers' compensation claim as non-exempt property once paid to the claimant. The legislature does not provide for bankruptcy debtors an alternative means in exempting workers' compensation benefits, even if those benefits may represent future earnings.

The Debtor's former attorney, Robin Peterson, who represented her during her workers' compensation claim testified that the Settlement Agreement which the Debtor entered into represented a settlement of her workers' compensation claim. (Peterson, Direct). He also testified that the settlement included a waiver of the Debtor's right to workers' compensation benefits that she was eligible to receive under the workers' compensation system, which included temporary/total disability benefits, permanent/partial disability benefits, past medical services, future medical services and wage loss differential. (Id.) Mr. Peterson further testified that the terms of the Settlement Agreement did not provide a specific allocation of how much of the \$50,000 settlement award was to be apportioned to the aforementioned benefits. (Peterson, Cross-Examination). The testimony of Mr. Peterson was credible.

The Debtor asserts that the language in paragraph two of the Settlement Agreement supports her contention that the Settlement Agreement award includes future wages exempt from attachment or execution under Ohio law. See Trustee's Exhibit 1. Paragraph two of the Settlement Agreement provides that the settlement award of \$50,0000 represented:

[F]ull and complete satisfaction and settlement of the cause of action herein involved, and in full and complete satisfaction and settlement of Ohio Workers' Compensation Claim No. 02-303329, as well as any other actual or potential workers' compensation claim(s) with respect to injury or occupation disease . . . Pursuant to R.C. 4123.67 all settlement awards are subject to any orders for child support authorized.

Id. The Settlement Agreement is devoid of any specific allocation for future wages. The Settlement Agreement does indicate that it represents a resolution of the Debtor's "case on appeal from the disallowance of a workers compensation claim." Id. at ¶ 1. The evidence presented supports the finding that the monetary award pursuant to the Settlement Award represents a payment of workers' compensation benefits due to the Debtor from the work-related injury she sustained. Additionally, the record is devoid of evidence that the Debtor could have received compensation for her work-related injury through any source other than the Ohio workers' compensation system. The workers' compensation settlement paid to the Debtor included various workers' compensation benefits components. Nonetheless it represented workers' compensation benefits that became non-exempt property of the Debtor's bankruptcy estate when payment was made to the Debtor in July of 2005.

The Court further finds that the Trustee has satisfied his burden of proof. Therefore, the funds on deposit in the Debtor's Account represent workers' compensation benefits that are not entitled to an exemption under Ohio law.

### CONCLUSION

Accordingly, the Trustee's Objection is sustained. The Debtor's objection is overruled. The subject funds are hereby determined to be nonexempt estate property. Each party is to bear its respective costs.

### IT IS SO ORDERED.

Dated, this 22<sup>nd</sup> day of  
December, 2006

  
RANDOLPH BAXTER  
CHIEF JUDGE  
UNITED STATES BANKRUPTCY COURT