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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re: ) Case No. 01-17908  
)  
BRENDA I. PARRILLA, ) Chapter 7  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**

The issue in this case is whether the Debtor is entitled to exempt funds in an IRA account under Ohio Revised Code § 2329.66(A)(10)(c) where the Debtor wrote a check to deposit money into an IRA before she filed her Chapter 7 case, but the check was not honored by the bank until a few days after the bankruptcy filing. For the reasons stated below, the Court finds that the Debtor's funds were not "held in" an IRA under that statute at the time of the bankruptcy filing. The Debtor may not, therefore, exempt the funds from her bankruptcy estate.

**JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

**PROCEDURAL HISTORY**

The Chapter 7 Trustee filed a Motion for a Turnover Order asking that the Debtor be ordered to turnover this property that allegedly belongs to the Chapter 7 estate:

- (1) a prorated amount of the Debtor's federal and state tax refunds;  
and
- (2) cash on hand at the time the case was filed;

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less a \$650.00 exemption, for a total due of \$6,427.23. (Docket 13). The Debtor responded that (1) she is entitled to exempt \$4,000.00 of the cash under Ohio Revised Code § 2329.66(A)(10)(c) because she had deposited it into an IRA; and (2) the tax refund amount is not immediately ascertainable. (Docket 16). After hearings on the motion and the opposition, the parties chose to submit this for decision on stipulated facts rather than have an evidentiary hearing. (Docket entries for 5/9/02, 5/23/02, and 6/13/02).

**FACTS**

The Debtor and the Trustee entered into this Stipulation of Facts, which is quoted verbatim:

1. The petition was filed under Chapter 7 of the Bankruptcy Code on August 13, 2001.
2. The money from the 401(k) account in the amount of \$5,511.90 was deposited into her bank account at Charter One Bank on August 8, 2001.
3. The Debtor wrote a check for \$4,000.00 to roll into an IRA account on August 9, 2001.
4. The check for \$4,000.00 cleared the bank on August 16, 2001.
5. The balance in the Charter One bank account on August 13, 2001 was \$5,094.78.

(Docket 19).

The parties did not explain the reference in Stipulation No. 2 to a 401(k) account or provide additional facts about it. According to the Stipulations, the Debtor deposited money from that account into her checking account at Charter One Bank and then wrote a \$4,000.00 check on that account on August 9, 2002 to transfer funds to an IRA. On August 13, 2002, the date of the bankruptcy filing, the Charter One Bank account had a balance of \$5,094.78 because the \$4,000.00 check to the IRA had not cleared. The check to fund the IRA was honored

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postpetition. There was no evidence regarding when the IRA account was set up or when the check was delivered for deposit into that account.

**POSITIONS OF THE PARTIES**

In the Debtor's Schedule C filed with her petition, she claimed an exemption for an IRA with a \$4,000.00 value under Ohio Revised Code § 2329.66(A)(10)(c). (Docket 1). The Trustee's position is that the Debtor may have intended to transfer the funds prepetition to an IRA and have them be exempt by the time of filing, but she did not accomplish that. As a result, according to the Trustee, the funds are property of the estate and the IRA exemption is not available.

**DISCUSSION**

A Chapter 7 debtor's estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case," with exceptions not relevant here. 11 U.S.C. § 541(a)(1). The debtor is entitled by statute to remove certain property from the estate and keep it so that she has some resources to start anew after the bankruptcy filing. 11 U.S.C. § 522(b). For debtors who file their bankruptcy cases in Ohio, the property that can be exempted from the bankruptcy estate is set out in Ohio Revised Code § 2329.66. *See* 11 U.S.C. § 522(b)(1) (permitting a state to opt-out of the federal exemptions and use state exemptions instead); Ohio Rev. Code § 2329.662 (in which Ohio opts-out of the federal exemptions). In this case, the Debtor claims an exemption under Ohio Revised Code § 2329.66(A)(10)(c), which states generally that a debtor may exempt her "right in the assets held in . . . any individual retirement account that provides benefits by reason of illness, disability, death, or age," subject to restrictions that are not now at issue. State law determines the nature of the Debtor's interest in this property. *Butner v. U.S.*, 440 U.S. 48 (1979). The Trustee has the burden of proving by a

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preponderance of the evidence that the exemption should be disallowed. *Hamo v. Wilson (In re Hamo)*, 233 B.R. 718 (B.A.P. 6th Cir. 1999).

The parties do not dispute that the \$4,000.00 at issue is presently held in an IRA account that meets Ohio's exemption standard. Because the Chapter 7 estate is defined at the time of the bankruptcy filing, however, the critical question is whether the money was "held in" such an IRA on the filing date. If the cash was held in the IRA at the filing date, then the Debtor may exempt it under the Ohio IRA exemption. If the cash was not held in the IRA on that date, then it may not be exempted under that particular provision.

The parties have not cited any law defining the phrase "assets held in" an IRA and the Court has not located any either. There does not appear to be any relevant legislative history. When a word or phrase is not defined in an Ohio statute, Ohio courts often look to a dictionary to establish the word's meaning. *See, for example, State v. Johnson*, 754 N.E.2d 796, 799 (Ohio 2001) (considering Black's Law Dictionary); *Columbus & Southern Ohio Elec. Co. v. Peck*, 118 N.E.2d 142, 145-46 (Ohio 1954) (quoting Webster's New International Dictionary 2d edition, among others).

According to Webster's Third International Dictionary, the meaning of the verb "hold" includes "to maintain possession of" or "to keep control of." Webster's Third International Dictionary 1078 (1997). The plain meaning of the exemption statute language, therefore, is that an individual's money is "held in" an IRA account when an institution has possession of the money for the benefit of that individual's IRA account; in other words, when the check is honored (clears) and the funds are in the account. Until that time, the intended deposit is a hope, not a reality, as the check might be stopped by the issuer or dishonored by the payor bank. *See generally* Ohio Rev. Code §§ 1304.32, 1303.62. In this case, therefore, the act of writing a check

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and/or otherwise setting the transaction in motion was insufficient under the Stipulated Facts to transfer the \$4,000.00 to the IRA for purposes of the exemption statute. *Cf. Barnhill v. Johnson*, 503 U.S. 393 (1992) (for preference purposes under 11 U.S.C. § 547(b), a transfer is deemed to occur under federal law on the date the check is honored rather than the date the transferee received the check). As a result, the \$4,000.00 is part of the Debtor's estate, not exempt under Ohio Revised Code § 2329.66(A)(10)(c) as claimed by the Debtor, and must be turned over to the Trustee for administration and distribution to creditors.

CONCLUSION

For the reasons stated, the Trustee's Motion for Turnover is granted in part, with the Debtor directed to turnover \$4,000.00 to the Trustee, subject to any other appropriate exemption. Although the Trustee referred to a \$650.00 exemption in her motion, the Stipulated Facts do not provide a basis for determining whether any other exemption is available or for resolving the dispute regarding the tax refunds. Those remaining issues will, therefore, be set for a status conference through a separate order.

Date: 20 Sept 2002

Pat E. Morgenstern-Clarren  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Mary Ann Rabin, Esq.  
Ashvin Chandra, Esq.

By: Joyce L. Gordon, Secretary

Date: 8/20/02

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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re: ) Case No. 01-17908  
)  
BRENDA I. PARRILLA, ) Chapter 7  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) ORDER

For the reasons stated in the Memorandum of Opinion filed this same date, the Trustee's Motion for a Turnover Order is granted in part, with judgment being entered in favor of the Trustee finding that the Debtor is not entitled to an exemption under Ohio Revised Code § 2329.66(A)(10)(c). (Docket 13). A status conference on the remaining issues raised by the Motion relating to tax refunds and whether the Debtor is entitled to retain \$650.00 of the funds will be held on **September 5, 2002** at 10:30 a.m.

IT IS SO ORDERED.

Date: 20 August 2002

Pat E. Morgenstern-Clarren  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Mary Ann Rabin, Esq.  
Ashvin Chandra, Esq.

By: Joyce L. Gordon, Secretary

Date: 8/20/02