UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	)	Case No. 02-32856
	)	
Tony Alan Pyles,	)	Chapter 7
	)	
	)	
Debtor.	)	JUDGE MARY ANN WHIPPLE

MEMORANDUM OF DECISION AND ORDER REGARDING TRUSTEE'S OBJECTION TO EXEMPTION

This case came before the Court for a hearing on February 11, 2003, on the Trustee's objection to Debtor Tony Alan Pyles' claimed exemption of his interest in a retirement account and Debtor's opposition and supplement to the opposition. For the reasons that follow, the Court finds that the retirement account is excludable as property of the estate and, therefore, that the Trustee's objection is denied as moot.

Background

Mr. Pyles was granted a dissolution of marriage by the Court of Common Pleas, Lucas County, Ohio, on September 12, 2001. His ex-wife was the owner of a retirement account with an approximate value of $13,409.26 on December 31, 2000. The Judgment Entry of Dissolution of Marriage provides that the entire value of the retirement account be transferred to Mr. Pyles by his ex-wife and, if required, that a Qualified Domestic Relations Order (QDRO) be prepared to effect the transfer. Mr. Pyles has submitted a document to the Court indicating that the retirement account is an ERISA-qualified plan. The trustee does not dispute this evidence. At the time of the hearing, a QDRO had not yet been submitted to the plan administrator. However, it is undisputed that a QDRO is required in order to transfer the interest of his ex-wife to Mr. Pyles.

Mr. Pyles filed for relief under Chapter 7 of Title 11 of the United States Code on April 30,

2002, disclosing the retirement account and claiming it as exempt under Ohio Revised Code §2329.66(A)(10). The trustee filed a timely objection to the exemption. In her brief in support of the objection, the trustee argues (1) that the retirement account is property of the estate, and (2) that because Mr. Pyles' interest in the account is derived solely through a QDRO and not directly through the plan, it is not exempt because all of the exceptions to exemption provided in § 2329.66(A)(10)(b) are applicable.[1] In response, Mr. Pyles contends that his interest in the retirement in excludable from property of the estate under 11 U.S.C. § 541(c)(2).

Law and Analysis

The parties' arguments present the following issues: (1) Whether Mr. Pyles' interest in an ERISA-qualified retirement account to be obtained pursuant to a QDRO is part of the bankruptcy estate created under 11 U.S.C. § 541(a) or is excluded under 11 U.S.C. § 541(c)(2); and (2) if part of the estate, whether Mr. Pyles' interest in the account is exempt under Ohio Revised Code § 2329.66(A)(10). The issues presented constitute core proceedings that this court may hear and determine under 28 U.S.C. § 157(b).

Because an interest which falls within the scope of § 541(c)(2) does not become part of the bankruptcy estate, *see Patterson v. Shumate*, 504 U.S. 753, 755 (1992), there is no need for the debtor to claim it as exempt. Thus, before considering whether Mr. Pyles' claimed exemption is proper, the Court addresses his contention that § 541(c)(2) renders that issue moot.

Section 541(c)(2) provides that "[a] restriction on the transfer of a beneficial interest of the

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[1] An interest in a retirement plan is not exempt under §2329.66(A)(10)(b) if the following three part test set forth is subparagraphs (i)-(iii) is satisfied:

> (I) The plan or contract was established by or under the auspices of an insider that employed the person at the time the person's rights under the plan or contract arose.
> (ii) The payment is on account of age or length of service.
> (iii) The plan or contract is not qualified under the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.

debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title." As the Supreme Court explained, this statute "entitles a debtor to exclude from property of the estate any interest in a plan or trust that contains a transfer restriction enforceable under any relevant nonbankruptcy law." *Id.* at 758. "Relevant nonbankruptcy law" includes federal law such as ERISA. *Id.* at 759. Under section 206(d)(1) of ERISA, a pension plan must provide that benefits under the plan "may not be assigned or alienated." In *Shumate*, the Court found that since "[a] plan participant, *beneficiary*, or fiduciary, or the Secretary of Labor may file a civil action to 'enjoin any act or practice' which violates ERISA or the terms of the plan," the antialienation provision required for ERISA qualification "constitutes an enforceable transfer restriction for purposes of § 541(c)(2)'s exclusion of property from the bankruptcy estate.". *Id.* at 760 (emphasis added).

In the case *sub judice*, although the retirement account has not yet been transferred to Mr. Pyles pursuant to a QDRO, there is no dispute that he is entitled to such a transfer and that the funds in that account are being held in trust by an ERISA plan. The funds are, therefore, subject to ERISA's anti-alienation provision. As such, all elements of § 541(c)(2) are satisfied– (1) the debtor has a beneficial interest in a trust, (2) the trust contains a restriction on the transfer of that interest, and (3) the restriction on the transfer is enforceable under the provisions of ERISA. Thus, under the plain language of § 541(c)(2), Mr. Pyles' interest in the retirement account is excludable from his bankruptcy estate. *See Nelson v. Ramette (In re Nelson)*, – F.3d –, 2003 WL 885973 (8th Cir. March 7, 2003).

The cases relied upon by the trustee do not persuade the Court otherwise. In *In re Hageman*, 260 B.R. 852 (Bankr. S.D. Ohio 2001), the court found that the debtor's interest in an ERISA-qualified retirement plan obtained pursuant to a QDRO was included in the property of the bankruptcy estate. The court's decision is apparently based on its belief that in *Shumate*, the Supreme Court was "seeking to promote the public policy of ensuring that the treatment of pension benefits would not vary based upon the *plan participant's* bankruptcy status and to give full effect

to the goal of ERISA which is to protect pensions earned by the *participants*." *Id.* at 856 (emphasis added). Because the debtor's interest did not emanate from the retirement plan but, rather, from the QDRO, and a QDRO created an interest separate and distinct from the plan participants, it concluded that the debtor's interest in the ERISA plan was not subject to exclusion based upon *Shumate*. *Id.* at 857. The Court found that to adopt a contrary position "would seriously misconstrue the holding and purpose of *Patterson v. Shumate*, which is to protect plan participants, and would deprive [the debtor's] creditors of a significant recovery." *Id.* at 858.

However, the holding in *Shumate* was not based on policy considerations as suggested in *Hageman*. Rather, the Court stated that its decision was determined by the plain language of the Bankruptcy Code and ERISA. *See Shumate*, 504 U.S. at 757. With respect to policy considerations advanced by the petitioner in that case, the Court stated that "to the extent that policy considerations are even relevant where the language of the statute is so clear, we believe that our construction of § 541(c)(2) is preferable. . . ." *Id.* at 764. The Court stated that "[d]eclining to recognize any exception to [ERISA's antialienation provision] *within* the bankruptcy context minimizes the possibility that creditors will engage in strategic manipulation of the bankruptcy laws in order to gain access to otherwise inaccessible funds." *Id.* at 764 (emphasis in original). There is simply no indication in *Shumate* that § 541(c)(2) should be construed as inapplicable if the interest in the trust to which an antialienation provision applies is obtained pursuant to a QDRO. Quite the contrary, the Supreme Court reached its decision by giving effect to the plain language of the statute which, by contrast, *Hageman* fails to address.

Furthermore, in a more recent case, albeit a non-bankruptcy case, the Supreme Court recognized that QDROs confer beneficiary status on a nonparticipant spouse and that ERISA affords the same protections to both plan participants and beneficiaries. *Boggs v. Boggs*, 520 U.S. 833, 845-47 (1997); *Nelson*, 2003 WL 885973 at *2. *Hageman* does not discuss the import of *Boggs* in its decision, which results in different protections for a plan participant versus a nonparticipant spouse who obtained beneficiary status under a QDRO. There is no basis in ERISA,

the Bankruptcy Code or under the controlling Supreme Court authority for such a distinction in treatment between plan participants and plan beneficiaries.

The trustee also cites *Anderson v. Seaver (In re Anderson)*, 269 B.R. 27 (B.A.P. 8th Cir. 2001). In *Anderson*, the court applied Minnesota law to find that the debtor's interest in an individual retirement account (IRA) of his former spouse, obtained pursuant to a QDRO, was not exempt property in his bankruptcy case. The court simply did not discuss the applicability of § 541(c)(2).

THEREFORE, for the foregoing reasons, good cause appearing it is

ORDERED that Mr. Pyles' beneficiary interest in the retirement account which was obtained pursuant to a QDRO is excluded from property of the bankruptcy estate under § 541(c)(2), and

IT IS FURTHER ORDERED that the trustee's objection to the claimed exemption is DENIED as moot.

Dated:

/s/ Mary Ann Whipple

Mary Ann Whipple
United States Bankruptcy Judge