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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
03 JUN 16 PM 3:25
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 02-16906
)
JAMES A. FASICK and) Chapter 7
JUANITA M. FASICK,)
)
Debtors.) Judge Pat E. Morgenstern-Clarren
)
_____)
MARY ANN RABIN, TRUSTEE,) Adversary Proceeding No. 02-1472
)
Plaintiff,)
)
v.) **MEMORANDUM OF OPINION**
)
JUANITA M. FASICK,)
)
Defendant.)

James Fasick and Juanita Fasick filed this joint Chapter 7 case. James Fasick died within 180 days of the filing and Juanita Fasick received the proceeds of his group life insurance policy. The Chapter 7 trustee seeks in this adversary proceeding to require Juanita Fasick to turn over these proceeds because they are property of her estate. (Docket 1). Ms. Fasick asserts that she is entitled to exempt the funds under Ohio Revised Code §§ 2329.66(A)(6)(c) and 3917.05. (Docket 5). For the reasons stated below, the Court finds that the proceeds are not exempt and must be turned over to the trustee for distribution to creditors.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered 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) and (E).

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FACTS

The parties chose to submit this adversary proceeding complaint for decision on stipulated facts and briefs. (Docket 8).¹ They agree that the funds at issue are the proceeds of a group life insurance policy issued through the late James Fasick's employer and paid to Juanita Fasick, his spouse, as beneficiary. They entered into this Stipulation of Facts:

1. James A. and Juanita M. Fasick filed a petition under Chapter 7 of the United States Bankruptcy Code on June 26, 2002.
2. After June 26, 2002 and before the scheduled meeting of creditors on August 27, 2002, Mr. Fasick died.
3. [Ms.] Fasick received \$12,625 in insurance proceeds within . . . 180 days of the filing of the bankruptcy petition.

(Docket 9).

DISCUSSION

A Chapter 7 debtor's estate generally consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). The estate also includes certain property interests acquired after the filing, including a debtor's interest "as a beneficiary of a life insurance policy" which is acquired within 180 days after the case is filed. 11 U.S.C. § 541(a)(5)(C). A debtor is entitled by statute to remove certain property from the estate. *See* 11 U.S.C. § 522(b). For debtors who file their bankruptcy cases in Ohio, the property that can be exempted 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).

¹ This makes the defendant's motion for summary judgment moot. (Docket 6).

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Ms. Fasick acquired her interest in the proceeds as the beneficiary of the group life insurance policy within 180 days of the couple's bankruptcy filing.² The insurance proceeds, therefore, are property of her estate unless she is able to assert an exemption which respect to them. The exemption she relies on is found in Ohio Revised Code § 2329.66(A)(6)(c), which states that a debtor may exempt her "interest in a policy of group insurance or the proceeds of a policy of group insurance, as exempted by section 3917.05 of the Revised Code[.]" Ohio Rev. Code § 2329.66(A)(6)(c). Section 3917.05 of the Revised Code provides that:

No policy of group insurance, nor the proceeds thereof, when paid to any employee thereunder, is liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law, to pay any liability of such employee, his beneficiary, or any other person who may have a right thereunder, either before or after payment.

Ohio Rev. Code § 3917.05.

The parties dispute the meaning of this provision. The trustee argues that § 3917.05 exempts insurance proceeds only when they are "paid to an[] employee"; because Ms. Fasick is the beneficiary of an employee, rather than an employee, she is not entitled to this exemption. Ms. Fasick argues that the exemption is available to her because a common sense reading of the statute places the insurance proceeds beyond the reach of the creditors of both employees and their beneficiaries. As she is a beneficiary of an employee, and the money would be used to pay her creditors, she believes the funds are exempt.

² Mr. Fasick's interest in the policy was property of his Chapter 7 case at the filing. He claimed an exemption under Ohio Rev. Code §§ 2329.66(A)(6)(c) and 3917.05 as to that interest. Ms. Fasick did not file an amended exemption schedule after her husband's death, but has instead asserted the exemption as a defense to the turnover action.

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In interpreting Ohio law, words and phrases not defined by statute are to be read in context and construed according to the rules of grammar and common usage. Ohio Rev. Code § 1.42. The plain meaning of a statute is usually conclusive. *Morgan v. Ohio Adult Parole Authority*, 68 Ohio St. 3d 344, 347, 626 N.E.2d 939, 941 (Ohio 1994). *Accord, United States v. Ron Pair Enters. Inc.*, 489 U.S. 235, 242 (1989). Courts must give effect to the words used in the statute and may not insert words which are not used. *State ex rel Purdy v. Clermont County Bd. of Elections*, 77 Ohio St. 3d 338, 340, 673 N.E.2d 1351, 1353 (Ohio 1997).

If state courts have interpreted an exemption statute, that interpretation guides federal courts in construing the same statute. *See Doethlaff v. Penn Mut. Life Ins. Co.*, 117 F.2d 582, 584 (6th Cir. 1941); *see also, Wicheff v. Baumgart (In re Wicheff)*, 215 B.R. 839, 843 (B.A.P. 6th Cir. 1998). If state courts have not done so, a bankruptcy court must interpret the provision. *See Doethlaff*, 117 F.2d at 584. Exemption statutes are to be liberally construed in the debtor's favor. *Id.* "The correct focus of the inquiry is whether [Ms. Fasick] is of the class intended to be protected by the insurance exemption provisions." *In re Heins*, 83 B.R. 504, 505 (Bankr. S.D. Ohio 1988).

There are no Ohio cases addressing this issue. The plain meaning of § 3917.05 must, therefore, be considered. The trustee's proposed interpretation of the section best comports with its plain meaning. Section 3917.05 states that proceeds of a group life insurance policy are exempt "when paid to any employee thereunder[.]" A related statute limits who can be included as an employee under a group life insurance policy and provides that group life insurance may be extended to insure the "spouse and dependent children of an insured employee[.]" Ohio Rev.

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Code § 3917.01(A) and (C).³ These provisions show that the Ohio legislature intended the term “employee” to be limited and further intended the exemption provision to be available only to employees. The proceeds in this case were not paid to the employee Mr. Fasick, but to his beneficiary Ms. Fasick. Ms. Fasick is not an employee as defined by the statute and the § 3917.05 exemption is not available to her.

Although there are no state court decisions discussing § 3917.05, there are two bankruptcy court decisions on point. *See White v. North (In re North)*, 108 B.R. 180 (Bankr. S.D. Ohio 1989); *In re Heins*, 83 B.R. 504 (Bankr. S.D. Ohio 1988). Both cases support the conclusion reached here, which is that § 3917.05 was not “intended to give the same protection to a beneficiary who becomes a debtor as it did to an insured who becomes a debtor.” *In re Heins*, 83 B.R. at 505-6. *See also, In re North*, 108 B.R. at 183. Additionally, *In re Fick*, a case involving a North Carolina exemption provision which is virtually identical to § 3917.05, reaches the same conclusion. *See In re Fick*, 249 B.R. 108 (Bankr. W.D. N.C. 2000) (holding that death proceeds of a group life insurance policy which were paid directly to non-employee beneficiary were not exempt).

Ms. Fasick makes an additional argument that warrants analysis. She argues that if the statute is read in this way, an employee will never benefit from the exemption because the proceeds of a group life insurance policy on the employee’s life will never be paid to the

³ Group life insurance “is that form of life insurance covering not less than ten employees . . . written under a policy issued to the employer . . . and insuring all of the employer’s employees or all of any classes thereof[.]” A group policy “may provide that ‘employees’ includes retired employees of the employer and the officers, managers, employees, and retired employees of subsidiary or affiliated corporations and the individual proprietors, partners, employees, and retired employees of affiliated individuals and firms . . . [.] Ohio Rev. Code § 3917.01(A).

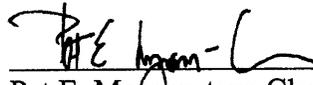
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employee. This argument assumes that the only payments made under a life insurance policy are death benefits, which is not the case. The proceeds of a life insurance policy may, for example, include its cash surrender value, interest, and accumulated dividends. *See Doethlaff*, 117 F.2d at 584-85.⁴ As a result, there may indeed be instances in which the proceeds of a policy are paid to the employee. The Ohio legislature has decided that those proceeds are exempt, but it did not choose to extend the exemption to the situation where the proceeds are paid to a beneficiary such as Ms. Fasick. The wisdom of that policy decision is for the legislature to determine, not the courts.

CONCLUSION

The insurance proceeds are property of the estate and cannot be exempted by Ms. Fasick under Ohio Revised Code § 2329.66(A)(6)(c) and § 3917.05. Judgment will, therefore, be entered in favor of the plaintiff trustee on the complaint. A separate Order will be entered reflecting this decision.

Date: 16 June 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mary Ann Rabin, Esq.
Steven Adler, Esq.

By: Joyce L. Gordon, Secretary
Date: 6/16/03

⁴ The parties chose not to provide the policy at issue in this case with their Stipulations of Fact.

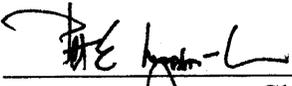
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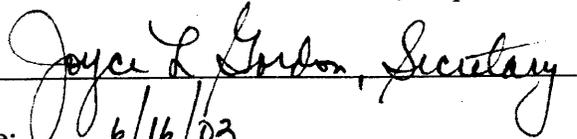
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v.)	<u>JUDGMENT</u>
)	
JUANITA M. FASICK,)	
)	
Defendant.)	

For the reasons stated in the Memorandum of Opinion filed this same date,
IT IS, THEREFORE, ORDERED that judgment is entered in favor of the plaintiff trustee
on the complaint.

Date: 16 June 2003 
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mary Ann Rabin, Esq.
Steven Adler, Esq.
By:  Secretary
Date: 6/16/03