UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re	)	**Case No.** 01-37728
	)	
Aletha L. Chapman	)	**Chapter 7**
	)	
Debtor	)	
	)	**JUDGE MARY ANN WHIPPLE**

MEMORANDUM OF DECISION AND ORDER RE EXEMPTION OBJECTION

This case is before the court upon Chapter 7 Trustee Patricia Kovacs' ("Trustee") Objection to the Debtor's claimed exemption of an interest in the General Motors Savings-Stock Purchase Program, derived through her divorce from her former husband. [Doc. #4]. Trustee has filed a brief in support of her objection to the exemption, together with properly authenticated supporting documents [Doc. #16], and Debtor Aletha L. Chapman ("Debtor" or "Ms. Chapman") has filed a reply brief to Trustee's brief in support of objection to exemption [Doc. #21].

Factual Background:

The Debtor and John L. Chapman ("Mr. Chapman") were married on January 1, 1975 and a decree of divorce was entered by the Lucas County, Ohio Court of Common Pleas, Domestic Relations Division, on August 25, 1997. [Doc. #16, Ex. A]. During their marriage Mr. Chapman participated in a deferred compensation savings plan sponsored by his employer, General Motors Powertrain ("GM plan"). [Doc. #16, Ex. C, p.2 and exhibit to stipulation]. According to the documents submitted at the time of the divorce, the GM plan had a value of $52,991.67 as of May 16, 1996. [*Id.*]. The Judgment Entry of Divorce awarded Ms. Chapman a fifty percent interest in the GM plan account. [Doc. #16, Ex. A, p.5]. On November 12, 1998, the Lucas County Court of Common Pleas entered a separate Qualified Domestic Relations Order ("QDRO"). Among other things, the QDRO specified Ms. Chapman as the alternate payee of Mr. Chapman's account benefits under the General Motors Savings-Stock Purchase Program, and that she would be permitted to have her entire interest in the GM plan rolled over into an Individual Retirement Account "with no adverse tax consequences." There is no evidence that she had rolled the account over into an Individual Retirement Account prior to the commencement of this case, or that the funds were not still held

in the GM plan.[1]

Subsequently, the Debtor filed her voluntary petition for relief under Chapter 7 of the Bankruptcy Code on December 14, 2001. The Debtor scheduled as personal property, specifically a contingent and unliquidated claim, a "claim on [her] Ex [spouse]'s Pension" with an "unknown value" [Doc. #1, Schedule B, p.2, q.20]. Furthermore, the Debtor claimed this interest as exempt property pursuant to O.R.C. § 2329.66(A)(10). [Doc. #1, Schedule C].

The Chapter 7 Trustee timely objected to the claimed exemption. The basis for the Trustee's objection is that Debtor is not entitled to exempt any interest in the GM plan because she did not acquire her interest through her own employment, but through the state court divorce process. In her reply brief in opposition to the objection, Debtor argues that the plan interest is not property of the estate in the first instance, and that if it is, it nevertheless falls within the specified exemption regardless of how Ms. Chapman acquired her interest in the GM plan.

Law and Analysis:

The parties' arguments present the following issues: (1) whether Ms. Chapman's interest in an employee pension benefit account obtained pursuant to a qualified domestic relations order 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 Ms. Chapman's 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)(1) and (2)(A),(B) and (O).

Because an interest that falls within the scope of § 541(c)(2) does not become property 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 Ms. Chapman's claimed exemption is proper, the court will address Debtor's argument and whether § 541(c)(2) renders the exemption issue moot.

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[1] Had they been distributed pre-petition to an Individual Retirement Account, the funds would be considered property of the estate and the exclusion issue argued by Ms. Chapman would be moot. *Ostrander v. Lalchandani (In re Lalchandani), 279 B.R. 880, 881, n.2 (B.A.P. 1st Cir. 2002)*.

Section 541(c)(2) provides that "[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." As the Supreme Court has 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 [29 U.S.C. § 1056(d)(1)], a pension plan must provide that benefits under the plan "may not be assigned or alienated." In *Patterson v. 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).

Before deciding the legal issue whether the Debtor's interest is excluded from her bankruptcy estate where it was acquired through a QDRO and not through her own employment, the court must address the factual question whether the GM plan in issue is an "ERISA-qualified" plan within the meaning of *Patterson v. Shumate* in the first instance. The current record as to the nature of the GM plan in issue is limited. Throughout the record, the GM plan is referred to with different labels. For example, it has been labeled as an "employee benefits plan" [Doc. #16, p.1], "Ex's Pension" [Doc. #1], "personal savings plan" [Doc. #16, Ex. A], "General Motors Savings - Stock Purchase Program" [Doc. 16, Ex. B (the QDRO)], "deferred compensation account" [Doc. #16, Ex. C (stipulation)], "personal savings plan (psp)" [Doc. #16, Ex. C (exhibit to stipulation)], and a "retirement savings plan/pension" [Doc. #21]. And neither party has presented a copy of the underlying plan documents or a summary plan description thereof to the court. The Chapter 7 Trustee states that she subpoenaed such documents from GM, but received only documents related to a separate defined benefit pension plan interest that is not the subject of the Trustee's objection. So the court is not able to determine directly whether the plan assets are held in a trust and are subject to an anti-alienation clause prohibiting voluntary or involuntary transfer of Mr. Chapman's plan interest with certain limited exceptions.

Notwithstanding the sketchy record, the court infers from documents presented that the GM plan and the account established thereunder, pursuant to which Ms. Chapman is now "an alternate payee,"

are "ERISA qualified" within the meaning of the Supreme Court's decision in *Patterson v. Shumate*. Accordingly, the court will proceed to decide the issue before it based upon that factual inference. Under Fed. R. Bankr. P. 4003(c), the Chapter 7 Trustee expressly bears the burden of proving that the exemption is not properly claimed. It is less clear who bears the burden of proving that the GM plan interest in issue is or is not property of the estate; that burden is not expressly established by rule. In the court's view, however, the Chapter 7 Trustee also logically bears the burden of proving that the plan interest is property of the estate that she may use, sell or lease for the benefit of creditors. That is because the issue is ultimately the same under both questions: whether the property is available to satisfy the claims of Ms. Chapman's creditors. As explained below, Debtor has met her burden of going forward on the current record and made a showing that GM plan interest is part of and derived from an ERISA-qualified plan. The Trustee has not so far met her burden of showing that the GM plan interest is *not* held in trust and subject to an anti-alienation clause. The court will nevertheless afford the Trustee an additional period of time, as set forth below, to obtain and submit to the court any additional documents that she believes show that the plan interest in issue is *not* ERISA-qualified, or that the GM plan administrator is not treating the order as a "qualified domestic relations order" under either ERISA, 29 U.S.C. § 1056(d)(3), or the Internal Revenue Code, 26 U.S.C. §§ 414(p), 401(n). Absent any such additional evidence, this decision will become final and unconditional on the basis of the record now before the court.

The basis for the court's finding from the current record submitted by Ms. Chapman is through inferences from the QDRO entered by the state court in light of the applicable statutory requirements under ERISA and the Internal Revenue Code. The language of the QDRO (submitted by both parties as part of the record) makes a number of factual findings that there is no basis in the record for this court to contradict. The intent of the QDRO is to "provide the alternate payee [Debtor] with a retirement payment..." [QDRO, ¶M]. The domestic relations court specifically stated that it intended the order to be a qualified domestic relations order under ERISA, making it one of the limited exceptions to the anti-alienation provisions of the statute. [QDRO ¶L]. *In re Hthiy*, 283 B.R. 447 (Bankr. E.D. Mich. 2002). In In the event of termination of the plan, the QDRO contemplates guarantee by the Pension Benefit Guaranty Corporation. Throughout the order, pertinent sections of the Internal Revenue Code relating to qualification and taxation of ERISA retirement benefits are referred to and incorporated. [QDRO ¶¶ E, J,]. Lastly, the domestic relations court retained "jurisdiction to supervise the payment of retirement benefits as provided herein [the QDRO]." [QDRO, ¶O].

So although the documents comprising the plan and trust, including the anti-alienation clause,

are not themselves in evidence, the record shows that the GM Savings Plan interest in issue is an employee benefit plan within the scope of ERISA 29 U.S.C. §§ 1002(2)(A), 1003. As such, the plan benefits must necessarily be held in trust, 29 U.S.C. § 1103(a) and 26 U.S.C. § 401(a), and must contain an anti-alienation clause prohibiting assignment or other alienation of the benefits. 29 U.S.C. § 1056(d)(1); 26 U.S.C. § 401(a)(13). Ms. Chapman acquired an interest as an alternate payee of Mr. Chapman's participant's account in the GM plan through the mechanism of the QDRO entered by the Lucas County, Ohio Court of Common Pleas. QDRO's are one of the very limited exceptions to the ERISA anti-alienation provisions. 29 U.S.C. § 1056(d)(3). 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), Ms. Chapman's interest in the GM plan is excludable from her bankruptcy estate. *See Nelson v. Ramette (In re Nelson)*, 322 F.3d 541(8th Cir. 2003). The court finds that the fact that Ms Chapman obtained that interest via a QDRO and not through her own employment is not a meaningful statutory distinction given the plain language of the provision.

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 *Patterson v. 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 participant's, it concluded that the debtor's interest in the ERISA plan was not subject to exclusion based upon *Patterson v. 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 *Patterson v. Shumate* was not based on policy considerations as suggested in *Hageman*. Rather, the Supreme 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 *Patterson v. 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. Other courts subsequently addressing the same issue have criticized *Hageman*. *Nelson v. Ramette, supra; In re Hthiy, supra; Ostrander v. Lalchandani* (*In re Lalchandani*), 279 B.R. 880 (B.A.P. 1st Cir. 2002). Likewise, this court finds *Hageman* unpersuasive and declines to follow it as argued by the Trustee.

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*, 322 F.3d at 544. *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), as it was not

applicable to an IRA. IRAs are individual accounts, not held in trust. The *Anderson* case is distinguishable on that basis. The court also notes that *Anderson* is a decision of the Eighth Circuit Bankruptcy Appellate Panel, while *Nelson v. Ramette* is a recent decision of the Eighth Circuit Court of Appeals. So to the extent Anderson is not distinguishable on its facts, its continued viability is questionable in light of *Nelson v. Ramette.*

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

ORDERED that the Chapter 7 Trustee is hereby given leave to submit on or before 45 days from the date of this Order additional documentary evidence contesting that the GM plan in issue is ERISA-qualified or that the administrator of the GM plan in issue has not recognized the Lucas County Common Pleas Court QDRO entered on November 12, 1998 as a "qualified domestic relations order" as defined by applicable sections of ERISA and the Internal Revenue Code, absent such timely submission this order will be considered final without further notice or opportunity for hearing or order of this court; and

IT IS FURTHER ORDERED that Debtor Aletha Chapman's alternate payee interest in the General Motors Savings-Stock Purchase Program account which was obtained pursuant to the QDRO entered by the Lucas County, Ohio Court of Common Pleas on November 12, 1998, is excluded from property of her bankruptcy estate under 11 U.S.C. § 541(c)(2), subject to the condition set forth above; and

IT IS FINALLY ORDERED that the Chapter 7 Trustee's objection to the Debtor's claimed exemption of such interest is DENIED as moot, subject to the condition set forth above.

Dated:

/s/ Mary Ann Whipple

MARY ANN WHIPPLE
UNITED STATES BANKRUPTCY JUDGE