

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:) Case No. 03-33093
)
Michael A. Voss) Chapter 7
Pamela J. Voss,)
)
Debtors) JUDGE MARY ANN WHIPPLE

**MEMORANDUM AND ORDER SETTING HEARING REGARDING TRUSTEE'S
OBJECTION TO EXEMPTION AND DEBTOR'S MOTION REQUESTING EXEMPTION**

This case is before the court on the chapter 7 Trustee's Objection to Exemption [Doc. #14]. A hearing was held on September 9, 2003, which was attended by counsel for Debtors and the Trustee. At the hearing, the court granted the parties leave to file follow up memoranda. Thereafter, Debtors filed a Motion Requesting Exemption [Doc. # 30] and the Trustee submitted a memorandum in support of her objection [Doc. #31]. For the reasons that follow, this matter is set for further hearing.

On or about April 4, 2003, Debtor Pamela J. Voss received a personal injury settlement in the amount of \$6,500.00. Ms. Voss cashed the settlement check, spent \$2,500.00 of the proceeds on rent and other expenses, and deposited the remaining \$4,000.00 in a bank account. *See* Trustee's Exhibits B and C. On April 23, 2003, Debtors filed a petition for relief under chapter 7 of the Bankruptcy Code, disclosing as personal property a "personal property settlement of \$4,000.00 currently in the bank" and claiming the entire amount as exempt under Ohio Revised Code § 2329.66(A)(12)(c). [Doc. #1, Petition, Schedules B and C]. The Ohio exemption statute provides that "[e]very 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: . . . a payment, not to exceed five thousand dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the person. . . ." Ohio Rev. Code § 2329.66(A)(12)(c). The Trustee argues that Ms. Voss' personal injury settlement lost its exempt status under § 2329.66(A)(12)(c) when Ms. Voss converted the proceeds to cash, deposited the cash in a bank account and used the proceeds on

“normal bills.” Alternatively, the Trustee contends that, to the extent the personal injury recovery is based upon discharged medical bills or lost wages, the exemption does not apply.

The court first addresses the issue as to whether the personal injury settlement retains its statutorily exempt status after being deposited, in part, in a bank account and after part of the proceeds have been used to pay everyday bills. In *Daugherty v. Central Trust Co. of Northeastern Ohio, N.A.*, 28 Ohio St. 3d 441, 504 N.E.2d 1100 (1986), the court faced a similar issue. In *Daugherty*, the debtor had deposited personal earnings that were exempt under Ohio Revised Code § 2329.66(A)(13) in a personal savings account. The court was asked to determine whether the funds retained their exempt status. In concluding that they did, the court analyzed several opinions of other courts, including *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 82 S.Ct. 1231 (1962). *Id.* at 443, 504 N.E. 2d at 1102. In *Porter*, the Court held that a veteran’s disability compensation remained exempt after being deposited in a savings and loan association account. *Porter*, 370 U.S. at 162, 82 S.Ct. at 1233. The Court explained that in enacting a statute exempting such funds from attachment by creditors, Congress “intended that veterans in the safekeeping of their benefits should be able to utilize those normal modes adopted by the community for that purpose--provided the benefit funds, regardless of the technicalities of title and other formalities, are readily available as needed for support and maintenance, actually retain the qualities of moneys, and have not been converted into permanent investments. *Id.*; see also *Philpott v. Essex Cty. Welfare Bd.*, 409 U.S. 413, 93 S.Ct. 590 (1973) (holding that a depositor’s social security disability benefits retained their exempt status).

Consistent with the United States Supreme Court opinions, the Ohio Supreme Court in *Daugherty* concluded that “statutorily exempt funds do not lose their exempt status when deposited in a personal checking account . . . so long as the source of the exempt funds is known or reasonably traceable.” *Daugherty*, 29 Ohio St. 3d at 445, 504 N.E.2d at 1103. The court explained:

The legislature’s purpose, in exempting certain property from court action brought by creditors, was to protect funds intended primarily for maintenance and support of the debtor’s family. (Citation omitted). This legislative intent would be frustrated if exempt funds were automatically deprived of their statutory immunity when deposited in a checking account which a depositor commonly maintains in order to pay by check those regular subsistence expenses he incurs.

Id. Since the parties had agreed that the funds in the debtor's checking account were from personal

earnings that were exempt under the Ohio exemption statute, the *Daugherty* court held that the deposited funds were exempt. *Id.* In addition, the court noted that the funds on deposit retained their exempt status because they also met the test set forth in *Porter*, that is, they were “‘readily available as needed for support and maintenance,’ retained their quality as monies and were not converted into a permanent investment.”

Id. at n.3.

In this case, the Trustee does not dispute the fact that the personal injury settlement is the source of the \$4,000.00 in the bank account at issue. There has been no commingling of these funds with funds from other sources which would require tracing of the monies on deposit. *See Id.* Under *Daugherty*, since the source of the funds is known, to the extent they meet the requirements of Ohio Revised Code § 2329.66(A)(12)(c), they retain their exempt status under Ohio's exemption statute. The court rejects the Trustee's contention that the funds lost their character as an exempt payment on account of personal injury due to Ms. Voss' use of part of the proceeds to pay everyday expenses. The court in *Daugherty* implicitly, if not explicitly, contemplates use of exempted funds under the Ohio statute to be used for “regular subsistence expenses.” *Id.* at 445 and n.3 (finding that the funds also retained their exemption because they met the test in *Porter*, including that they were “‘readily available as needed for support and maintenance. . .”). As in *Daugherty*, to the extent they meet the statutory requirements, the deposited funds at issue in this case also retain their exempt status because they satisfy the factors set forth in *Porter*.

The court also rejects the Trustee's argument that the cases cited above and others cited by Debtors are distinguishable from the case at bar since they all deal with public aid, whereas this case involves proceeds from a personal injury claim. While it is true that *Porter* and *Philpott* cited above deal with veteran's and social security disability benefits, the reasoning in those cases was adopted by the Ohio Supreme Court in *Daugherty* which involved personal earnings rather than public aid. The court further finds the Trustee's reliance on *Silagy v. Bank One, Akron, N.A. (In re Collin)*, 182 B.R. 763 (N.D. Ohio 1995), misplaced. In *Silagy*, the debtor transferred funds from an ERISA-qualified plan, deposited them in her personal checking account, and used them, in part, to pay the balance due on a loan from the

bank. *Id.* at 764-65. The Trustee filed a complaint to avoid preferential transfers to the bank. In defending against the complaint, the bank argued that because the funds were traceable to the debtor's ERISA-qualified plan, they retained exempt status. *Id.* at 766.

The bank's argument was based on the anti-alienation provision that all ERISA plans must contain, *see* 29 U.S.C. § 1056(d), and the provision of § 541(c)(2) of the Bankruptcy Code excluding an interest in such a plan from property of the estate. *Id.* The court rejected the bank's argument, finding that when the debtor withdrew the funds from the ERISA plan and gained unrestricted access to the funds, the funds lost their exempt status as ERISA-qualified funds and the protection of §541(c)(2). *Id.* at 768-69. Thus, the court concluded that the funds were property of the estate and subject to the avoidance powers of the Trustee.

In *Silagy*, the only discussion relating to the Ohio exemption statute was in the context of distinguishing a case cited by the Trustee, *In re Donaghy*, 11 B.R. 677 (Bankr. S.D.N.Y. 1981), wherein the debtor claimed an exemption in a lump sum distribution from an ERISA-qualified plan under 11 U.S.C. § 522(d)(10)(E). *Id.* at 766-67. The court noted that the *Donaghy* court had found that the funds were essential for the support of the debtor and that they retained their exempt status. *Id.* Although both the Ohio exemption statute and § 522(d)(10)(E) require that in order for ERISA funds to be exempt they must be necessary for the support of the debtor, *see* Ohio Rev. Code § 2329.66(A)(10)(b), *Donaghy* was distinguished in that the debtor in *Silagy* had presented no evidence that the transferred funds were in fact necessary for her support. Thus, to the extent that the court even applied the Ohio exemption statute, the funds were not exempt at any time because they were not necessary for the debtor's support.

The case *sub judice* does not involve the application of 11 U.S.C. § 541(c)(2), nor does it involve an ERISA-qualified plan. *Silagy* is clearly distinguishable both on its facts and the law and lends no support to the Trustee's argument that the funds in Ms Voss' bank account, the source of which is her personal injury settlement, have lost their exempt status.

The Trustee also contends that, to the extent the personal injury recovery is based upon discharged medical bills or lost wages, the exemption does not apply. Under Ohio Revised Code §2329.66(A)(12)(c), a debtor can claim as exempt up to \$5,000.00 of any payment on account of personal bodily injury,

excluding amounts compensating for pain and suffering and actual pecuniary loss. Thus, to the extent that Ms. Voss' settlement included recovery of amounts excluded from exemption under the Ohio statute, she is not entitled to the claimed exemption. The Trustee's argument raises issues of fact that have yet to be developed, thus requiring an evidentiary hearing.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that the Trustee's Objection to Exemption and Debtor's Motion Requesting Exemption is set for an Evidentiary Hearing on **November 19, 2003 at 9:30 a.m.**, in Courtroom No. 2, Room 103, United States Courthouse, 1716 Spielbusch, Toledo, Ohio.

/s/ Mary Ann Whipple

Mary Ann Whipple
United States Bankruptcy Judge