

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

)	CASE NO. 02-65505
)	
IN RE:)	CHAPTER 7
)	
GERALD F. LOCKWOOD,)	JUDGE RUSS KENDIG
)	
Debtor.)	
)	MEMORANDUM OF DECISION
)	
)	

This matter comes before the court upon the chapter 7 trustee’s (hereafter “Trustee”) objection to exemption. Debtor Gerald Lockwood (hereafter “Debtor”) responded. The parties subsequently filed joint stipulations. Trustee then filed a memorandum in support, and Debtor filed a supplemental memorandum in opposition. Finally, Trustee filed a reply.

JURISDICTION

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the general order of reference entered in this district on July 16, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

FACTS AND ARGUMENTS

Trustee objects to Debtor’s claimed exemption in an annuity. Debtor asserts that the annuity at issue arose from a Federal Employers’ Liability Act (FELA) claim against his former employer, Consolidated Rail Corporation (hereafter “Conrail”). This claim was brought by Debtor as a result of hazardous job conditions that led to asthma and lung cancer. Pursuant to a settlement with Conrail, Debtor received an annuity from Transamerican Occidental Life Insurance. The annuity provides Debtor with \$650.00 per month for life, with 240 payments guaranteed. It also has a death benefit payable to Debtor’s wife should he die before 240 payments have been disbursed.

Trustee classifies this annuity as a structured tort settlement and cites cases which hold that these are not exempt. Trustee also cites cases which classify a FELA claim as a tort claim, rather than a disability or workers’ compensation claim.

Debtor claims that the annuity is exempt pursuant to the plain meaning of R.C. §

2329.66(A)(10)(b). Debtor contends that the nature of the cause of action requiring Conrail to buy the annuity is immaterial. Debtor asserts that what is relevant is that he is receiving annuity payments in compensation for lost wages. Thus, Debtor posits that the annuity is in the nature of a disability benefit and, therefore, is exempt. Debtor also states that a FELA claim is not a tort claim. Rather, it is akin to a workers' compensation or a disability benefit and should be exempt under R.C. § 2329.66(A)(10)(b).

As an alternative ground for exemption, Debtor argues that the annuity is exempt pursuant to R.C. § 2329.66(A)(6), which exempts life insurance benefits described in R.C. § 3911.10. Debtor alleges that the annuity qualifies under R.C. § 3911.10 since his wife will receive some money if Debtor dies before receiving 240 payments.

Trustee objects to Debtor's assertion that the annuity is exempt under R.C. § 2329.66(A)(6). Trustee argues that since Debtor did not assert this exemption in his schedules, he should not be allowed to amend his schedules in a memorandum to the court. Further, Trustee argues that the annuity does not meet the requirements of R.C. § 3911.10.

ANALYSIS

I. Statutory Interpretation

A paramount concern when interpreting the Ohio exemption statute is how to best express the intent of the legislature. State v. Anthony, 96 Ohio St. 3d 173, 175 (Ohio 2002). The starting point to determine the intent of the legislature is the text of the statute. *See e.g. Id.*; Provident Bank v. Wood, 36 Ohio St. 2d 101, 105 (Ohio 1973). "Where the meaning of the statute is clear and definite, it must be applied as written." Anthony, 96 Ohio St. 2d at 175. The relevant text of the Ohio exemption reads as follows:

- (A) Every 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:

....

(10)(b) Except as provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 of the Revised Code, the person's right to receive a payment under any pension, annuity, or similar plan or contract, not including a payment from a stock bonus or profit-sharing plan or a payment included in division (A)(6)(b) or (10)(a) of this section, on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the person and any of the person's dependents

R.C. § 2329.66(A)(10)(b).

The Ohio Supreme Court's mandate that a statute be construed according to its terms appears to provide little room for interpretation. Unfortunately, the statute is often far from clear. This is especially true where the plain text of the statute does not answer the question at hand. Neither § 2329.66(10)(b), nor any other section of the Revised Code, provides specific instruction as to a FELA claim. Since the naked text alone does not address the issue confronting the court, the court must read the text in light of the intent of the drafting legislature.

The court could construe the Ohio exemption statute as providing no exemption since FELA is not mentioned. Such a result would appear arbitrary and mean spirited. This would involve considering the statutory text in a vacuum, without concern for its impact on the Debtor, future debtors who might be faced with similar issues, the policies underlying the Bankruptcy Code or the disparate treatment of similarly placed persons.

Another possibility is to assume that the legislature made an oversight when it did not clearly indicate a section under which FELA claims could be exempted. This view would hold that when considering the many different asset classes that might be exempted, FELA claims resulting from disabilities on the job were overlooked due to their obscurity to state legislators.

A final view of the Ohio exemption statute's apparent lack of language encompassing FELA claims is that the legislature did not specifically address FELA because it assumed that such claims were subsumed within other, more generally phrased exemptions. It would then make sense that FELA claims are not dealt with specifically because the legislature concluded that these claims were covered in more general provisions.

II. Relevance of Possible Interpretation Methods

A. Consistency

Courts interpret a statute where the plain text does not produce an obvious result. Consistency must be preserved so that all parties are able to make a reasonable prediction of what their situation will be at the conclusion of the bankruptcy process. A consistent interpretation of exemptions and a consistent method of interpreting exemptions is essential to this.

Further, consistency in statutory interpretation is necessary to uphold the integrity of the bankruptcy process. Debtors should not exit the bankruptcy process retaining vastly different assets depending on insignificant technical differences in the assets owned at the

time of filing. The Bankruptcy Code and state exemption statutes were drafted to be as equitable as possible to both debtors and creditors. This fairness would be sacrificed if results varied dramatically in spite of similar underlying facts.

The importance of consistency can clearly be seen in the doctrine of *stare decisis*. This is the principal that a ruling by a court is usually binding on subsequent decisions by that court. See Arecibo Cmty. Health Care, Inc. v. Puerto Rico, 270 F.3d 17, 22 (1st Cir. 2001). *Stare decisis* “promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” Payne v. Tennessee, 501 U.S. 808, 827 (1991). Just as consistency in a series of judicial rulings is important to the integrity of the judicial process, so is consistency in the interpretation of a particular statute.

B. Exemptions Should Be Liberally Construed

When Ohio exemption statutes have been interpreted, courts uniformly hold that if there is a doubt as to the intent of the legislature, the statute should be construed liberally in favor of the debtor. In re Young, 93 B.R. 590, 595 (Bankr. S.D. Ohio 1988); In re Simon, 71 B.R. 65, 66 (Bankr. N.D. Ohio 1987); In re Everhart, 11 B.R. 770 (Bankr. N.D. Ohio 1981). “It is uniformly held that since the right to exemption is a valuable right, grounded on humane public policy principles, statutes granting exemptions should be liberally construed, and the right to exemption should not be defeated by a mere technicality.” 45 O. Jur. 3d Exemptions, § 8 (1983) (footnotes omitted). This liberal construction is necessary to carry out one of the purposes underpinning exemptions – giving the debtor a fresh start. See Sheehan v. Morehead, 283 F.3d 199, 206 (4th Cir. 2002).

This mandate to liberally construe exemption statutes is not infinitely expandable. It does not provide the court with boundless, imaginative liberty to wander into a judicial fairyland and invent exemptions that do not exist. There is a line between reading language expansively to include a debtor’s claimed exemption and contorting the exemption statute so that a court is creating exemptions. Once the latter occurs, a court loses the consistency and fairness that are the hallmarks of a principled decision making system.

While courts should be cautious not to invent unintended exemptions in the construction of the Ohio exemption statute, some nexuses are impelled by logic. If no provision addresses the matter and similar types of assets are treated generously, then it is permissible to consider whether this matter can fall within the broad sweep or the logical meaning of that section’s text. In this way, a court is still grounded in the reality of the exemption statute as drafted, able to handle the matter before it, remain consistent in its application, and effectuate the policies underlying the exemptions.

III. What Is FELA?

FELA makes railroads engaged in interstate commerce liable for employees' injuries incurred due to a railroad's negligence. 45 U.S.C. § 51. FELA provides the *exclusive remedy* for all cases within its scope. Wabash R.R. Co. v. Hayes, 234 U.S. 56, 89 (1914). Many states have excluded railroad workers from the scope of workers' compensation laws on the assumption that FELA gives these workers adequate protection. Hilton v. South Carolina Pub. Rys. Comm'n, 502 U.S. 197, 202 (1991).

Perhaps there was a point in time when FELA was more prominent on the legal landscape. Today, however, workers' compensation laws are the primary means by which employees are compensated for occupational injuries. Just because FELA is not a household term does not mean that it should cease to become important. This is especially true for a debtor whose only recourse for disabling injuries is FELA because he happens to work in an industry that is uniquely beyond the scope of the state workers' compensation statutes.

IV. FELA Does Not Fall Within the Workers' Compensation Exemption

The Ohio Revised Code exempts workers' compensation benefits pursuant to R.C. § 2329.66(A)(9)(b) which reads:

(A) Every 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:

.....

(9) The person's interest in the following:

.....

(b) Workers' compensation, as exempted by section 4123.67 of the Revised Code

R.C. § 2329.66(A)(9)(b). Section 4123.67 reads, in pertinent part:

[C]ompensation before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to the employees or their dependents. In all cases where property of an employer is placed in the hands of an assignee, receiver, or trustee, claims arising under any award or finding of the

industrial commission or bureau of workers' compensation, pursuant to this chapter, including claims for premiums, and any judgment recovered thereon shall first be paid out of the trust fund in preference to all other claims, except claims for taxes and the cost of administration, and with the same preference given to claims for taxes.

R.C. § 4123.67. Neither of these sections is helpful to Debtor in attempting to claim his exemption.

FELA claims cannot be characterized as workers' compensation claims because of the fundamental differences between the two. Workers' compensation requires employers to compensate employees injured on the job regardless of fault. *See American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 44 (1999). Prior to the enactment of workers' compensation laws, employees suffering work related injury had to resort to traditional tort remedies. *Id.* Often times this tort recovery was limited or prevented by the doctrines of assumption of risk and the fellow-servant rule. The Ohio's Workers' Compensation Act is the result of a compromise between employers and employees. *Bailey v. Republic Engineered Steels, Inc.*, 91 Ohio St. 3d 38, 41 (Ohio 2001). Employees receive compensation if injured on the job, and employers are immune from civil suits by employees arising out of workplace injury in most circumstances. *Id.*

FELA, on the other hand, is premised on a finding of employer negligence. 45 U.S.C § 51. *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532 (1994), speaks to this issue. In this case the plaintiffs tried to bring a negligent infliction of emotional distress claim under FELA. In reaching its decision, the Court discussed the purpose of the FELA statute, noting that the statute was designed to shift the burden of injuries sustained by railroad workers from the employee to the employer. *Id.* at 542. The Court stated that it had liberally construed the FELA statute to effectuate this purpose. *Id.* at 543. However, the Court went on to say:

That FELA is liberally construed, however, does not mean that it is a workers' compensation statute. We have insisted that FELA does not make the employer the insurer of the safety of his employees while they are on duty. The basis of his liability is his negligence, not the fact that injuries occur.

Id. (internal quotations and citation omitted). This statement, although dicta, makes quite clear that the Supreme Court not does equate FELA claims with workers' compensation claims. Thus, Debtor is unable to exempt his annuity under R.C. § 2329.66 (A)(9)(b).

V. The Personal Injury Exemption Does Not Apply to a FELA Claim

A. FELA Claims Are Not True Tort Actions

Ohio's personal injury exemption does not encompass FELA claims because these claims are not really tort type causes of action. The exemption reads, in pertinent part, as follows:

- (A) Every 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:

.....

- (12) The person's right to receive, or moneys received during the preceding twelve calendar months from, any of the following:

(a) An award of reparations . . . ;

(b) A payment on account of the wrongful death of an individual of whom the person was a dependent . . . ;

(c) [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 or an individual for whom the person is a dependent;

(d) A payment in compensation for loss of future earnings of the person . . . to the extent reasonably necessary for the support of the debtor and any of the debtor's dependents.

R.C. § 2329.66(A)(12). This section deals with the various remedies that arise as a result of successful tort actions. FELA, however, is not in the nature of a tort cause of action.

A FELA claim resembles a tort claim due to the elements that must be demonstrated: duty, breach, causation and damages. Adams v. CSX Transp. Inc., 899 F.2d 536, 539 (6th Cir. 1990). However, the Supreme Court has interpreted the FELA statute in such a way that very little, if any, showing of fault is actually required. A FELA cause of action is available to an employee if an employer's negligence played even a slight role in causing the employee's injury. Rogers v. Missouri Pacific R.R. Co., 352 U.S. 500, 506 (1957). Anything

more than a mere scintilla of evidence will suffice. See Hardyman v. Norfolk & Western Rail Co., 243 F.3d 255, 259 (6th Cir. 2001).

The primary difference between a cause of action under FELA and a tort action is that a relaxed standard of causation applies. Rogers, 352 U.S. at 506. A case that is illustrative of this lessened causation requirement is Gallick v. Baltimore & Ohio Railroad, 372 U.S. 108 (1963). In this case an employee was working on the railroad near a pool of vermin infested water when he suffered an insect bite on his leg. Id. at 109. This bite became infected and, ultimately, resulted in the amputation of both legs. Id. Due in part to the fact that the railroad knew of the existence of this pool of water, the jury verdict in favor of the employee was upheld. Id.

Further differences between true common law tort claims and FELA causes of action are the lack of defenses available to employers under FELA. One such defense is contributory negligence. Section 53 of Title 45 of the United States Code abolishes the employer's defense of contributory negligence in favor of comparative negligence. 45 U.S.C. § 53. Another defense unavailable to railroads is assumption of the risk. So long as negligence of the employer played some part in the employee's injury, assumption of the risk will not apply. See 45 U.S.C. § 54.

Because of the drastically reduced standards of causation and the limitation of affirmative defenses, FELA claims cannot accurately be characterized as tort claims. Therefore, In re Simon, 71 B.R. 65 (Bankr. N.D. Ohio 1987) and its progeny, upon which Trustee relies, do not apply. Simon stands for the proposition that structured tort settlements are not exempt under § 2329.66(A)(10)(b). Since FELA claims are not tort claims, the reasoning in Simon is not useful in this case.

FELA claims are not tort claims, nor can they be characterized as workers' compensation claims. Thus, FELA claims must logically be characterized as something else, lest they slip through the cracks and not be entitled to exemption at all.

Finally, even if FELA claims could be interpreted as falling within this tort/personal bodily injury exemption, this does not mean that it cannot also be found to be within a more generous exemption subsection.

B. Restricting FELA Exemptions According to R.C. § 2329.66(A)(12) Would Produce Illogical Results

Restricting FELA claims to the amount of exemption allowed by R.C. § 2329.66(A)(12) would produce illogical results that could not have been intended by the legislature. The legislature did not express an intent to leave a twenty-five year old permanently disabled while working on the railroad only \$5,000.00 to live on for the rest of

her life. Conversely, if this same twenty-five year old had worked in another industry when she became permanently disabled as a result of an injury on the job, her entire workers' compensation benefits would be exempted under R.C. § 2329.66(A)(9)(b). Certainly the legislature did not intend for this great disparity in treatment based solely on the debtor's occupation. An interpretation that leads to a wholly illogical result should be avoided. *See Nat'l Foods, Inc. v. Rubin*, 936 F.2d 656, 660 (2d Cir. 1991); *Int'l Union v. Brock*, 816 F.2d 761, 766 (D.C. Cir. 1987) ("It is well-understood that statutes must be construed so as to avoid illogical or unreasonable results.").

C. Debtor's Claimed Exemption In His FELA Settlement Fits Within the Language of R.C. § 2329.66(A)(10)(b)

Because Debtor's FELA claim does not fall within the scope of the personal injury exemption or the workers' compensation exemption, the court turns to other exemptions. Debtor claims that R.C. § 2329.66(A)(10)(b) exempts the annuity at issue. The plain language of that section supports such a result. It exempts "the person's right to receive a payment under any . . . annuity . . . on account of illness [or] disability . . . to the extent reasonably necessary for the support of the person . . ." Trustee argues that "annuity" as used in the statute does not encompass Debtor's FELA settlement since the term "annuity" is used alongside pension, benefit and retirement allowance. Trustee cites cases which argue that this and the legislative history of this section's federal counterpart support the argument that only retirement annuities may be exempted under this section. However, this court must, as discussed above, liberally construe Ohio's exemption statutes. A liberal construction which allows FELA claims to be exempted under R.C. § 2329.66(A)(10)(b) does not stretch the statutory text beyond what logic will allow. Debtor received an annuity on account of a disability. Subsection (A)(10)(b) states that it exempts exactly that. Since the Trustee has stipulated that the money Debtor receives from the annuity is reasonably necessary for his support, all of the stated conditions in the text of the statute have been met. Therefore, it is the opinion of this court that Debtor be entitled to his claimed exemption in the annuity resulting from his settlement of a FELA claim with his former employer, Conrail.

VI. How Does This Ruling Work On the Facts of This Case?

The decision to allow Debtor's exemption under R.C. § 2329.66(A)(10)(b) works quite well on the facts of this case. Debtor's total monthly benefits are \$2,142.00¹ per month according to the joint stipulations filed by Debtor and Trustee. Six hundred and fifty dollars of this comes from the annuity at issue. When this is multiplied by twelve, the total annual

¹Debtor's Schedule I lists his total monthly income at \$2,075.87. The court will use the values in the joint stipulations since the Trustee has signed off on these.

income for Debtor is \$25,704.00². Debtor's after tax income for 1987, the last full year that he was able to work, was \$32,732.00. Thus, the decision to allow Debtor to exempt the annuity does not result in a windfall. Debtor's income is about 75% of what he made when last able to work. Certainly if Debtor had continued to work his salary would have increased since this was sixteen years ago, therefore, he is receiving significantly smaller compensation. This is no exemption lottery prize allowing Debtor to live a lavish lifestyle. Rather, it permits Debtor to keep living.

By way of comparison, if Debtor were receiving an Ohio workers' compensation benefit for permanent total disability, he would receive 66 2/3% of his average weekly wage. R.C. § 4123.58(A). Sixty-six and two-thirds percent of \$32,732.00 is \$21,819.15. This is comparable to what Debtor is currently receiving. This entire amount would be exempted from Debtor's estate under R.C. § 2329.66(A)(9)(b). Therefore, Debtor is not receiving more than what the legislature has approved for workers injured in different industries.

VII. Applying the Rule of This Case In the Future

Although exempting a FELA claim under R.C. § 2329.66(A)(10)(b) works with the facts in this case, the court must discern if this ruling can be applied to other fact patterns as well.

A. Sympathetic Facts

One example, which was discussed above, is a young debtor who is permanently and totally disabled while working for a railroad. She settles her FELA claim against the railroad and receives an annuity which pays a monthly benefit. Certainly exempting this annuity makes more sense than treating it as a personal injury exemption. If it were treated as a tort claim, such a debtor would be forced to live off of her \$5,000.00 exemption under R.C. § 2329.66(A)(12) for the rest of her life, which is not possible. She would be forced to live off of other government benefits or suffer. Thus, unsecured creditors would get a little more of their money back and the permanently disabled debtor would be entitled to a life of poverty or to collect some limited public support. In this way, the burden for compensating debtor for her injury is shifted from the railroad to the public, or the debtor would live a life of poverty due to permanent disability arising from an occupational injury. This is not logical. The better approach is the one taken in this case in which the debtor keeps her interest in the settlement annuity, just as she would for a workplace injury *in every other workplace in the state*.

²Debtor filed jointly with his wife. Her income as reported in Schedule I is zero.

B. Less Sympathetic Facts

Another situation might arise where a debtor, permanently disabled while working for a railroad, is quite well represented in his FELA claim and receives an annuity which pays \$20,000.00 per month. The rule articulated in this case would not necessarily exempt this entire amount. The statute only allows an exemption "to the extent reasonably necessary for the support of the person." R.C. § 2329.66(A)(10)(b). This is not at issue in this case since the annuity is modest and Trustee has stipulated that the entire amount of Debtor's annuity is reasonably necessary to support him and his wife. Our hypothetical debtor might only require \$2,000.00 to support himself each month, and in that case \$2,000.00 per month is all that would be exempted. The express terms of R.C. § 2329.66(A)(10)(b) requiring that the annuity be "reasonably necessary" for support are a self-regulating governor, much like the inherent restriction of workers' compensation benefits to 66 2/3% of the average weekly wage.

VIII. Debtor's Right to Amend Exemptions

Trustee objects that Debtor claims an entitlement to an exemption for the first time in his memorandum in support of his position without first amending his schedules. Debtor's Schedule C claims an exemption in the annuity under R.C. § 2329.66(A)(16). This is clearly a clerical error as subsection (A)(16) exempts an interest in a tuition credit or a payment pursuant to a tuition credit contract.

The general rule is to allow the liberal amendment of exemption claims. In re Williamson, 804 F.2d 1355, 1358 (5th Cir. 1986). Bankruptcy Rule 1009 provides in pertinent part that "[a] voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed." Fed. R. Bankr. P. 1009(a). This general right to amend is not absolute. If there has been bad faith by the debtor or prejudice to the creditors, courts will not allow the amendment. Kaelin v. Bassett (In re Kaelin), 308 F.3d 885, 889 (8th Cir. 2002). Debtor's need to amend his exemptions appears to be the result of clerical error, not bad faith. Therefore, Debtor should be granted leave to amend his claimed exemption to reflect the correct subsection under which to exempt his annuity.

CONCLUSION

For the foregoing reasons, Trustee's objection to exemption is hereby **OVERRULED**. Debtor is granted leave to amend Schedule C. In reaching this decision, the court has considered all arguments, whether or not specifically addressed in this Memorandum of Decision.

RUSS KENDIG
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

)	CASE NO. 02-65505
)	
IN RE:)	CHAPTER 7
)	
GERALD F. LOCKWOOD,)	JUDGE RUSS KENDIG
)	
Debtor.)	ORDER
)	
)	

This matter comes before the court upon an objection to exemption by the trustee. Based on the reasoning in the accompanying Memorandum of Decision, the trustee's objection is hereby **OVERRULED**.

Debtor is granted leave to file an amended Schedule C as soon as is practicable.

So Ordered.

RUSS KENDIG
UNITED STATES BANKRUPTCY JUDGE

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