

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Case No. 04-16101
)
CLAUDETTE WILLIAMS,) Chapter 7
)
Debtor.) Judge Arthur I. Harris

ORDER VACATING BENCH RULING SUSTAINING TRUSTEE'S
OBJECTION TO DEBTOR'S CLAIM OF EXEMPTION

Before the Court is the Chapter 7 Trustee's objection to the debtor's claim of exemptions (Docket #10). Although the August 17, 2004, bench ruling for this case indicates that the Trustee's objection will be sustained in view of the fact that no party has opposed the objection, the Court hereby vacates that bench ruling and permits the parties to file, on or before September 14, 2004, additional briefing in order to address the matters discussed below.

The main issues implicated by the Trustee's objection are (1) whether the debtor's interest in her "403(b)" annuity plan constitutes property of the estate and, if so, (2) whether the debtor has validly claimed an exemption in such property. Notwithstanding the lack of opposition to the Trustee's objection, the Trustee – as the objecting party – has the "burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. 4003(c).

In arguing that the debtor's interest in her 403(b) annuity is not exempt from

administration in her bankruptcy case, the Trustee relies on the case of *Rhiel v. Adams (In re Adams)*, 302 B.R. 535, 544-45 (B.A.P. 6th Cir. 2003). In that case, the majority decision holds that a debtor's 403(b) annuity is not a "trust" that would be excluded from the bankruptcy estate by operation of 11 U.S.C. § 541(c)(2) and the Supreme Court's reasoning in *Patterson v. Shumate*, 504 U.S. 753 (1992). See *In re Adams*, 302 B.R. at 546. Although the majority concedes that the goal of ERISA is to protect pensions for retirees and beneficiaries, the majority finds that a 403(b) annuity simply does not meet the plain meaning of the term "trust" contained within 11 U.S.C. § 541(c)(2). The majority and dissent agree, though, that a debtor's 403(b) annuity would be protected from creditors outside of bankruptcy by operation of ERISA. See *id.*, at 542-44, 547.

This federal ERISA exemption would presumably work in conjunction with those exemptions provided under Ohio law. See OHIO REV. CODE ANN. § 2329.66(a)(17) (West 2004) ("Any other property that is specifically exempted from execution, attachment, garnishment, or sale by federal statutes other than the Bankruptcy Reform Act of 1978"). In order for a 403(b) annuity to be qualified under ERISA, it must contain certain antialienation provisions. See, e.g., 29 U.S.C. § 1056(d)(1); *Patterson v. Shumate*, 504 U.S. 753, 759-60 (1992). Assuming that a 403(b) annuity contains these antialienation provisions and is

otherwise qualified under ERISA, the exemption provided in Ohio Revised Code § 2329.66.(a)(17) would incorporate the ERISA antialienation protections regardless whether the annuity is a trust for the purposes of 11 U.S.C. § 541(c)(2).

Thus, in the context of the Trustee's objection to the debtor's claim of exemptions, the Court may agree with the Trustee's reliance on *In re Adams* for the proposition that the debtor's 403(b) annuity constitutes property of the estate.

However, the Court is not yet convinced that the Trustee has met his burden under Bankruptcy Rule 4003(c) to show that the debtor's claim of exemption should be denied, especially given the debtor's invocation of Ohio Revised Code § 2329.66.(a)(17) and the way that particular exemption incorporates federal exemptions outside of those provided under bankruptcy law. The Trustee has not shown specific evidence, for example, that the debtor's 403(b) annuity plan does not meet the requirements of ERISA.

Therefore, the Court's bench ruling of August 17, 2004, sustaining the Trustee's objection to the debtor's claim of exemptions (Docket # 10) is vacated, and both parties may file, on or before September 14, 2004, supplemental briefing to address the Court's aforementioned concerns.

IT IS SO ORDERED.

/s/ Arthur I. Harris 08/30/2004

Arthur I. Harris

United States Bankruptcy Judge