

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: July 07 2005

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No.: 05-30504
	)	
Molly M. Hartman,	)	Chapter 7
	)	
Debtor.	)	JUDGE MARY ANN WHIPPLE

**MEMORANDUM OF DECISION AND ORDER**  
**SUSTAINING OBJECTION TO EXEMPTION CLAIM**

Elizabeth A. Vaughan (“Trustee”), the trustee of the bankruptcy estate of Molly M. Hartman (“Debtor”), is before the court on the Objection to Exemption that she filed in the above-styled case on March 11, 2005. After considering the objection and the documents submitted by Trustee with respect thereto and after hearing the arguments of counsel, the court will sustain the objection.

Debtor filed the voluntary petition commencing this case on January 26, 2005. Her schedule of personal property disclosed that she holds \$5,000 representing “proceeds of beneficiary fund paid on account of death of Robert W. Hartman, Debtor’s deceased spouse, from Thrivent Financial for Lutherans.” Debtor’s Schedule C claimed those funds as exempt pursuant to O.R.C. § 2329.66(A)(6)(b). Trustee’s objection asserts that the claimed exemption should be disallowed because “the asset represents monies on deposit and therefore is improperly claimed as exempt under the foregoing statute.” The court

conducted a hearing on the objection on May 10, 2005, affording Debtor 30 days within which to submit a copy of documents needed to determine whether the funds in question are exempt. On June 21, 2005, Trustee filed a status report, attaching a copy of a Certification of Insurance and related documents. It appears from a review of those documents that the funds in question constitute the proceeds of a life insurance policy on Debtor's spouse, paid to her as alternate beneficiary.

Section 2329.66(A)(6)(b) of the Ohio Revised Code provides an exemption for a domiciliary's "interest in contracts of life or endowment insurance or annuities, as exempted by section 3911.10 of the Revised Code." Section 3911.10, in turn, provides as follows in pertinent part:

All contracts of life or endowment insurance or annuities upon the life of any person, or any interest therein, which may hereafter mature and which have been taken out for the benefit of, or made payable by change of beneficiary, transfer, or assignment to, the spouse or children, or any persons dependent upon such person, or an institution or entity described in division (B)(1) of section 3911.09 of the Revised Code, or any creditor, or to a trustee for the benefit of such spouse, children, dependent persons, institution or entity, or creditor, shall be held, together with the proceeds or avails of such contracts, subject to a change of beneficiary if desired, free from all claims of the creditors of such insured person or annuitant.

It appears from the documents submitted by Trustee that the funds in question represent the proceeds of a contract of insurance on the life of Debtor's spouse. The policy was taken out for the benefit of the insured's spouse, and has matured. Accordingly, the proceeds of the policy are "free from all claims of the creditors of such insured person."

The problem in this case is that Debtor is not the "insured person." Rather, she is a beneficiary of the policy, and the statute does not make the insurance proceeds exempt from the claims of the creditors of beneficiaries, as opposed to the insured. *In re Huth*, Ch. 7 Case No. 97-63986, 1998 WL 404153 (Bankr. N.D. Ohio June 30, 1998); *see In re Heins*, 83 B.R. 504, 506 (Bankr. S.D. Ohio 1988) (insurance policy on life of wife is not exempt in husband's estate) (citing *In re Howard*, 6 B.R. 220 (Bankr. S.D. Ohio 1980)). As Judge Williams noted in *Huth*: "Even if it were the intent of the Ohio General Assembly to provide an exemption for life insurance proceeds received by a beneficiary, it is not a court's function to rewrite a statute to express that intent." *Huth*, 1998 WL 404153, at \*2. Nevertheless, because Debtor has claimed only \$130 exempt pursuant to O.R.C. § 2329.66(4)(a) and (18) and she may exempt

a total of \$800 in money on deposit and other property pursuant to those provisions, the court will deem her exemption claim to be amended to claim \$670 of the \$5,000 in question as exempt pursuant to those provisions.

**THEREFORE**, for the foregoing reasons,

**IT IS ORDERED** that Trustee's Objection to Exemption [doc. #9] is sustained and Debtor's claim of exemption pursuant to O.R.C. § 2329.66(A)(6)(b) is disallowed, and it is

**FURTHER ORDERED** that Debtor shall be deemed to claim the proceeds of the life insurance policy on her spouse as exempt to the extent of \$670.00 pursuant to O.R.C. § 2329.66(4)(a) and (18).