

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: December 09 2005

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No. 05-39182
	)	
Jay R. Briggs,	)	Chapter 7
	)	
Debtor.	)	
	)	JUDGE MARY ANN WHIPPLE

**ORDER GRANTING MOTION OBJECTING TO EXEMPTION**

This case came before the court for hearing on the Chapter 7 Trustee’s Motion Objecting to Exemptions [Doc. # 10] and Debtor’s response [Doc. # 13]. The Chapter 7 Trustee (“Trustee”), Debtor, and Debtor’s counsel all appeared in person. The Trustee objects to an exemption claimed by Debtor under Ohio Revised Code §§ 2329.66(A)(6)(a) and 2329.63. The court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §1334(b) and the general order of reference entered in this district. This is a core proceeding that the court may hear and decide under 28 U.S.C. § 157(b)(1) and (b)(2)(B). Having considered the motion and Debtor’s response, for the reasons discussed below, the court will grant the motion.

**BACKGROUND**

The relevant facts are simple and undisputed. Debtor filed his Chapter 7 bankruptcy petition on September 6, 2005. His bankruptcy schedules list personal property that includes an inheritance from the estate of Gertrude Briggs, his mother, who had died before he filed his petition. However, he had not yet received the inheritance at the time of filing, and he estimated the inheritance that he would receive to be \$2,500, which he claimed as an exemption under Ohio Revised Code § 2329.66(A)(6)(a) and § 2329.63. Ultimately, Debtor received \$4,817.11 as his share of his mother's estate. According to Debtor, it was his mother's intention, and there was an agreement between Debtor and his mother, that he would use funds received by him from her estate to pre-pay his funeral expense. The Trustee argues that neither § 2329.66(A)(6)(a) nor § 2329.63 provide an exemption in the inheritance received by Debtor from Gertrude Briggs' estate.

### **LAW AND ANALYSIS**

Section 2329.66(A)(6)(a) of the Ohio Revised Code provides for an exemption in a "person's interest in a beneficiary fund set apart, appropriated, or paid by a benevolent association or society, as exempted by section 2329.63 of the Revised Code." Section 2329.63 provides as follows:

A beneficiary fund, not exceeding five thousand dollars, set apart, appropriated, or paid by a benevolent association or society, according to its rules, regulations, or bylaws, to the family of a deceased member, or to a member of such family, is not liable to be taken by process or proceedings, legal or equitable, to pay any debt of such deceased member.

Under Bankruptcy Rule 4003(c), the party objecting to the exemption, in this case the Trustee, has the burden of establishing that the debtor is not entitled to the claimed exemption. *In re Andrews*, 301 B.R. 211, 213 (Bankr. N.D. Ohio 2003). In making this determination, and in order to further the fresh-start policy of the Bankruptcy Code, exemption statutes are to be liberally construed in a debtor's favor. *Id.* Nevertheless, "a court cannot create an exemption where one does not exist; nor can a court go contrary to the express language of the statute." *In re Bunnell*, 322 B.R. 331, 334 (Bankr. N.D. Ohio 2005).

In this case, the estate of Gertrude Briggs is not a "benevolent association or society" as contemplated in §§ 2329.66(A)(6)(a) and 2329.63 and Debtor presents no argument to the contrary. As such, Debtor's interest in his mother's estate does not constitute an "interest in a beneficiary fund" as contemplated under § 2329.66(A)(6)(a) and his inheritance does not constitute a "beneficiary fund . . . paid by a benevolent association or society" as contemplated under § 2329.63. Debtor is therefore not entitled to an exemption under either of those statutes. And Debtor's argument that he and his mother had agreed that he would use his inheritance to pre-pay his own funeral does not entitle him to any exemption under Ohio law.

**THEREFORE**, for the foregoing reasons, good cause appearing,

**IT IS ORDERED** that the Trustee's Motion Objecting to Exemption [Doc. # 10] be, and hereby is, **GRANTED**, and that Debtor's claim of exemption under Ohio Rev. Code §§ 2329.66(A)(6)(a) and 2329.63 be, and hereby is, **DISALLOWED**.