

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
DIANE R. JONES, * CASE NUMBER 03-42112
*
Debtor. * CHAPTER 7
*
* THE HONORABLE KAY WOODS
*

MEMORANDUM OPINION GRANTING TRUSTEE'S EXEMPTION
FOR DEBTOR'S LIFE INSURANCE POLICY

The matter before the Court has been fully briefed for nearly three years, but was apparently "lost" when my predecessor retired. The matter has been brought again to the attention of this Court and, for the reasons set forth herein, the Court belatedly issues this memorandum opinion and order granting the Trustee's objection.

Debtor Diane R. Jones ("Debtor") filed a Chapter 7 petition on May 2, 2003. She claimed an exemption of \$3,639.00 in the cash surrender value of a life insurance policy under which her mother, Carol Jones ("Mrs. Jones") was named as beneficiary. Andrew W. Suhar, the Chapter 7 Trustee in this case ("Trustee"), objected to the exemption on July 11, 2003. A hearing was held on the objection on October 2, 2003. The parties filed a Stipulation ("Stipulation") on October 17, 2003 in which the parties requested the Court to decide the matter upon briefs and the information contained in the transcribed examinations of the Debtor and Mrs. Jones, which were both filed with the Court. Both parties filed briefs on October 17, 2003, as follows: Trustee filed Trustee's Brief Opposing Debtor's Claimed Exemptions for Debtor's Life Insurance Policy ("Trustee's Brief") and Debtor filed Debtor's Brief in Opposition to Objection

to Exemption ("Debtor's Brief").

The following constitutes the Court's findings of fact and conclusions of law. See FED. R. CIV. P. 52 and FED. R. BANKR. P. 7052.

Facts

The facts in this case are not in dispute. Debtor is the owner and the named insured of the insurance policy listed on Schedule B to Debtor's petition. (Stipulation, ¶ 1.) Debtor's mother, Mrs. Jones, is the named beneficiary under that policy. (Stipulation, ¶ 1.) The transcribed examinations of the Debtor and Mrs. Jones were filed with the Court to assist in the factual background of this matter.¹ (Stipulation, ¶¶ 2 and 3.)

Debtor concedes that Mrs. Jones is not financially dependent upon Debtor. (Debtor's Brief, p. 3.) Mrs. Jones is employed full time at Automatic Vending Company. (Mrs. Jones Exam, p. 5, line 25 through p. 6, line 11; Debtor's Exam, p. 12, lines 2 - 24.) Mrs. Jones does not receive any financial support from Debtor. (Mrs. Jones Exam, p. 7, line 25 through p. 8, line 4; Debtor's Exam, p. 13, lines 16 - 21 .) Debtor does not claim her mother as a dependent on Debtor's tax returns and Mrs. Jones files her own tax returns and claims herself as a dependent. (Mrs. Jones Exam, p. 8, lines 11-20; Debtor's Exam, p. 7, line 24 through p. 8, line 11; Debtor's Exam, p. 15, lines 5-6.) Mrs. Jones owns her own car and drives herself to and from work, as well as for errands. (Mrs.

¹The Court will refer to the Debtor's examination, taken on August 26, 2003 and filed with the Court on October 17, 2003, as "Debtor's Exam;" likewise, the Court will refer to the examination of Mrs. Jones, taken on September 18, 2003 and filed with the Court on October 17, 2003, as "Mrs. Jones Exam." All facts relate to the time the Debtor's petition was filed and/or the examinations were taken. Although the Court may use the present tense to describe facts, such facts are based on filings that occurred nearly three years ago.

Jones Exam, p. 9, lines 4-19; Debtor's Exam, p. 13, lines 12-13.)

Although Mrs. Jones has health problems, including having had a heart catheterization in 1996 or 1997, asthma, and a bladder problem that limits her ability to lift heavy objects, none of those problems prevents her from working (including lifting heavy objects at work). (Mrs. Jones Exam, p. 9, line 20 through p. 10, line 6; Mrs. Jones Exam, p. 13, line 25 through p. 14, line 14; Mrs. Jones Exam, p. 15, line 16 though p. 16, line 9; Debtor's Exam, p. 15, lines 7 - 12; Debtor's Exam, p. 17, lines 5-13.) Mrs. Jones lives alone, but she testified that Debtor helps her carry groceries and heavy items, such as a patio set. She further testified that Debtor helps her (i) if she needs something from the attic, (ii) move furniture to clean, and (iii) by doing "outside work" such as putting down mulch. (Mrs. Jones Exam, p. 11, line 16 though p. 13, line 8; Debtor's Exam, p. 11, line 14 through p. 12, line 3.)

Debtor named her mother the beneficiary of the policy in question eleven or twelve years prior to the petition date; at that time her mother would have been approximately 48 years of age and Debtor's father was still living. (Mrs. Jones Exam, p. 6, line 23; Mrs. Jones Exam, p. 16, lines 19-20; Debtor's Exam, p. 12, line 25 through p. 13, line 7; Debtor's Exam, p. 15, lines 13 - 20.) Although Mrs. Jones testified that Debtor is the one who helps her out the most, Debtor is not Mrs. Jones's only child; Debtor has a brother and a sister. (Mrs. Jones Exam, p. 16, line 21 through p. 17, line 7; Debtor's Exam, p. 16, lines 15-16.)

In addition, Mrs. Jones has approximately \$39,000 left from life insurance proceeds received after her husband's death; she owns her car outright, does not own a home and has no debt. (Mrs. Jones

Exam, p. 8, line 24 through p. 9, line 8; Mrs. Jones Exam, p. 11, lines 2 - 9; Mrs. Jones Exam, p. 9, lines 14 - 23.)

Legal Analysis

Debtor has claimed an exemption in the cash surrender value of the life insurance policy on the basis of Ohio Revised Code § 2329.66(A)(6)(b), which provides that a person may hold as exempt "[t]he person's interest in contracts of life or endowment insurance or annuities, as exempted by section 3911.10 of the Revised Code." O.R.C. § 2329.66(A)(6)(b). O.R.C. § 3911.10 provides, in pertinent part, that

All contracts of life . . . insurance . . . upon the life of any person, . . . which may hereafter mature and which have been taken out for the benefit of, or made payable by change of beneficiary . . . to, the spouse or children, or any persons dependent upon such person . . . shall be held, together with the proceeds or avails of such contracts . . . free from all claims of the creditors of such insured person.

O.R.C. § 3911.10.

The issue in this case is whether Mrs. Jones is a "dependent" of Debtor, as required by § 3911.10. If so, Debtor can claim the exemption to the life insurance policy. If not, then Trustee's objection is well taken. The statute does not provide guidance concerning the definition of the word "dependent." Both parties have cited the three cases listed in West as cases defining "dependent." These cases are: *In re Peacock*, 292 B.R. 593 (Bankr. S.D. Ohio, 2002); *In re Brown*, 133 B.R. 860 (Bankr. N.D. Ohio 1991); and *In re Collopy*, 99 B.R. 384 (Bankr. S.D. Ohio 1989). Both parties discuss the fact that a person need not be financially dependent, but may be physically dependent on the insured person to qualify under O.R.C. § 3911.10. Debtor states that Trustee has the

burden of proof in this case. Debtor argues that "Trustee has not produced any evidence or testimony regarding the purpose for which the policy was originally taken out. . . . Trustee has failed to establish anything other than Debtor's mother is not financially dependent upon her." (Debtor's Brief, p. 4.) As a consequence, Debtor argues that Mrs. Jones's physical dependence on her daughter, due to her medical conditions, causes Mrs. Jones to fall within the definition of "dependent." (Debtor's Brief, p. 4.) Trustee counters that Mrs. Jones is not physically dependent on Debtor for vital services and distinguishes the *Collopy* case. (Trustee's Brief, pp. 4 -5.)

This Court agrees with Trustee's analysis. Mrs. Jones lives alone and is employed full time. Although she claims that she is precluded from heavy lifting and requires her daughter's services for such, she manages to work at a job that she concedes involves heavy lifting. Debtor performs outside work around Mrs. Jones's apartment, such as trimming bushes and laying mulch, but those tasks are not required. Mrs. Jones stated that the apartment complex provides lawn cutting, etc., but that the residents are permitted to plant flowers. (Mrs. Jones Exam, p. 12, line 21 through p. 13, line 5.) Debtor moves heavy furniture and gets seasonal items from Mrs. Jones's attic, as well as helping her carry heavy loads when shopping, but there is no evidence that someone other than Debtor, including but not limited to Debtor's sister or brother, could not perform these types of periodic services. The evidence is overwhelming that Mrs. Jones lives and works independently. Although Debtor helps her out on a periodic or regular basis, none of the tasks that Debtor performs can be classified as a "vital"

function.

In *Collopy*, debtor's mother was 85 years of age and had glaucoma. In that case, debtor provided all of the mother's transportation because she could not drive. In finding that debtor's mother was physically dependent, Judge Perlman stated that it was a "fair inference" that the debtor had purchased the life insurance policy "to make some provision for the physical needs of the mother in the event that debtor should predecease her." *Collopy* at 384. In the instant case, no such fair inference can be made. Debtor states that Trustee has presented no evidence about the purpose for which the policy was originally taken out, yet, in doing so, Debtor ignores her own testimony on this subject. Debtor testified that her mother has been the named beneficiary since Debtor acquired the policy. She further testified that this designation occurred eleven or twelve years pre-petition, which was at a time when Debtor's father was alive and working at General Motors and before Mrs. Jones's heart problem. Under these circumstances, there is no reason to infer that Debtor named her mother as beneficiary on the policy in order to make provision for her financially in the event of Debtor's death.

The facts of this case are more similar to the facts in the *Brown* and *Peacock* cases than they are to the *Collopy* case. In *Peacock*, the debtor took out a life insurance policy to cover her burial expenses so her mother and aunt would not have to bear those expenses. The *Peacock* debtor was 67 years old and suffered from breast cancer. Given her medical condition, debtor argued that she would not be able to obtain a replacement policy and, thus, her mother and aunt would have to bear the costs of debtor's burial.

The *Peacock* debtor conceded that neither her mother nor aunt lived with her and that she provided no financial support to either of them.

Here, *Peacock* conceded that she provides no financial support whatsoever to either of the Policy's beneficiaries. Nor does the Debtor provide her mother or aunt with the vital services that established a dependency relationship in *Collopy*. No evidence was presented demonstrating that the Policy's beneficiaries rely on the Debtor to care for their physical needs. Thus, the indirect financial dependence that characterized the relationship between the debtor and her mother in *Collopy* has not been shown to exist in this case.

Peacock at 597.

In *Brown*, the debtor's mother had lived with the debtor for fourteen years. The mother did not pay rent and debtor provided groceries and transportation for her mother. Judge Speer found "that the relationship between Janice [debtor] and Mrs. Brown is not one of dependency as the term is used in the Ohio statute." *Brown* at 862. The court made this finding because the "testimony adduced at the Hearing indicates that Mrs. Brown is not financially dependent upon Janice; though Mrs. Brown may very well be physically dependent upon Janice for transportation due to her arthritis." *Id.*

In the instant case, Mrs. Jones has some medical problems that may require her to have assistance in carrying or moving heavy objects. That alone does not suffice for Mrs. Jones to be a dependent of Debtor for purposes of O.R.C. § 3911.10. As a consequence, since Mrs. Jones does not meet the statutory requirement of being "dependent," Debtor's claim of exemption is not allowable. Trustee's objection to the claimed exemption is well taken.

An appropriate order will follow.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

DIANE R. JONES,

Debtor.

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CASE NUMBER 03-42112

CHAPTER 7

THE HONORABLE KAY WOODS

ORDER GRANTING TRUSTEE'S EXEMPTION FOR
DEBTOR'S LIFE INSURANCE POLICY

For the reasons set forth in this Court's memorandum opinion entered this date, Trustee's objection to Debtor's claimed exemption is well taken and is granted.

IT IS SO ORDERED.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE