

The court incorporates by reference in this paragraph and adopts as the findings and analysis 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: August 23 2010

A blue ink signature of Mary Ann Whipple, written in a cursive style.

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No. 09-36839
	)	
Steven L. Heiskell,	)	Chapter 7
	)	
Debtor.	)	
	)	JUDGE MARY ANN WHIPPLE

**MEMORANDUM OF DECISION**

This case came before the court for hearing on the Chapter 7 Trustee's Objection to Exemption ("Objection") [Doc. # 32]. The Trustee and Debtor's attorney attended the hearing in person. The parties agreed that the court should decide the Objection on the documentary record before it, including Debtor's bank account records submitted at the hearing.

The district court has jurisdiction over this Chapter 7 case pursuant to 28 U.S.C. § 1334(a) as a case under Title 11. It has been referred to this court by the district court under its general order of reference. 28 U.S.C. § 157(a); General Order 84-1 of the United States District Court for the Northern District of Ohio. A proceeding regarding exemptions from property of the estate is a core proceeding that the court may hear and decide. 28 U.S.C. § 157(b)(1) and (b)(2)(B). For the reasons that follow, the Trustee's Objection will be overruled.

Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code on October 1, 2009. On that same date, \$5,822.50 was deposited into Debtor's checking account at Charter One Bank, which amount represents student loan and/or grant monies awarded to Debtor. Immediately before that deposit was made,

the balance in Debtor's checking account was \$41.53. [See Doc. # 38 and Checking Account Statement for the period beginning Sept. 4, 2009, through Oct. 5, 2009, attached thereto]. No withdrawals were made from the account on that date. [Id.]. After this court entered an order granting the Trustee's motion for turnover of funds in Debtor's bank account at the time of filing, Debtor filed an amended Schedule C claiming student loan proceeds in the amount of \$5,324.10 as exempt under Ohio Revised Code § 2329.66(A)(17). [Doc. # 30].

### **LAW AND ANALYSIS**

As authorized by 11 U.S.C. § 522(b)(2), the Ohio legislature opted out of the federal exemptions provided in § 522(d). See Ohio Rev. Code § 2329.662. As a result, debtors for whom the applicable exemption law under § 522(b)(3)(A) is Ohio law must claim exemptions under the relevant Ohio statutes and under applicable non-bankruptcy federal law. Ohio exemption law applies to Debtor as he has been domiciled in this state for more than the 730 days preceding the date of the filing of his petition. See 11 U.S.C. § 522(b)(3)(A); Doc. # 1, p. 31, SOFA question 15.

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.*

Ohio's exemption statute provides that "[e]very 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: . . . property that is specifically exempted from execution, attachment, garnishment, or sale by federal statutes other than the [Bankruptcy Code]." Ohio Revised Code § 2329.66(A)(17). In claiming this exemption, Debtor relies on 20 U.S.C. § 1095a, which provides as follows:

(d) No attachment of student assistance

Except as authorized in this section, notwithstanding any other provision of Federal or State law, no grant, loan, or work assistance awarded under this subchapter and part C of subchapter I of chapter 34 of Title 42, or property traceable to such assistance, shall be subject to garnishment or attachment in order to satisfy any debt owed by the student awarded such assistance, other than a debt owed to the Secretary and arising under this subchapter and part C of subchapter I of chapter 34 of Title 42.

Although the Trustee does not dispute that the \$5,822.50 deposited into Debtor's bank account constituted student assistance as contemplated by § 1095a(d), the Trustee argues that those funds lost their exempt status when they were deposited into that account and commingled with funds from other sources.

The United States Supreme Court has addressed the issue of whether benefits received by an individual that were otherwise exempt under similar federal exemption statutes retained their exempt status when deposited into a bank account. See *Porter v. Aetna Casualty & Surety Co.*, 370 U.S. 159 (1962); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413 (1973). In *Porter*, the Court held that a veteran's disability compensation remained exempt after being deposited into a savings and loan association account. The Court held that because "legislation of this type should be liberally construed . . . to protect funds granted by the Congress for the maintenance and support of the beneficiaries thereof," the deposits "should remain inviolate." *Id.* at 162. The Court stated:

The Congress, we believe, intended that veterans in the safekeeping of their benefits should be able to utilize those normal modes adopted by the community for that purpose-provided the benefit funds, regardless of the technicalities of title and other formalities, are readily available as needed for support and maintenance, actually retain the qualities of moneys, and have not been converted into permanent investments.

*Id.* Relying on the reasoning in *Porter*, the Supreme Court held in *Philpott* that a depositor's social security disability benefits retained their exempt status after being deposited into the individual's bank account. *Philpott*, 409 U.S. at 416-17.

Consistent with the United States Supreme Court opinions, the Ohio Supreme Court in *Daugherty v. Central Trust Co. of Northeastern Ohio, N.A.*, 28 Ohio St. 3d 441 (1986), addressed the exempt nature of personal earnings and concluded that "statutorily exempt funds do not lose their exempt status when deposited in a personal checking account . . . so long as the source of the exempt funds is known or reasonably traceable." *Daugherty*, 29 Ohio St. 3d at 445, 504 N.E.2d at 1103. The court explained:

The legislature's purpose, in exempting certain property from court action brought by creditors, was to protect funds intended primarily for maintenance and support of the debtor's family. (Citation omitted). This legislative intent would be frustrated if exempt funds were automatically deprived of their statutory immunity when deposited in a checking account which a depositor commonly maintains in order to pay by check those regular subsistence expenses he incurs.

*Id.* Since the parties had agreed that the funds in the debtor's checking account were from personal earnings that were exempt under the Ohio exemption statute, the *Daugherty* court held that the deposited funds were exempt. *Id.* In addition, the court noted that the funds on deposit retained their exempt status because they also met the test set forth in *Porter*, that is, they were "'readily available as needed for support and maintenance,' retained their quality as monies and were not converted into a permanent investment." *Id.* at n.3.

Under the reasoning of the above cited cases, to the extent that the source of the funds in Debtor's

checking account on the date of filing his bankruptcy petition is student assistance awards as contemplated under § 1095a(d), the funds retain their exempt status under that statute and Ohio Revised Code § 2329.66(A)(17). And under Ohio law, those funds remain exempt even if they are commingled with non-exempt funds deposited in that account if the funds are reasonably traceable to the student assistance awards. *See Daugherty*, 29 Ohio St. 3d at 445; *First Nat'l Master Charge v. Gilardi*, 44 Ohio App. 2d 383, 385-86 (1975) (stating it is “obvious” that tracing of monies on deposit is required to determine the amount attributable to exempt welfare funds); *cf. NCNB Fin'l Servs., Inc. v. Shumate*, 829 F. Supp. 178, 181 (W.D. Va. 1993) (finding funds exempt that are reasonably traceable to social security income); *In re Moore*, 214 B.R. 628, 631 (Bankr. D. Kan. 1997) (same).

Although the court finds use of the first-in, first out method of accounting appropriate in tracing the funds under these circumstances, *see In re Lichtenberger*, 337 B.R. 322, 326 (Bankr. C.D. Ill. 2006) (“[g]uided by the principle that exemptions are to be construed liberally in favor of debtors,” the court applied the first-in, first-out method to determine the source of funds in the debtor’s bank account); *Shumate*, 829 F. Supp. at 181 (using the first-in, first-out method in determining whether funds could be traced to social security benefits); *United States v. Griffith*, 584 F.3d 1004, 1021 (10th Cir. 2009) (finding VA funds commingled in account with other funds will retain their VA character as long as they are readily traceable and may be accounted for with a standard accounting method, such as first-in, first-out tracing), Debtor’s student assistance award in the amount of \$5,822.50 was deposited into his checking account on the same date he filed his Chapter 7 petition and no withdrawals were made on that date, making tracing of the funds relatively simple. Immediately before the deposit, the balance in Debtor’s checking account was \$41.53. After the deposit, and at the time of filing, the checking account balance was \$5,864.03. Thus, the entire \$5,822.50 was in his account at the commencement of his Chapter 7 case. Debtor is, therefore, entitled to the exemption in student loan proceeds claimed on his Schedule C.<sup>1</sup>

A separate order in accordance with this memorandum of decision will be entered by the court.

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<sup>1</sup> Although the entire \$5,822.50 deposited into Debtor’s checking account remained in his account at the time of filing, he has only claimed an exemption as to student loan proceeds in the amount of \$5,324.19.