

In the United States Bankruptcy Court
for the Northern District of Iowa
Western Division

IRENE J. WIGGINS
Debtor.

Bankruptcy No. 96-51376XS
Chapter 7

ORDER RE: TRUSTEE'S OBJECTION TO EXEMPTION

The matter before the court is the Trustee's objection to the debtor's claim of exemption in two individual retirement accounts. Hearing was held in Sioux City, Iowa on August 7, 1996. Glenn A. Metcalf appeared for the debtor, Irene J. Wiggins. Donald H. Molstad appeared for himself as Trustee. On August 15, 1996, Wiggins filed a post-trial brief. The court now issues its findings and conclusions as required by Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C. 157(b)(2) (B).

Irene J. Wiggins filed her Chapter 7 bankruptcy petition on May 31, 1996. Her schedules listed an interest in a "Bankers Life IRA" and a "pension." The total value of the accounts was listed as \$5,643. Account statements from Bankers United Life Assurance Company refer to the accounts as "annuity fund" policies and name Wiggins as owner and annuitant of the accounts. Exhibits A and B. Wiggins claimed the accounts exempt under Iowa Code 627.6(8)(e). The Trustee objected on the ground that IRAs are not exempt under Iowa law.

The contracts were not offered in evidence. The parties stipulate that the accounts are individual retirement accounts under the Internal Revenue Code, 26 U.S.C. 408(a). The accounts were opened in 1982 with money from an inheritance. Wiggins has made no additions to the accounts since that time. She works full time at Gunderson's Jewelers. She is 61 years old.

Iowa Code 627.6(8)(e) allows a debtor to exempt her rights in:

A payment or a portion of a payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless the payment or a portion of the payment results from contributions to the plan or contract by the debtor within one year prior to the filing of a bankruptcy petition, which contributions are above the normal and customary contributions under the plan or contract, in which case the portion of the payment attributable to the contributions above the normal and customary rate is not exempt.

Because she is more than 59-1/2 years old, Wiggins is able to withdraw money from the accounts without an additional tax penalty. 26 U.S.C. 408(d)(1), 72(t). She argues that her rights in any distribution from the IRAs are, therefore, "on account of" age.

Exemption laws are to be construed liberally in favor of the debtor, but a court "should not depart substantially from the express language of the exemption statute or extend the legislative grant." In re

Huebner, 141 B.R. 405, 408-09 (N.D. Iowa 1992), aff'd, 986 F.2d 1222 (1993), cert. denied by Huebner v. Farmers State Bank, Grafton, Iowa, 114 S.Ct. 272 (1993). This court has held that IRAs are not exempt under Iowa Code

627.6(8)(e). In re Goodman, No. X88-00991S (Bankr. N.D. Iowa Oct. 19, 1988); In re Matthews, 65 B.R. 24 (Bankr. N.D. Iowa 1986). In Matthews, the court left open the question whether a debtor's interest in an IRA would be exempt if he had attained age 59-1/2. 65 B.R. at 26 n.1. However, the argument is foreclosed by the analysis in Huebner.

Glen Huebner had invested in individual retirement annuities. He was age 64 when he filed his bankruptcy petition. He elected to begin receiving annuity payments after he had reached age 65. The District Court held that his rights in the annuity payments were not "on account of" age within the meaning of Iowa Code 627.6(8)(e). Huebner had chosen a payment option under which the amount he received was based upon his age, but his right to receive payments from the annuities was not tied to his age. Huebner, 141 B.R. at 407-08. The court held that the phrase "on account of" should be interpreted to mean "triggered by" rather than "based on." Id. at 409. The Eighth Circuit agreed with this analysis. Huebner's present right to receive an annuity payment did not depend upon his having reached a particular age. 986 F.2d at 1225.

Similarly, Wiggins' right to receive a distribution from her IRAs is not connected in any way to her age. Reaching age 59-1/2 is not a triggering event; it improves the tax consequences of a withdrawal. Cf. 26 U.S.C. 408(a)(6) and 26 C.F.R.

1.408-2(b)(6)(iii) (distribution of individual's interest in IRA must begin not later than taxable year in which individual attains age 70-1/2).

The Huebner decision was based upon an interpretation of the phrase "on account of ... age" in 627.6(8)(e). The amendment which became effective after Huebner's case was filed did not change this portion of the statute.⁽¹⁾ Wiggins' rights under her IRAs are not on account of age. The amendment does not change the analysis. Heubner, 141 B.R. at 408 n.1. The exception in amended 627.6(8)(e) for excess contributions is not at issue in this case. The court also need not address Wiggins' argument that 627.6(8)(e) exempts the entire corpus of the IRA. Her rights at the time of her bankruptcy petition to any form of distribution from the account were not on account of her age. Accordingly,

IT IS ORDERED that the Trustee's objection to the debtor's claim of exemption in individual retirement accounts is sustained. SO ORDERED THIS 3rd DAY OF SEPTEMBER 1996.

William L. Edmonds

Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U.S. mail to: Glenn A. Metcalf, Donald H. Molstad, and U. S. Trustee.

1. The prior statute read: "A payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."