

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

DWIGHT P. JOHNSON and
MARY A. JOHNSON

Bankruptcy No. 99-03126S

Debtor(s).

Chapter 7

ORDER RE: TRUSTEE'S OBJECTION TO EXEMPTIONS

The Chapter 7 trustee objects to the debtors' claim of exemption in an annuity. Hearing on the matter was held March 16, 2000 in Sioux City. Trustee Wil L. Forker appeared *pro se*. Ryan Kolpin appeared for the debtors. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

Findings of Fact

Debtors Dwight and Mary Johnson filed a Chapter 7 petition on November 29, 1999. Their schedule of personal property listed a "New York Life Annuity on Dwight P. Johnson" valued at \$20,000. Johnsons claimed the annuity exempt.

Dwight Johnson is 48 years old. He was formerly employed by Computer Sciences Corporation, a firm with headquarters in El Segundo, California. He worked for Computer Sciences for 14 years, leaving in October 1997. He participated in the firm's 401(k) plan for about 10 years. He contributed three percent of his salary to the plan. The company contributed matching funds. Johnson was earning approximately \$12 per hour when he first participated in the plan and approximately \$19 per hour when he left the company.

The value of Johnson's interest in his 401(k) account grew to \$39,000. When the account was liquidated, some of the funds were offset against a loan on the account. Johnson used some of the money to move to Iowa. On December 31, 1998, he used \$20,000 of his 401(k) account funds to purchase a single premium annuity from New York Life Company. The transfer of the funds into the annuity was not a taxable event.

The application for the annuity indicates the annuity was intended to be a "tax-qualified plan" described as an "IRA" with a rollover amount of \$20,000. Exhibit 1. The policy contains an endorsement captioned "Individual Retirement Annuity (IRA)." The first paragraph of the endorsement states: "At your request, as long as this endorsement is in effect, this policy is changed so that it can qualify as an IRA under Section 408 of the Internal Revenue Code ("the Code"). The terms of this endorsement apply even if they do not agree with the other terms of this policy."

Discussion

Johnsons claimed the annuity exempt pursuant Iowa Code § 627.6(8) without further specificity. The exemption conceivably could have been claimed under either § 627.6(8)(e) or § 627.6(8)(f).

Subsection (e) provides an exemption for 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" An individual retirement annuity is not exempt under Iowa Code § 627.6(8)(e). Eilbert v. Pelican (In re Eilbert), 212 B.R. 954 (B.A.P. 8th Cir. 1997), aff'd, 162 F.3d 523 (8th Cir. 1998); In re Heubner, 141 B.R. 405 (N.D. Iowa 1992), aff'd, 986 F.2d 1222 (8th Cir. 1993).

Johnson's annuity is exempt, if at all, under the recently enacted § 627.6(8)(f), which provides that a debtor may exempt his rights in--

(f) Contributions and assets, including the accumulated earnings and market increases in value, in any of the plans or contracts as follows:

(1) Transfers from a retirement plan qualified under the Employee Retirement Income Security Act of 1974 (ERISA), as codified at 29 U.S.C. § 1001 et seq., to another ERISA-qualified plan or to another pension or retirement plan authorized under federal law, as described in subparagraph (3).

(2) Retirement plans established pursuant to qualified domestic relations orders

(3) For simplified employee pension plans, self-employed pension plans, Keogh plans (also known as H.R. 10 plans), individual retirement accounts, Roth individual retirement accounts, savings incentive matched plans for employees, salary reduction simplified employee pension plans (also known as SARSEPs), and similar plans for retirement investments authorized in the future under federal law, the exemption for contributions shall not exceed, for each tax year of contributions, the actual amount of the contribution or two thousand dollars, whichever is less. The exemption for accumulated earnings and market increases in value of plans under this subparagraph shall be limited to an amount determined by multiplying all the accumulated earnings and market increases in value by a fraction, the numerator of which is the total amount of exempt contributions as determined by this subparagraph, and the denominator of which is the total of exempt and nonexempt contributions to the plan.

For purposes of this paragraph "f", "market increases in value" shall include, but shall not be limited to, dividends, stock splits, interest, and appreciation. "Contributions" means contributions by the debtor and by the debtor's employer.

Iowa Code § 627.6(8)(f) (effective May 17, 1999).

The court first considers the meaning of § 627.6(8)(f)(1). That subsection exempts "transfers" from an ERISA plan to "another pension or retirement plan authorized under federal law, as described in subparagraph (3)." A 401(k) plan is a type of tax-qualified plan governed by ERISA. In re Kleinmeyer, No. L92-01089C, slip op. at 5 (Bankr. N.D. Iowa Oct. 30, 1992). Johnson's annuity should be exempt if his transfer of the 401(k) funds was to a retirement plan of the type described in § 627.6(8)(f)(3).

The trustee argues that the phrase "as described in subparagraph (3)" requires the court to apply a \$2,000 limitation to Johnson's rollover of funds into the annuity. The court disagrees. Subparagraph (3) provides that "the exemption for contributions [to the previously named retirement plans] shall not

exceed, for each tax year of contributions, the actual amount of the contribution or two thousand dollars, whichever is less." The Iowa legislature has chosen the word "transfers" to refer to rollovers; rollovers are not included in the "contributions" described in § 627.6(8)(f)(3). There is no evidence that Johnson made any "contributions" within the meaning of § 627.6(8)(f)(3). The trustee's interpretation would effectively eliminate the exemption for rollovers, making § 627.6(8)(f)(1) superfluous. The issue, therefore, is whether Johnson's annuity is a retirement plan included in the types of plans described in § 627.6(8)(f)(3).

The trustee contends that the Iowa legislature, by including "individual retirement accounts" in § 627.6(8)(f)(3) and not expressly listing "individual retirement annuities" in that section, has made a distinction between the two investment types. The trustee interprets the statute to provide an exemption for IRA accounts described in 26 U.S.C. § 408(a), but not for IRA annuities described in 26 U.S.C. § 408(b). Johnson argues that the term "individual retirement accounts" should include both IRA accounts and IRA annuities, citing In re Kemmerer, 245 B.R. 335 (Bankr. N.D. Iowa Feb. 8, 2000) (Kilburg, J.).

Exemption statutes are to be liberally construed in favor of the debtor, but without extending the legislative grant. In re Eilbert, 162 F.3d 523, 526 (8th Cir. 1998); In re Huebner, 141 B.R. 405, 408-09 (N.D. Iowa 1992), aff'd, 986 F.2d 1222 (8th Cir. 1993). "The exemption law should be so construed as to effectuate the very object which the legislature had in view when the statute was enacted." Olsen v. Lohman, 234 Iowa 580, 585, 13 N.W.2d 332, 335 (1944). The legislature's apparent object in adding § 627.6(8)(f) was to equalize the exempt status of interests in retirement plans that are exempt under § 627.6(8)(e) and interests in other types of federally regulated retirement plans. Section 627.6(8)(f)(3) exempts contributions and assets in several specified types of retirement plans "and similar plans for retirement investments authorized in the future under federal law." The addition of "similar plans" indicates that the exemption statute was intended to be inclusive. If individual retirement annuities are "similar plans" and can reasonably be included within the term "individual retirement accounts," the statute should so be read.

Case law prior to the enactment of § 627.6(8)(f) has treated the two investments as identical for purposes of exemption law. In re Huebner, 141 B.R. 405, 408 (N.D. Iowa 1992) (finding no relevant distinction between IRA account under 26 U.S.C. § 408(a) and IRA annuity under § 408(b)), aff'd, 986 F.2d 1222 (8th Cir. 1993). IRA accounts and IRA annuities are two forms of individual retirement plans eligible to receive favorable tax treatment. According to one treatise, the term "IRA" has become a generic term that includes both IRA accounts and IRA annuities. Kemmerer, 245 B.R. at 339 (citing Robert E. Madden, Tax Planning for Highly Compensated Individuals, ¶¶ 7.06, 7.06[1] (2000)); see also 26 U.S.C. § 408 (entitled "individual retirement accounts," governing both IRA accounts and IRA annuities).

The question is whether the Iowa legislature used the phrase "individual retirement accounts" as a generic term that includes IRA annuities, or whether it intended the term to refer only to accounts described in 26 U.S.C. § 408(a). Given the identical treatment of the two investments under prior exemption law and the statute's indicated purpose to give identical treatment to "similar plans," it seems more reasonable to interpret the statute inclusively. The trustee's reading of the statute would make IRA annuities alone, among several similar retirement investment plans, not exempt at all. The legislature did not expressly exclude IRA annuities, nor did it expressly define "individual retirement accounts" by reference to 26 U.S.C. § 408(a). Cf. Iowa Code §§ 97A.6B(1)(b)(1), 97B.53B(1)(b)(1), 411.6B(1)(b)(1) and 602.9105(1)(b)(1) (defining "individual retirement account" as account "in accordance with section 408(a) of the federal Internal Revenue Code"). This court agrees with Judge

Kilburg's conclusion in the Kemmerer decision that the term "individual retirement accounts" in Iowa Code § 627.6(8)(f)(3) should be read to include "individual retirement annuities."

The trustee's brief cites a number of sections of the Iowa Code referring to both an "individual retirement account" and an "individual retirement annuity." The statutes cited, however, treat the two types of investment identically. Moreover, these statutes are consistent with the conclusion that the legislature intended identical treatment of IRA accounts and IRA annuities for purposes of § 627.6(8)(f)(3). See Iowa Code §§ 97A.6B(1)(b), 97B.53B(1)(b), 411.6B(1)(b) and 602.9105(1)(b) (both IRA accounts and IRA annuities are "eligible retirement accounts" for purposes of rollovers from accounts in the retirement plans of peace officers, public employees (IPERS), police and fire fighters, and the judiciary).

The trustee argues that one distinction between IRA accounts and IRA annuities is that the funds in an IRA account must be held by a trustee or custodian, whereas an IRA annuity is an insurance contract owned directly by the individual. The trustee does not explain why this fact is significant. If he means to imply that debtors have control over the funds in an IRA annuity, the inclusion of IRA accounts in § 627.6(8)(f)(3) shows that that fact is not relevant. A debtor has "relatively unrestricted control and use" of the funds in an IRA account, despite the existence of a trustee. In re Matthews, 65 B.R. 24,25 (Bankr. N.D. Iowa 1986).

The court concludes, therefore, that § 627.6(8)(f)(3) provides for an exemption for an individual retirement annuity, and that Johnson's rollover of his 401(k) funds into the IRA annuity is exempt under Iowa Code § 627.6(8)(f)(1).

IT IS ORDERED that the trustee's objection to the debtor's claim of exemption in the New York Life annuity is overruled.

SO ORDERED THIS 30 DAY OF MARCH 2000.

William L. Edmonds
U.S. Bankruptcy Judge