

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:
Reginald Gaudette,
Debtor

Bk. No. 96-12653-MWV
Chapter 7

Louise L. Gaudette
Movant

v.

Richard R. Erricola, Trustee,
Respondent

MEMORANDUM OPINION

The Court has before it the motion of Louise Gaudette (“Movant”), which asks the Court to declare and affirm the exempt status of Reginald Gaudette’s (“Debtor’s”) pension plan, the OFS Pension Plan and Trust (“OFSPPT” or “Plan”). For the reasons set forth below, the Court denies Louise Gaudette’s motion. This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

BACKGROUND

On September 23, 1996, the Debtor filed a petition under Chapter 7 commencing the above captioned bankruptcy case. Movant is the spouse of the Debtor. In his schedules, the Debtor claimed an exemption in his interest of the OFSPPT pursuant to 29 U.S.C. § 1056(d)(1) and (2) and N.H. RSA § 512:21(V). The only beneficiary of OFSPPT was and is the Debtor. See Erricola v. Gaudette (In re Gaudette), 240 B.R. 649, 651 (Bankr. D.N.H. 1999).

Shortly after the commencement of the case, the United States Trustee appointed Jeffrey

Schreiber as Chapter 7 trustee. Schreiber convened the § 341 meeting on October 29, 1996.¹

On January 24, 1997, the successor Chapter 7 Trustee and respondent in this matter (“Trustee”/“Respondent”), Richard R. Erricola, filed an objection to Debtor’s claimed exemptions. A hearing on the objection was held on July 22, 1997. In a Procedural Order dated July 23, 1997, the Court (Yacos, J.) instructed the Trustee to bring an adversary proceeding, noting that the request was made “for procedural reasons only and [was] not intended to change the fact of the claim of exemption or objection thereto that [were] already in the Court’s file.” Doc. No. 66. The Trustee subsequently brought Adversary No. 97-1096 (the “Adversary”) in which he challenged the validity of Debtor’s exemption claim under 29 U.S.C. § 1056 and 11 U.S.C. § 541. On June 11, 1999, this Court ruled that the OFSPPT was not an exempt pension plan subject to ERISA and was, therefore, property of the bankruptcy estate under § 541 of the Bankruptcy Code. See In re Gaudette, 240 B.R. at 657. This decision was subsequently affirmed on appeal. See Gaudette v. Erricola, 2000 D.N.H. 48.

Movant presently seeks a determination that the OFSPPT is exempt under state law. Movant alleges that the time for objecting to Debtor’s claimed exemption under N.H. RSA § 512:21(V) has expired pursuant to Federal Rule of Bankruptcy Procedure 4003(b) because the Trustee failed to include a prayer for relief regarding the state exemption issue in the Adversary. Trustee responds that Movant does not have standing to bring her motion and that, in any event, the Court should sustain the Trustee’s objection to the Debtor’s N.H. RSA § 512:21(V) exemption because the state provision is not applicable to the OFSPPT.

DISCUSSION

A. Standing

Section 522(l) provides that “the debtor shall file a list of property that a debtor claims as exempt under subsection (b) ... [i]f the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor.” The term

¹ The Court has no further information on record as to what took place at the § 341 meeting.

“dependent” includes a debtor’s spouse, whether or not that spouse is actually dependent on the debtor. 11 U.S.C. § 522(a)(1).

Although courts within this district or circuit have not directly addressed the issue, other Courts have determined that the language of § 522(l) only confers standing to dependents when the Debtor has not filed a list of exemptions or the list is incomplete. See In re Homan, 112 B.R. 356, 359-60 (B.A.P. 9th Cir. 1989) (determining that supplementation of exemptions is not allowable pursuant to § 522(l), but assuming, *arguendo*, that, if allowable, such supplemental exemptions would be required to be consistent with those already claimed by debtor); In re Crouch, 33 B.R. 271, 274 (Bankr. E.D.N.C. 1983) (holding that debtor’s exemptions must be claimed in good faith and not for purpose of circumventing debtor’s obligation to support his or her spouse, and, when debtor who has not met such obligations has claimed inadequate exemptions, spouse should be permitted to claim additional exemptions so long as they do not unduly prejudice debtor); but see In re Donnelly, 151 B.R. 787, 789 (Bankr. S.D. Ohio 1992) (tentatively holding that the non-debtor spouse has standing to oppose the trustee’s objection to the debtor’s claim of exemption, but noting that such an objection may be premature pending the division of assets in the state court divorce proceeding).

In this case, although the Movant is a dependent within the meaning of § 522(a)(1), she is claiming property that the Debtor has already claimed as exempt on his own behalf, thereby bringing her outside the scope of § 522(l).² Further, this present case can be distinguished from Donnelly because the Movant’s case does not involve pending ownership issues over marital assets. In re Donnelly, 151 B.R. at 789. This case is also distinguishable from Crouch because there is no indication from the record that the Debtor had claimed inadequate exemptions for the purpose of circumventing his obligations to

² At the hearing on the motion held October 17, 2001, Movant’s counsel argued that the Movant would have standing, regardless of the applicability of § 522(l), because she is a beneficiary under OFSPPT. However, the Court previously ruled that the only beneficiary of OFSPPT was and is the Debtor and, accordingly, the Court will not address Counsel’s unsupported contention further. See Erricola v. Gaudette (In re Gaudette), 240 B.R. 649, 651 (Bankr. D.N.H. 1999).

support his spouse. In re Crouch, 33 B.R. at 274. Accordingly, Movant does not have standing before the Court. Further, even if the Movant could claim OFSPPT as exempt on the Debtor's behalf, she could only do so if the Debtor would be entitled to that exemption and, as the Court finds below, the Debtor is not entitled to an exemption under N.H. RSA § 512:21(V).

B. Exemption

Generally, once an exemption has been claimed, a two-step approach applies. The threshold requirement is a timely objection by a party in interest. 11 U.S.C. § 522(l). If such an objection is filed and the asset is property of the estate, only then does the bankruptcy court decide if the claimed exemption fits into one of the categories listed in § 522(b) of the Bankruptcy Code, if the Debtor chooses federal exemptions, or under the various sections of N.H. RSA, if the Debtor chooses the state exemption scheme.

In this case, the Court finds that a timely objection was filed by a party in interest. Rule 4003(b) provides, in relevant part, that:

[a] party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Fed. R. Bankr. P. 4003(b). The Debtor never challenged the validity of the Trustee's July 24, 1997 objection, and has, thus, waived any challenge to the objection. The Debtor's timely objection continues to remain valid, despite the Court's request for a procedural modification. On July 22, 1997, a hearing was held before Judge Yacos on the Trustee's objection to Debtor's claim of exemption. At that hearing, the Court determined that the Trustee's objection should have been brought as an adversary proceeding, and requested that the Trustee bring such a proceeding. The Court emphasized that its "action [was] taken for procedural reasons only and [was] not intended to change the fact of the claim of exemption or objection thereto that [were] already in the Court's file." Doc. No. 66.

The Trustee subsequently brought an adversary proceeding in which he challenged the validity of the Debtor's claimed exemptions pursuant to 29 U.S.C. § 1056 and 11 U.S.C. § 541. The course of conduct by both parties throughout the Adversary indicated that only the ERISA issue was being tried, as is evidenced by the Joint Final Pretrial Statement ("Statement"). See Adv. Doc. No. 10. In the Statement, the parties characterize the case as a dispute over whether "the [Debtor's] interest in his pension plan is property of the estate and not excluded from the estate pursuant to 11 U.S.C. § 541(c) as an ERISA qualified pension plan." Id. ¶ 1. Further, in its memorandum opinion dated June 11, 1999, this Court also noted that it was not addressing "whether, and to what extent, the Debtor's claimed exemptions [under 29 U.S.C. § 1036(d)(1) and N.H. RSA § 512:21(V)] affect the outcome of today's decision." 240 B.R. at 652, fn. 3. The Court noted that it did not make a final determination on the exemption claim because 1) the adjudication of the property of the estate issue may have rendered the exemption claim superfluous and 2) at a hearing held April 8, 1998, the Plaintiff indicated that the only issue before the Court was whether the assets of OFSPPT were property of the estate. See id. Thus, the Trustee made a timely objection and that objection remained valid, as Judge Yacos clarified in his July 27, 1997 Procedural Order. Further, a determination can now be made as to the exemption claim as it was not rendered moot or superfluous by the Court's 1999 In re Gaudette decision. See 240 B.R. at 652, fn. 3.

Even though the Trustee's objection remains valid, it does not follow, however, that the N.H. RSA claim of exemption likewise remains valid. Since there was a timely objection filed with the Court, the issue that remains is whether the exemption provision listed by the Debtor is applicable to the property of the estate the Debtor has listed on his schedules. In this case, N.H. RSA § 512:21(V) does not serve to exempt OFSPPT from the reach of the other creditors in the Debtor's bankruptcy.³

³ At the hearing, Movant's counsel indicated that he believed that the N.H. RSA provision cited in Debtor's schedules contained a typographical error. More specifically, Movant's counsel alleged that the Debtor had intended to cite § 512:21(IV) instead of § 512:21(V). However, the Court gives no weight to Counsel's hypothesis as the Debtor's schedules were never amended.

N.H. RSA § 512:21(V) provides that “[t]he money, right, and credits of the defendant shall be exempt from trustee process in the following instances, and the trustee shall not be chargeable therefor: (V) [f]unds held by the trustee in the capacity of clerk, cashier, or other employee of the defendant which were received in the ordinary course of such employment.” N.H. RSA § 512:21(V). N.H. RSA § 512:21 deals with trustee process, an event which is not applicable the OFSPPT. See In re Damast, 136 B.R. 11 (Bankr. D.N.H. 1991). Accordingly, the Court sustains the Trustee’s objection.

CONCLUSION

Movant lacks standing to make the exemption claim. Further, the Trustee’s objection is sustained because the OFSPPT is not exempt under N.H. RSA § 512:21(V). This opinion and order constitutes the Court’s findings of facts and conclusions of law in accordance with Federal Rule of Procedure 7052.

DATED this 1st day of March, 2002, at Manchester, New Hampshire.

Mark W. Vaughn
Chief Judge