Dated: February 11, 2014
The following is SO ORDERED:

Jimmy L. Croom
Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re: MARY R. PETREMAN,	)	**Case No. 12-13352**
	)	
Debtor	)	**Chapter 7**
	)	
	)	

MEMORANDUM OPINION RE: (1) TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS and DEBTOR'S OBJECTION THERETO; (2) DEBTOR'S MOTION TO DISMISS THE TRUSTEE'S OBJECTION TO THE EXEMPTION and TRUSTEE'S OBJECTION THERETO; and (3) DEBTOR'S MOTION TO DISMISS TRUSTEE'S OBJECTION TO THE EXEMPTION

At issue in this case is the nature of the debtor's interest in her ex-husband's 401(k) account. Initially, the debtor claimed her entire interest in the account as exempt under Tennessee state law and § 522(b) of the Bankruptcy Code. The debtor subsequently changed her position to assert that her interest in the retirement account is not property of the estate.

For the reasons that follow, the Court concludes that the interest the debtor acquired in her ex-husband's ERISA-qualified 401(k) retirement account pursuant to the terms of a Qualified Domestic Relations Order is excluded from "property of the estate" pursuant to 11 U.S.C. § 541(c)(2).

1. Jurisdiction

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). This Court has jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334 and thus may enter a final order in this matter. This memorandum opinion shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052.

2. Facts

Mary R. Petreman ("Debtor") filed a Chapter 7 petition for bankruptcy relief on November 28, 2012. Although she did not list any type of retirement account on her petition at the time of filing, she subsequently amended Schedule B to include an interest in a "QDRO-401 (K) ex-husband's Dupont retirement savings plan" ("Retirement Account") valued at $24,000. She also amended Schedule C to claim the entire amount of her interest in the Retirement Account as exempt under Tennessee Code Annotated § 26-2-105(a).

Following the amendments to Debtor's schedules, the Chapter 7 Trustee, Michael T. Tabor ("Trustee"), filed an objection to the Debtor's claimed exemption in the Retirement Account. In so doing, the Trustee asserted that the Debtor's interest in the account arose out of a divorce settlement and was, therefore, not exemptible under Tennessee Code Annotated § 26-2-105(a).

In response to the Trustee's objection, the Debtor amended Schedule C to add 11 U.S.C. § 522(b)(3)(C) as a basis for the exemption. The Debtor also filed a response to the Trustee's objection in which she asserted that the divorce court awarded her the interest in the Retirement Account pursuant to a Qualified Domestic Relations Order ("QDRO"). As such, the Debtor argued that the account was properly exempted under both Tennessee Code Annotated § 26-2-105(a) and 11 U.S.C. § 522(b)(3)(C). The relevant portions of the QDRO are as follows:

1. This Order creates and recognizes the existence of an Alternate Payee's right to receive a portion of the Participant's benefits payable under an employer sponsored defined contribution plan that is qualified under Section 401 of the Internal Revenue Code (the "Code") and the Employee Retirement Income Security Act of 1974 as amended ("ERISA"). It is intended to constitute a Qualified Domestic Relations Order ("QDRO") under Section 414(p) of the Code and Section 206(d)(3) of ERISA.

. . . .

4. The name of the Plan to which this Order applies is the DuPont Retirement Savings Plan ("RSP"). . . .

. . . .

6. This Order is entered pursuant to the authority granted in Tennessee Code Annotated § 36-4-121.

7. This Order relates the provision of marital property rights to the Alternate Payee as a result of the Final Decree between Participant and Alternate Payee.

8. This Order awards the Alternate Payee the sum of Twenty-four Thousand Ninety-nine Dollars and 0/100 ($24,099.00) of the Participant's account in the RSP . . . .

9. The Plan Administrator will establish a separate account in the Plan for the Alternate Payee and it will transfer the Alternate Payee's benefit to this account as soon as is administratively practicable.

10. If the Alternate Payee dies before she receives her benefit from the Plan, the benefit will be paid to the Alternate Payee's estate.

(QDRO at 1-3, ECF No. 26-2.) The QDRO identifies the Debtor's ex-spouse as the "Participant" and the Debtor as the "Alternate Payee." The state court entered the QDRO on September 5, 2012.

After responding to the Trustee's objection to the exemption, the Debtor filed a motion to dismiss the Trustee's objection for failure to state a claim. The Debtor alleged that the exemption was proper under the Bankruptcy Code, Tennessee law and case law. In an affidavit attached as an exhibit to the motion to dismiss, the Debtor averred that she received the interest in the Retirement Account pursuant to a QDRO under § 414(p) of the Internal Revenue Code, (26 U.S.C. § 414(p)), and § 206(d)(3) of the Employee Retirement

Income Security Program ("ERISA"), (29 U.S.C. § 1056(d)(3)). The Debtor also attached a copy of the QDRO that was issued in her state court divorce proceedings.

The Trustee filed an objection to the Debtor's motion to dismiss wherein he restated his contention that the Debtor's claimed exemption in the Retirement Account was not allowable under either state or federal law. In response, the Debtor filed a second motion to dismiss the Trustee's objection for failure to state a claim. Therein, the Debtor abandoned the argument that the exemption was proper and instead argued that her interest in the Retirement Account was not property of the estate.

The parties filed a stipulation of facts with the Court on January 6, 2014. This stipulation provides as follows:

1. The debtor, Mary R. Petreman ("Petreman") resides at 148 Jacqualine Circle, Camden, TN 38320.
2. The Chapter 7 case was filed on November 28, 2012, and Michael T. Tabor is the duly appointed Chapter 7 Trustee.
3. Petreman went through a divorce with her ex-husband, Paul Barry Petreman ("Paul Petreman"), and the divorce was granted by the Chancery Court for Benton County, Tennessee in case #2430.
4. Paul Petreman worked for DuPont and he and the company contributed to a 401(k) retirement program.
5. The DuPont 401(k) is a national retirement program that is qualified by both the Internal Revenue Servi[c]e and [ ] ERISA. The specific qualifying code sections are recited within paragraph one of the QDRO and adopted and incorporated by reference herein. Also see the national DuPont website for further authentication.
6. In the divorce, Petreman was awarded as the Alternate Payee the sum of $24,099.00, a portion of the retirement through a DePont [sic] standardized QDRO, and as approved by the court. The QRDO is filed of record in this case as an attachment to document #26. Also, reference is made to the national website describing and defining the 401(k) program.
7. At the time the Chapter 7 case was filed the monies Petreman were [sic] entitled to were located in a QDRO account at Dupont, styled Mary R. Petreman, Dupont Retirement Savings Plan, having been established on October 22, 2012.

8. Petreman's portion of the 401(k) account is still invested with DuPont program, but segregated to an independent account, which is evidenced by the attached document.

9. Petreman has not alienated, assigned or withdrawn any money from this account.

10. The interest of the 401(k) account was not initially listed on the schedules; however, later Petreman amended Schedule B to list the interest in the 401(k) and Schedule C to claim it exempt.

(Stipulation of Facts, ECF No. 35.) The document referenced in paragraph 8 of the stipulation is a copy of a December 5, 2013 notice from Merrill Lynch which states the following: "This letter is to confirm that the QDRO account you hold in the DuPont Retirement Savings Plan was established and funded on October 22, 2012." (*Id.*, ECF No. 35-1.)

All of the relevant pleadings in this case were scheduled for a hearing on January 23, 2014. After the submission of the stipulation of facts, the parties elected to submit the matters to the Court without a hearing.

3.Analysis

At issue in this case is the nature of the debtor's interest in her former husband's retirement plan which was established pursuant to the Employee Retirement Income Security Program, commonly referred to as ERISA. Congress enacted ERISA in 1974. 29 U.S.C. § 1001 *et seq.* "The principal object of the statute is to protect plan participants and beneficiaries." *Boggs v. Boggs*, 520 U.S. 833, 845, 117 S. Ct. 1754, 1762 (1997) (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90, 103 S. Ct. 2890, 2896 (1983)). "Section 1001(b) explains that ERISA contains certain safeguards and protections which help guarantee the 'equitable character and the soundness of [private pension] plans' in order to protect 'the interests of participants in private pension plans and their beneficiaries.' " *Boggs*, 520 U.S. at 845 (citing 29 U.S.C. § 1001(b)).

In the case at bar, the Debtor initially claimed her interest in the Retirement Account as exempt pursuant to Tennessee law and § 522 of the Bankruptcy Code. She later

changed her position to argue that 11 U.S.C. § 541(c)(2) excluded her interest in the account from property of the estate. The Trustee has objected to both of the Debtor's positions.

Section 522(b)(1) of the Bankruptcy Code provides that "an individual debtor may exempt from property of the estate" certain specified property interests. 11 U.S.C. § 522(b)(1); however, "[n]o property can be exempted (and thereby immunized), . . . unless it first falls *within* the bankruptcy estate." *Owen v. Owen*, 500 U.S. 305, 308, 111 S. Ct. 1833, 1835 (1991). Therefore, before determining whether the Debtor in this case is entitled to the claimed exemption in the Retirement Account, the Court must first determine whether the Debtor's interest in the account is "property of the estate." If it is not, then it will be unnecessary for the Court to address the exemption issue. *Id.*

By virtue of § 541 of the Bankruptcy Code, the filing of a bankruptcy petition creates a bankruptcy estate. Section 541(a) of the Bankruptcy Code defines "property of the estate" as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "This definition is unquestionably broad, its main purpose being to bring anything of value that the debtors have into the [bankruptcy] estate." *Lyon v. Eiseman* (*In re Forbes*), 372 B.R. 321 (B.A.P. 6th Cir. 2007) (internal quotation marks and citation omitted).

Despite its vast reach, § 541(a)'s definition of "property of the estate" is not without limits. Section 541(b) and (c)(2) provide exclusions from property of the estate. 11 U.S.C. § 541(a)(1). The relevant exclusion for purposes of the case at bar is found in § 541(c)(2). This subsection provides that "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title." 11 U.S.C. § 541(c)(2). The debtor carries the burden of proof in establishing that § 541(c)(2) excludes a particular property interest from property of the estate. *Rhiel v. Adams* (*In re Adams*), 302 B.R. 545, 540 (B.A.P. 6th Cir. 2003).

In the case of *Patterson v. Shumate*, 504 U.S. 753, 112 S. Ct. 2242 (1992), the Supreme Court addressed the scope of § 541(c)(2) in the context of a debtor's interest in

his own ERISA-qualified retirement plan. In that case, the debtor argued that his interest in the retirement plan should be excluded from property of the estate under § 541(c)(2). The trial court disagreed and held that § 541(c)(2)'s reference to "applicable nonbankruptcy law" "embraced only state law, not federal law such as ERISA." *Id*. at 756 (citing *Creasy v. Coleman Furniture Corp.*, 83 B.R. 404, 406 (1988)). On appeal, the Fourth Circuit reversed and concluded that § 541(c)(2) encompassed both state and federal law and that the anti-alienation provision of ERISA-qualified plans satisfied the "restriction on transfer" requirements of § 541(c)(2). Consequently, the Fourth Circuit determined that the debtor's interest in his ERISA-qualified retirement account was not property of the estate. *Id*. at 757. The Supreme Court granted certiorari in the case to resolve a split among the circuits on the issue of whether § 541(c)(2) referred to only state law or federal law as well. *Id.*[1]

The Supreme Court began its analysis with the language of § 541(c)(2) and determined that "[t]he natural reading of the provision entitles a debtor to exclude from property of the estate any interest in a plan or trust that contains a transfer restriction enforceable under any relevant nonbankruptcy law." *Id.* at 758. Because "nothing in § 541 suggests that the phrase 'applicable nonbankruptcy law' refers . . . exclusively to *state* law," the Court concluded that the "applicable law" referenced in § 541(c)(2) included both state and federal law, "including federal law such as ERISA." *Id.* at 757, 759.

The Court then turned its attention to the issue of whether the terms of an ERISA-qualified plan satisfied the requirements of § 541(c)(2). The Court first examined the anti-alienation provisions of ERISA and the Internal Revenue Code. Because § 206(d)(1) of ERISA provides "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated," the Court concluded that ERISA "clearly imposes a 'restriction on the transfer' of a debtor's 'beneficial interest' in the trust." *Id.* at 759 (citing 29 U.S.C. § 1056(d)(1)). The Court also found that "[t]he coordinate section of the Internal Revenue Code" contained a similar anti-alienation provision such that a beneficial interest

[1]For a synopsis of the circuit split, see *The Teachers Insurance and Annuity Assoc. v. Bareham* (*In re Quinn*), 327 B.R. 818, 822 (W.D. Mich. 2005) (citations omitted).

in an ERISA-qualified plan clearly could not be "assigned or alienated" within the meaning of 11 U.S.C. § 541(c)(2). *Id.* (citing 26 U.S.C. § 401(a)(13)).

The Court next examined whether the anti-alienation provisions in ERISA-qualified plans were enforceable. Pursuant to §§ 404(a)(1)(D) and 502(a)(3) and (5) of ERISA,

> Plan trustees or fiduciaries are required under ERISA to discharge their duties "in accordance with the documents and instruments governing the plan." A plan participant, beneficiary, or fiduciary, or the Secretary of Labor may file a civil action to "enjoin any act or practice" which violates ERISA or the terms of the plan.

Id. at 760 (citing 29 U.S.C. §§ 1104(a)(1)(D) and 1132(a)(3) and (5)). Additionally, the Supreme Court recognized that "this Court itself vigorously has enforced ERISA's prohibition on the assignment or alienation of pension benefits, declining to recognize any implied exceptions to the broad statutory bar." *Id.* (citing *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 110 S. Ct. 680 (1990)). Given these rights of enforcement, the Supreme Court concluded that ERISA-qualified plans contain "enforceable transfer restriction[s] for purposes of § 541(c)(2)'s exclusion of property from the bankruptcy estate." *Id.*[2]

Patterson clearly establishes that a debtor's beneficial interest in his *own* ERISA-qualified plan is not property of the estate. *See In re Harshbarger*, 66 F.3d 775, 777 (6th Cir. 1995); *United States v. Rogers*, 558 F.Supp.2d 774, 785 (N.D. Ohio 2008). What the

---

[2]In *Patterson,* the Supreme Court determined that "ERISA-qualified" plans are excluded from property of the estate under § 541(c)(2); however, the Court did not define what an "ERISA-qualified" plan is. In *Quinn*, the District Court for the Western District of Michigan commented on this omission in the *Patterson* opinion: "Following *Patterson*, courts have debated the meaning of the term 'ERISA-qualified plan' coined by the Supreme Court in *Patterson* because ERISA does not speak in terms of 'qualification.' Rather, a 'qualified plan' generally refers to a plan that is tax 'qualified' under the Internal Revenue Code." *Quinn*, 327 B.R. at 823 n.6 (citations omitted).

In the case at bar, the parties stipulated that the Debtor's Retirement Account is a qualified plan under both ERISA and the Internal Revenue Code. Therefore, an analysis of whether the account is "qualified" within the meaning of *Patterson* is unnecessary in this case.

Patterson decision did not address, however, was whether § 541(c)(2) excludes a debtor's beneficial interest in an ex-spouse's ERISA-qualified plan from property of the estate. For purposes of § 541(c)(2), the key difference between these two types of property interests is the mechanism by which the debtor acquires an interest in the retirement account. In the former situation, the debtor obtains a property interest in the ERISA plan by virtue of employment and participation in the retirement program. In the latter, the debtor gains a beneficial interest in the plan's funds during the course of divorce proceedings.

Although ERISA provides that qualifying pension plans "may not be assigned or alienated," it contains one narrow exception to this mandate. Section 206(d)(3)(A) allows benefits to be assigned or alienated pursuant to "a qualified domestic relations order." 29 U.S.C. § 1056(d)(3)(A). The Internal Revenue Code contains the same exception to the anti-alienation provision. 26 U.S.C. § 401(a)(13)(B) (providing that the anti-alienation provisions of 26 U.S.C. § 401(a)(13)(A) do "not apply if the order is determined to be a qualified domestic relations order."). A "qualified domestic relations order" is commonly referred to as a "QDRO." As the Supreme Court stated in *Boggs v. Boggs*, 520 U.S. 833, 117 S. Ct. 1754 (1997), "[a] QDRO is a type of domestic relations order that creates or recognizes an alternate payee's right to, or assigns to an alternate payee the right to, a portion of the benefits payable with respect to a participant under a plan." *Id.* at 846 (citing 29 U.S.C. § 1056(d)(3)(B)(i)). For purposes of § 206 of ERISA, a domestic relations order qualifies as a QDRO if it "does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan . . . ." 29 U.S.C. § 1056(d)(3)(B)(i) and (D)(i).

Pursuant to § 206(d)(3)(J) of ERISA, "[a] person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan." 29 U.S.C. § 1056(d)(3)(J). Subsection (K) defines "alternate payee" as "any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant." 29 U.S.C. § 1056(d)(3)(K). As the *Boggs* court recognized, "[i]n creating the QDRO

mechanism Congress was careful to provide that the alternate payee ... is to be considered a plan beneficiary" under ERISA. *Boggs*, 520 U.S. at 847.

In the case of *In re Carter-Bland*, 382 B.R. 743 (Bankr. S.D. Ohio 2008), the bankruptcy court was asked to determine whether § 541(c)(2) excluded from property of the estate an interest the debtor acquired in her ex-husband's ERISA-qualified plan by virtue of a QDRO. The chapter 7 trustee in that case did not dispute that the QDRO was a qualified domestic relations order. Instead, he argued "that the Debtor does not have an interest in the Plan because her interest arises from the QDRO, not as a participant in the Plan." *Id.* at 745. The court disagreed.

In analyzing the issue, the court began with ERISA's stated goal of "protect[ing] plan participants and [their] beneficiaries." *Id.* at 748 (citing *Boggs*, 520 U.S. at 845). The Court then cited the relevant provisions of ERISA which allow for the assignment of beneficial interests in qualified plans pursuant to QDROs, including § 206(d)(3)(J)'s provision that "an alternate payee under a [QDRO] shall be considered . . . a beneficiary under the plan." *Id.* at 749 (citing 29 U.S.C. § 1056(d)(3)). The court explained that

> This provision is designed "to give enhanced protection to the spouse and dependent children in the event of divorce or separation." *Boggs*, 520 U.S. at 847, 117 S.Ct. 1754. Indeed, many courts which have addressed the question, have found that a qualified domestic relations order creates a property interest in the plan separate and distinct from the interest of the plan participant, rather than creating a mere claim.

Id. (citing *In re Wilson*, 158 B.R. 709 (Bankr. S.D. Ohio 1993); *In re Debolt*, 177 B.R. 31, 36 (Bankr. W.D. Pa.1994); *In re Brown*, 168 B.R. 331, 334–335 (Bankr. N.D. Ill.1994); *Brown v. Pitzer* (*In re Brown*), 249 B.R. 303, 308–310 (S.D. In. 2000)). Accordingly, the court concluded that the debtor had "an interest in the Plan, and the fact that her interest arose via the QDRO rather than as a participant in the Plan is of no moment. As such the provisions of the Plan and ERISA protect her interest therein" *Id.*

The court then turned its attention to the question of whether the debtor's beneficial interest in the Plan was excluded from property of the estate pursuant to § 541(c)(2). The court answered that question in the affirmative:

> If the Bankruptcy Code required the Debtor to turn over her interest in the Plan to the Trustee, bankruptcy law, like the state law at issue in *Boggs,* would be in conflict with ERISA. The Bankruptcy Code, however, does not require—and in fact protects the Debtor against—liquidation of the Debtor's interest by the Trustee.

Id. (citations omitted). Because the debtor had a beneficial interest in the ERISA plan which contained a restriction on the transfer and because "the restriction [was] enforceable under nonbankruptcy law," the court concluded that § 541(c)(2) excluded the debtor's interest from property of the estate. *Id.* at 751. The court stated that its "decision 'ensures that the treatment of pension benefits will not vary based on the beneficiary's bankruptcy status,' and 'gives full and appropriate effect to ERISA's goal of protecting pension benefits." *Id.* (citing *Patterson*, 504 U.S. at 764).

A majority of courts that have addressed ERISA-qualified QDROs in the context of § 541(c)(2) have concluded that as long as the debtor's beneficial interest in the retirement plan satisfies the two factors set forth by the Supreme Court in *Patterson*, "a debtor's interest in the undistributed funds of an ERISA-qualified plan is not property of the bankruptcy estate."[3] *Dyckman v. Dyckman* (*In re Dyckman*), 2013 WL 1302613, *4 (Bankr. M.D. Pa. 2012) (citing *Nelson v. Ramette* (*In re Nelson*), 322 F.3d 541, 545 (8th Cir.

[3]For cases in which the court determined that a debtor's interest in an ex-spouse's ERISA-qualified plan is included within property of the estate see *In re Hageman*, 260 B.R. 852, 857 (Bankr. S.D. Ohio 2001) and *Johnston v. Mayer* (*In re Johnston*), 218 B.R. 813, 817 (Bankr. E.D. Va. 1998). However, the majority of courts have rejected these decisions. *See Nelson*, 322 F.3d at 545 ("Both *Hageman* and *Johnston* failed to address the plain language of ERISA, which provides that an alternate payee under a QDRO is considered a beneficiary of the plan."); *United States v. Rogers*, 558 F.Supp.2d 774, 786 (N.D. Ohio 2008) ("The IRS submits, and this court agrees, that *In re Hageman* was wrongly decided."); *In re Hthiy*, 283 B.R. 447, 450-51 (Bankr. E.D. Mich. 2002) ("The Court concludes that the decision of the *Hageman* court is unpersuasive. In addition to its failure to consider the *Boggs* decision in its analysis, the court also failed to consider the plain language of [§ 541(c)(2)] itself.").

2003)); *Hthiy*, 283 B.R. at 451 (concluding that "the debtor holds a separate property interest in her former husband's ERISA-qualified plan which is excluded under 541(c)(2).").
In *Nelson*, the Eighth Circuit relied on the Supreme Court's *Boggs* decision in reasoning as follows:

> Thus, the Court essentially recognized that Congress, via the QDRO provisions, intended that all persons conferred beneficiary status via a QDRO be given the same protections ERISA affords to plan participants. Those protections include ERISA's anti-alienation provisions. Therefore, a person who acquires an interest in an ERISA plan via a QDRO can exclude that interest from a bankruptcy estate in the same way that the plan participant herself could have excluded it.

Nelson, 322 F.3d at 545 (citing *Boggs*, 520 U.S. at 854); *see alsoUnited States v. Rogers*, 558 F.Supp.2d 774, 786 (N.D. Ohio 2008) (citing *Nelson* decision in determining that interest acquired pursuant to a QDRO qualified for exclusion from property of the estate); *Ostrander v. Lalchandani* (*In re Lalchandani*), 279 B.R. 880, 886 (B.A.P. 1st Cir. 2002) (adopting the *Nelson* decision in determining that a debtor's interest in her ex-husband's ERISA-qualified plan which she acquired pursuant to a QDRO was excluded from property of the estate.); *In re Farmer*, 295 B.R. 322, 324-25 (Bankr. W.D. Wis. 2003) (relying on the decisions in *Lalchandani* and *Nelson* in concluding that, because "the debtor as a former spouse is legally entitled to all the same protections as a plan beneficiary, including the anti-alienation provisions," the debtor's interest was excluded from property of the estate under § 541(c)(2)). There are two qualifying conditions in this line of cases. First, the QDRO must have been issued prior to the filing of the bankruptcy petition. *Walsh v. Burgeson* (*In re Burgeson*), – B.R. –, 2014 WL 198824, *4 (Bankr. W.D. Pa. 2014) (citing 11 U.S.C. §§ 522, 541(a)(1)) ("[P]roperty of a bankruptcy estate is determined as of the date the bankruptcy petition is filed."). Second, the debtor's interest must be in the "undistributed" funds in the plan. *Dyckman*, 2013 WL 1302613, *4; *Woodyear v. Clarke Insurance Inc.* (*In re Woodyear*), 162 F.3d 1160, *1 (5th Cir. 1998) (concluding that debtor's interest in ex-husband's plan was not excluded from property of the estate because she received immediate access to the funds in her ex-husband's account. Thus,

there was no "restriction on transfer" and, under *Patterson*, the debtor's interest did not satisfy the mandates of § 541(c)(2)).

In the case at bar, the parties stipulated that the Retirement Account was qualified by both the Internal Revenue Service and ERISA. They also stipulated that the Debtor is an "Alternate Payee" who was awarded a portion of the Retirement Account pursuant to a qualifying QDRO. The copy of the QDRO which was attached to the Debtor's motion to dismiss the Trustee's objection to her exemption clearly sets forth that the Retirement Account was qualified under the Internal Revenue Code and ERISA. The QDRO also clearly stated that it constituted a Qualified Domestic Relations Order pursuant to § 414(p) of the Internal Revenue Code and § 206(d)(3) of ERISA. The QDRO does not entitle the Debtor to immediate access to the funds awarded to her. Lastly, the exhibit attached to the stipulation clearly established that the Debtor's interest in the Retirement Account was established pre-petition. Based on these facts, the Court concludes that the Debtor's beneficial interest in her ex-husband's ERISA-qualified retirement account, which she acquired by virtue of the QDRO issued by the state court in divorce proceedings, is excluded from "property of the estate" by 11 U.S.C. § 541(c)(2).

4. Conclusion

The Court concludes that the Debtor's undistributed, beneficial interest in her ex-husband's ERISA-qualified 401(k) retirement account that the state court awarded to her pursuant to the terms of a Qualified Domestic Relations Order is excluded from "property of the estate" pursuant to 11 U.S.C. § 541(c)(2).

The Court will enter an order in accordance herewith.

Mailing list

Michael T. Tabor, Plaintiff/Chapter 7 Trustee
Benjamin Dempsey, attorney for Debtor

Dated: February 11, 2014
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re: MARY R. PETREMAN,	)	**Case No. 12-13352**
	)	
Debtor	)	**Chapter 7**
	)	
	)	

ORDER RE: (1) TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS and DEBTOR'S OBJECTION THERETO; (2) DEBTOR'S MOTION TO DISMISS THE TRUSTEE'S OBJECTION TO THE EXEMPTION and TRUSTEE'S OBJECTION THERETO; and (3) DEBTOR'S MOTION TO DISMISS TRUSTEE'S OBJECTION TO THE EXEMPTION

For the reasons set forth in the Court's memorandum opinion entered contemporaneously herewith, it is hereby **ORDERED** that the Debtor's undistributed, beneficial interest in her ex-husband's ERISA-qualified 401(k) retirement account that the state court awarded to her pursuant to the terms of a Qualified Domestic Relations Order is **HEREBY DECLARED** to be excluded from "property of the estate" pursuant to 11 U.S.C. § 541(c)(2). All other matters are **DISMISSED AS MOOT.**

IT IS SO ORDERED.

Mailing list

Michael T. Tabor, Plaintiff/Chapter 7 Trustee
Benjamin Dempsey, attorney for Debtor