

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE:

JULIEN J. HOHENBERG,

Debtor.

BK #91-20777-WHB

Chapter 11

MEMORANDUM OPINION AND ORDER ON OBJECTIONS
TO DEBTOR'S CLAIM OF EXEMPTION

This core proceeding¹ is before the Court on the objections of Bankers Trust Co. (BTCo) and Jack F. Marlow (Marlow), parties in interest, to the debtor's claimed exemption of the \$12,553.22 cash value of one of his life insurance policies.² The Massachusetts Mutual Life Insurance policy, which currently has a \$19,645.00 death benefit value, names the debtor's testamentary estate as its beneficiary. BTCo and Marlow take the position that the debtor's interest in this policy is not subject to exemption under applicable law. Conversely, the debtor contends that applicable law renders his interest exempt from the claims of creditors.

Given that Tennessee has chosen to "opt out" of available federal exemption provisions pursuant to 11 U.S.C. §522(b)(1), the law applicable to this proceeding is state exemption law. See, TENN. CODE ANN. §26-2-112. The most pertinent provision of this state exemption law are TENN. CODE ANN. §56-7-201 and §56-7-203.

¹ See, 28 U.S.C. §157(b)(2)(B)

² As initially filed, these parties' objections were directed at the debtor's claimed exemption of his interests in 10 life insurance policies, 5 annuities, 4 IRA's and a long term lease. It is the Court's understanding that all but the instant objection have been resolved by the parties. See, Consent Orders filed October 22, 1992 and December 3, 1992.

Section 56-7-201 provides:

§56-7-201. Life Insurance payable to surviving spouse and children - Effect of proceeds being payable to estate. - Any life insurance effected by a husband or wife on his or her own life shall, in case of his or her death, inure to the benefit of the surviving spouse and children, and the money thence arising shall be divided between them according to the statutes of distribution, without being in any manner subject to the debts of the decedent. Provided, however, that the proceeds of such insurance payable to a testate estate shall pass, as part of the estate and under the dispositive provisions of the will, as ordinary cash, whether or not the will uses any apt or express words referring to the insurance proceeds, but such proceeds shall not be subject to the debts of the decedent unless specifically charged therewith in the will.

Section 56-7-203 states:

§56-7-203. Life insurance or annuity for or assigned to wife or children or dependent relatives exempt from claims of creditors. - The net amount payable under any policy of life insurance or under any annuity contract upon the life of any person made for the benefit of, or assigned to, the wife and/or children, or dependent relatives of such persons, shall be exempt from all claims of the creditors of such persons arising out of or based upon any obligation created after January 1, 1932, whether or not the right to change the named beneficiary is reserved by or permitted to such person.

The language of §56-7-203 clearly establishes that the "net amount" of proceeds payable under any life insurance policy that specifically names the spouse, children or dependent relatives of the insured as beneficiaries are exempt from the claims of the insured's creditors. According to the debtor, §56-7-201, set forth above, mandates that the proceeds of an insurance policy such as the one at issue here, i.e., for the benefit of the debtor's testamentary estate, are payable to the debtor's dependents by operation of law. As such, the debtor asserts that "the cash surrender value of life insurance policies payable to the debtor's testamentary estate is exempt." Memorandum of Debtor in Partial Support of Claims of Exemption, p. 10.

In a recent decision analyzing both statutes under circumstances similar to those here,³ Judge Keith Lundin of the Bankruptcy Court for the Middle District of Tennessee, opined that "[w]hether a Tennessee debtor may exempt the cash surrender value of a life insurance policy is controlled by TENN. CODE ANN.

³ In that case, a Chapter 7 debtor sought to exempt the cash surrender value of a life insurance policy issued for the benefit of his sole proprietorship.

§56-7-201. . . ." In re Thurman, 120 B.R. 99, 100 (Bankr. M.D. Tenn. 1990), aff'd. 127 B.R. 401 (M.D. Tenn. 1991). Indeed, as set forth above, §56-7-203 specifically calls for the exemption of the "net amount payable under any policy of life insurance . . . made for the benefit of . . . the wife and/or children, or dependent relatives of such persons . . ." (Emphasis added). In contrast, §56-7-201 makes no reference to the "net amount payable;" rather, it directs that "the money thence arising" in case of the death of the insured shall "inure to the benefit of the surviving spouse and children, . . . without being in any manner subject to the debts of the decedent." (Emphasis added). The reference here is plainly to death benefits rather than cash surrender values. Consequently, although §56-7-201 does, as argued by the debtor, operate to result in receipt of a life insurance policy's proceeds by the insured's surviving spouse or children free from the claims of creditors if the referenced proceeds are death benefit proceeds, the language does not support exemption of such a policy's cash value.

Such an interpretation is supported by the bankruptcy and district court opinions in the Thurman case, supra, along with a majority of the opinions rendered by the Tennessee courts considering the issue. See, e.g., Lunsford v. Nashville Sav. & Loan Corp., 162 Tenn. 179, 35 S.W. 2d 395 (1931); Sparkman Thompson, Inc. v. Chandler, 162 Tenn. 614, 39 S.W. 2d 741 (1931). Cf., Dawson v. National Life Ins. Co., 156 Tenn. 306, 300 S.W. 567 (1927).

Particularly persuasive is the Thurman District Court opinion at 127 B.R. 401 authored by Chief Judge Wiseman of the Middle District of Tennessee. In that opinion, Judge Wiseman correctly heeds the well settled rule that "where two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed intention to the contrary, to regard each as effective." 127 B.R. at 405 (Citations omitted).

That Court then reasons that the statutes at issue may be given equal effect if meaning is ascribed to each word and phrase of the statutes. Id. As discussed above, giving meaning and merit to each phrase of each statute can only result in the conclusion that §56-7-201 operates to exempt death benefits from the claims of creditors in favor of a debtor's spouse and/or children unless otherwise directed by the insured while §56-7-203 operates to similarly exempt cash surrender value and death benefit proceeds when and if the

policy in question is issued for the specific benefit of the debtor's spouse, children or other dependent relatives.

Moreover, as in the Thurman case, the existence here of additional life insurance policies purchased for the benefit of the debtor's dependents indicates that the debtor could have chosen to ensure that the policy at issue was subject to the exemptions provided by §56-7-203 simply by directing that the policy's proceeds inure to the benefit of his spouse, children or other dependents. In other words, Mr. Hohenberg controlled the named beneficiary.

In the absence of such a beneficiary designation, given the language and effect of TENN. CODE ANN. §§56-7-201 and 203, the Court must conclude that the cash surrender value of the policy at issue is not exempt under Tennessee law.

From the above, it is HEREBY ORDERED that the objections of Banker's Trust Company and Jack F. Marlow to the debtor's attempted exemption of the cash surrender value of this Massachusetts Mutual Life Insurance policy is sustained.

SO ORDERED this 31st day of December, 1992.

WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY JUDGE

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