Dated: January 13, 2016
The following is SO ORDERED:

Paulette J. Delk
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re :

Michael A. Rubin and	**Case No. 13-28399-PJD**
Liza V. Rubin,	**Chapter 7**
Debtors.	

MEMORANDUM OPINION AND ORDER SUSTAINING TRUSTEE'S OBJECTION TO DEBTORS' CLAIMS OF EXEMPTION

The matter before the court is the Trustee's Objection to the Debtors' Claims of Exemptions in certain life insurance policies. The controlling Tennessee insurance exemption statute is Tenn. Code Ann. § 56-7-203, titled "Life Insurance or annuity for or assigned to spouse or children or dependent relatives exempt from claims of creditors." The statute provides as follows:

> 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 spouse and/or children, or dependent relatives of the persons, shall be exempt from all claims of the creditors of the person 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 that person.

T.C.A. § 56-7-203. The pertinent issue is whether the statute grants an exemption from the claims of creditors for the cash surrender value of the Debtor's life insurance policy when the named beneficiary is the Debtor's estate, but the legatees under the Debtor's Last Will and Testament are her spouse and children. In other words, is the life insurance policy "made for the benefit of" the legatees under the Debtor's Will, even though the named beneficiary on the policy is the Debtor's estate? The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

FINDINGS OF FACT

The facts of this case are undisputed. On August 7, 2013, Michael A. Rubin and Liza V. Rubin (the Debtors), filed a joint voluntary Chapter 11 petition. The Chapter 11 case was converted to a Chapter 7 case on February 28, 2014. In the originally filed Schedule B, the Debtors listed a Symetra Life Insurance Co. Policy (the "Symetra Policy") as owned by Mrs. Rubin with a current cash value of $39,711.68. The Symetra Policy lists the Liza V. Rubin Estate as its beneficiary. On Schedule C the Debtors claimed an exemption in the full value of the policy pursuant to T.C.A. § 56-7-203.[1]

[1] The Chapter 7 Trustee also discovered another policy owned by Mrs. Rubin, the Hartford Policy, which has a current cash value of $1,827.00. The beneficiary of the Hartford Policy is The Larissa Kelshall Trust. The Last Will and Testament of Mrs. Rubin provides that the proceeds of a policy of life insurance on Mrs. Rubin's life be placed in a trust for the benefit of her sister, Larissa Kelshall. Larissa Kelshall is Mrs. Rubin's sister, but she is not a dependent of either of the Debtors. At the hearing on the Trustee's Objection, the Debtors announced in open court that they would not oppose the Trustee's Objection to the Hartford Policy, and the Court sustained the Trustee's Objection to the Hartford Policy. The Hartford Policy is, therefore, no longer at issue in this matter.

The Last Will and Testament of Liza V. Rubin dated October 9, 2003, bequeaths her personal and household effects to her husband, and in the event that he predeceases her, to her children. The Will provides for the creation of a Marital Trust and a Family Trust into which all other of her property should be placed. These trusts were created to benefit Mrs. Rubin's husband and two children.

CONCLUSIONS OF LAW

In the absence of protective legislation, it is generally held that the proceeds of a debtor's life insurance policy, including the cash surrender value, are assets available to that debtor's creditors, and are treated no differently than the debtor's other assets. Section 541(a)(1) of the Bankruptcy Code provides that, upon the filing of a bankruptcy petition, a bankruptcy estate is created and consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "Whether the debtor has a legal or equitable interest in property such that it becomes 'property of the estate' under section 541 is determined by applicable state law." *Musso v. Ostashko,* 468 F.3d 99, 105 (2d Cir. 2006)(citation omitted). It is therefore only through specific state legislation exempting those proceeds from the claims of creditors that a debtor may be entitled to shield those proceeds.

Bankruptcy Code § 522(d) sets forth items that may be exempted from the bankruptcy estate and therefore protected from the reach of creditors. However, §522(b)(2) contains what is known as an "opt-out" provision permitting states to substitute their own exemption statutes for the exemption provisions in § 522(d). *See McFarland v. Wallace (In re McFarland),* 790 F.3d 1182, 1185 (11th Cir. 2015)("If a state opts out, debtors in that state cannot utilize the § 522(d) exemptions,

though they may take advantage of 'any exemptions available under state or local law and federal, non-bankruptcy law." (citation omitted)). Tennessee has "opted-out" of the federal exemption provisions, *see* T.C.A. § 26-2-112, and therefore T.C.A. § 56-7-203 applies to provide an exemption for the cash surrender value of life insurance policies, when the beneficiaries of those policies are the "spouse, and/or children, or dependent relatives," of the policy holder.

In applying this statutory provision to the facts before us, the Court must give effect to the plain language of the statute without resort to the rules of statutory construction, where the language of the statute is clear and unambiguous. The Tennessee legislature used plain, simple and clear language to provide a full exemption in the cash surrender value of life insurance policies provided that the named beneficiary belongs to a discrete class: spouses, children and dependent relatives. There is no room for reasonable doubt as to the unavailability of the exemption in this case; thus there is no need to resort to the rules of statutory construction that must be used when a statute is ambiguous. Only if the beneficiaries of the life insurance policy are either the spouse, children or dependent relative of the Debtor may this exemption be claimed. In this case, the beneficiary is none of those, but instead is the estate of Mrs. Rubin.

Under insurance law, "the interest of the beneficiary [of a life insurance policy] is distinct from that of a legatee. The fact that for the purpose of identifying the beneficiary, a contract of insurance is regarded as speaking as of the time of the decedent's death, does not make the proceeds of the policy an asset of the insured's estate in the absence of the insured designating the estate as the beneficiary." (footnotes omitted) . 4 Couch on Ins. § 58:2, Couch on Insurance (3rd ed. 2006). But when the insured does designate the estate as the beneficiary, the proceeds, including cash surrender value, of the policy do become an asset of the insured's estate. "When the proceeds of

insurance are bequeathed by the insured, the legatee is not to be deemed a beneficiary of the policy, since the legatee does not receive the proceeds until they have been received by the beneficiary of the policy, the decedent's estate." 5 Couch on Ins. § 67.5 (3rd ed. 2006). Assets of the estate are subject to the claims of the insured's creditors. When the insured files a petition in bankruptcy, after having designated the estate as beneficiary of the life insurance policy rather than the spouse, and/or children or dependent relative, the cash surrender value of the policy is not exempt from the reach of creditors, because the policy failed to name one of the designated classes for whom the exemption was enacted to benefit. Courts are not free to broaden the scope of an unambiguous statute, nor may a court create an exemption where none exists. *In re Bunnell*, 322 B.R. 331, 334 (Bankr. N.D. Ohio 2005)(citing *Morris Plan Bank of Cleveland v. Viona*, 170 N.E. 650 (1930)). Just as the bankruptcy court in *In re Thurman*, 120 B.R.99 (Bankr. M.D. Tenn. 1990) ruled, in a case where the debtor named the sole proprietorship as beneficiary, the cash surrender value of the policy cannot be exempted from the claims of creditors, because one other than a spouse, child or dependent relative was named as beneficiary. The district court affirmed the bankruptcy court's decision in *Thurman* in an opinion that discusses the statutory intent of the life insurance exemption provision: "...the Tennessee Supreme Court reiterated that the express statutory intent of the predecessor to § 203 was to limit the scope of the life insurance exemption to the widow, children, and dependent relatives of the debtor." *Newport v. Thurman (In re Thurman),* 127 B.R. 401, 404 (M.D. Tenn. 1991), citing *Sparkman-Thompson, Inc. v. Chandler*, 162 Tenn. 614, 39 S.W.2d 741,743 (1931). The district court noted that, in the *Sparkman-Thompson* case, it was determined that creditors were allowed to make claims on a life insurance policy that the deceased debtor had made payable to his estate.

The language of the Tennessee exemption statute is clear, and the State legislature has

specified the three categories of eligible claimants. The estate of the insured is not the same as the spouse, children or dependent relative of the insured. Even when the legatees under a will are the spouse and children of the insured, because of clear differences in the manner in which proceeds are distributed to a beneficiary under a life insurance policy and distributed to legatees, it cannot be said that naming the estate which benefits the spouse and children fulfills the purpose of the exemption statute. Although the Debtors cited *In re Billington*, 376 B.R. 239 (Bankr. M.D. Tenn. 2007) as support for their argument, that case actually provides support for the position that the exemption statute requires the use of specific language. There the bankruptcy court reasoned that the Tennessee legislature's intent in enacting § 56-7-203 is "to protect any life insurance policy or annuity contract from creditors **to the extent** the beneficiary presently named is a spouse, child, or dependent relative." (emphasis added). *Id.* at 241, citing *In re Clemmer*, 184 B.R. 935, 937-38 (Bankr. E.D. Tenn. 1995).

Maryland's life insurance exemption statute found at § 16-111 of the Maryland Insurance Article is very similar to Tennessee's life insurance exemption statute. The Maryland statute, Md. Code. Ann., Ins. § 16-111, was the central focus of *In re Rief*, No. 05-36515-JS, 2007 WL 2071808 (Bankr. D. Md. July 16, 2007), *aff'd Rief v. Guttman (In re Rief)*, No. 05-36515-JS, Adv. No. WMN-07-2284, 2008 WL 168951 (D. Md. Jan.15, 2008), in which the debtor claimed that his life insurance policies were fully exempt because he named his wife and children as the beneficiaries under his will, thus the insurance policies were for the benefit of his wife and children as required under the exemption statute. *Rief v. Guttman* at *2. The bankruptcy court found that "the cash surrender value of the policies on the life of the debtor that designated as beneficiaries 'the Trustee named in the Last Will and Testament of the Insured,' or simply 'Last Will and Testament,' may not

be exempted." *In re Rief* at *6. The bankruptcy court ruled "[t]he fact that the debtor's spouse and dependent children as legatees under his Last Will and Testament are the same beneficiaries protected under the statute does not extend the terms of the statute to them." *Id.* The bankruptcy court then added, "[t]he statute does not insulate insurance proceeds from the claims of creditors when the debtor's estate is the designated beneficiary of the insurance policies." *Id*. at *7.

On appeal, the district court ruled that "[w]hile some residual benefit might flow to the Debtor's wife or children from their position as legatees under the Will, the Court cannot conclude that the policies were made 'for the benefit of' the Debtor's wife and children under these circumstances." *Rief v. Guttman* at *6. The district court found that Mr. Rief, in naming the will or the trustees named in the will as the beneficiaries, "intended to make his estate the direct beneficiary of the Insurance Policies. As the bankruptcy court recognized, the result of this designation was that the proceeds of the policies would flow into the estate, be subject to claims of creditors, and be used to pay other expenses...." *Id*.

Based on the foregoing, the Court concludes that the Debtor's life insurance policy naming as beneficiary her estate does not qualify as exempt under T.C.A. § 56-7-203. In reaching the conclusions found herein, the court has considered all of the evidence, exhibits, arguments of counsel, and the entire record in this cause, regardless of whether they are specifically referred to in this Memorandum.

ORDER

For the reasons stated in the Memorandum filed contemporaneously herewith,

IT IS ORDERED, ADJUDGED AND DECREED that the Debtor, Liza V. Rubin, may not exempt the subject insurance policy.

IT IS SO ORDERED.