

**United States Bankruptcy Court  
Western District of Wisconsin**

Cite as: [Unpublished]

**In re Scott W. Bolles, Debtor**  
Bankruptcy Case No. 92-10883-7

United States Bankruptcy Court  
W.D. Wisconsin, Eau Claire Division

February 1, 1993

Lawrence J. Kaiser, Eau Claire, Wis., for the debtor.

Peter F. Herrell, Eau Claire, Wis., trustee.

Thomas S. Utschig, United States Bankruptcy Judge.

**MEMORANDUM OPINION, FINDINGS OF FACT,  
AND CONCLUSIONS OF LAW**

This matter comes before the Court on an objection by the trustee to the debtor's amended exemptions. The parties have stipulated to the facts and have submitted briefs for the Court's consideration. The trustee is Peter F. Herrell; the debtor, Scott W. Bolles, is represented by Lawrence J. Kaiser.

The relevant facts can be briefly stated. The debtor filed his chapter 7 bankruptcy petition on March 13, 1992. In Schedule C of his petition, he claimed as exempt mutual funds valued at \$10,808.00 pursuant to WIS. STAT. § 815.18(3)(i)(2).<sup>(1)</sup> He also claimed \$3,000.00 in a savings and checking account as exempt pursuant to WIS. STAT. § 815.18(k) and (i)(2).<sup>(2)</sup> These amounts, totaling \$13,808.00, were part of a personal injury settlement received by the debtor on July 30, 1991. The total award was \$65,000.00, of which the debtor actually received \$36,749.78 -- after payment of attorney fees and costs and medical expenses. Of the original award of \$65,000.00, \$32,500.00 was specified to be for pain and suffering, and \$32,500.00 was for loss of future earnings and earning capacity. The aforementioned amount of \$13,808.00 claimed exempt represents the amount of the personal injury award remaining as of the date of the bankruptcy filing. It is this amount to which the trustee objects, alleging that the exemption should be denied.

The trustee does not contest that the debtor is entitled to an exemption of \$1,000.00 in his savings and checking account pursuant to WIS. STAT. § 815.18(3)(k). The exemption amount at issue in this matter thus totals \$12,808.00. There are \$6,161.00 in timely filed claims in the debtor's bankruptcy; the trustee estimates that administrative costs and fees will total approximately \$2,000.00.

Neither of the parties has cited any statutory or judicial authority to the Court which specifies how amounts paid out of personal injury settlement proceeds for

attorney fees and medical expenses are to be allocated between those proceeds awarded for pain and suffering and those awarded for loss of earning potential. Nor has the Court located any such authority. For want of a better method, debtor's attorney proposes one whereby amounts expended would be deducted pro-rata from each of the two amounts -- the one representing compensation for pain and suffering and the other for loss of earning capacity.

The trustee argues that the debtor received \$65,000.00 in the settlement and spent \$51,192.00 prior to his bankruptcy filing. Included in the amount "spent" are the debtor's attorney fees and costs, medical expenses, and other amounts expended by the debtor pre-filing. The trustee further asserts that the Court should examine the amounts spent pre-filing and find that the debtor has already spent his \$25,000.00 pain and suffering exemption.

As to the future earnings exemption, the trustee relies heavily on the case of In re Bari, 43 B.R. 253 (Bankr. D. Minn. 1984). In that case the Court identified factors to be considered in determining what amount of money is "reasonably necessary for the support of the debtor." This language was contained in the Minnesota statute at issue in Bari and it is likewise contained in the Wisconsin exemption statute at issue here. See WIS. STAT. ANN. § 815.18(3)(i)(d) (West Supp. 1992). The factors considered in Bari include other income and exempt property of the debtor, the debtor's basic needs, and the debtor's age. See In re Bari, 43 B.R. 253, 255-56 (Bankr. D. Minn. 1984). In examining the age factor, the Bari court noted that some courts have denied a pension plan exemption to young debtors. Bari, 43 B.R. at 256, citing with approval, In re Kochell, 26 B.R. 86 (Bankr. W.D. Wis. 1982), aff'd 31 B.R. 139 (W.D. Wis. 1983), aff'd 732 F.2d 564 (7th Cir. 1984); In re Clark, 18 B.R. 824 (Bankr. E.D. Tenn. 1982).

The trustee applies the Bari court's factors and emphasizes that the debtor here is young (40 years old) and without dependents. He further cites a vocational evaluation of the debtor (contained in the Court file) which indicates that the debtor can perform at jobs paying approximately \$6.00 per hour. After noting that the debtor has low monthly expenses -- \$552.00 per month<sup>(3)</sup> -- the trustee computes that the debtor could have a surplus of about \$223.00 per month. This is based on an estimated net monthly income for the debtor of \$775.00 (\$6.00 per hour x 40 hours/week x 4.3 weeks/month, less 25% for taxes).

In addition, the trustee notes that, after paying the timely filed claims of \$6,161.00 and the estimated administrative expenses of \$2,000.00, the debtor would still have a "nest-egg" of \$5,600.00 to ensure his fresh start. Denying the debtor's exemptions to the extent of \$8,161.00 would thus "[a]ccomplish two of the primary goals of a chapter 7: the debtor retains his fresh start, and . . . the creditors get paid. Deciding otherwise would encourage undue manipulation of personal injury settlements with an aim to providing undue windfalls to debtors at the expense of creditors." See Trustee's Brief at 5.

The Court has considered the arguments and authority posited by the trustee as well as those of the debtor. The Court concludes that the debtor is entitled to exempt the entire amount of \$12,808.00 at issue here and the trustee's objection is accordingly denied. Numerous factors support this result.

First and foremost, this Court remains mindful of that central tenet of bankruptcy law -- exemption statutes are to be liberally construed in favor of the debtor. See, e.g., In re Harvey, 141 B.R. 164, 166 (Bankr. E.D. Wis. 1992), citing with approval In re Jackson, 95 B.R. 590, 593 (Bankr. C.D. Ill. 1989), citing In re Barker, 768 F.2d

Second, a debtor's exemption rights are to be determined on the date of filing. See, e.g., Armstrong v. Peterson (In re Peterson), 897 F.2d 935, 937 (8th Cir. 1990); In re Friedman, 38 B.R. 275, 276 (Bankr. E.D. Pa. 1984). The trustee has cited no authority which supports his assertion that the Court should in effect retroactively apply Wisconsin exemption provisions to the debtor's pre-filing expenditures. At least one court has specifically refused to apply state exemption laws in this manner to pre-filing expenditures from a personal injury award. See In re Haga, 48 B.R. 492, 496 n.3 (Bankr. E.D. Tenn. 1985). The Court therefore declines to apply the Wisconsin exemption statute in the manner argued by the trustee. It further declines to examine the debtor's pre-filing expenditures of the personal injury settlement proceeds. Only that portion of the proceeds remaining on the date of filing is relevant for purposes of determining the debtor's rights under the Wisconsin exemption provisions.

In addition, the Court finds the debtor's proposed method of pro-rata allocation of his expenditures to each of the two relevant award amounts to be reasonable. On the date of filing, then, the debtor had \$6,904.00 remaining of his pain and suffering award, and the same amount remaining of his future earnings award. The sum of \$6,904.00 attributable to the pain and suffering award is thus exempt under WIS. STAT. § 815.18(3)(i)(c) -- which allows an exemption of up to \$25,000.00 from such sources. After deducting the \$1,000.00 exemption for a depository account<sup>(4)</sup>, the amount still at issue is \$5,904.00 -- representing the amount remaining from the future earnings award.

Third, relevant case law supports the Court's finding that the debtor is entitled to exempt the \$5,904.00 under WIS. STAT. § 815.18(3)(i)(d). That provision allows debtors to exempt future earnings compensation awards to the extent reasonably necessary for the debtor's support. Courts which have examined the question of what sums are reasonably necessary for a debtor's support for exemption purposes have focused on the debtor's present circumstances and income, other exempt property and any other relevant factors. See, e.g., In re Haga, 48 B.R. 492, 496 (Bankr. E.D. Tenn. 1985). Notwithstanding the trustee's arguments to the contrary, the Court finds these factors weigh in favor of allowing the debtor to exempt the entire \$5,904.00. The vocational report submitted to the Court notes that the debtor has a fair degree of permanent disability due to injuries to the soft tissue structures in his back. The report also states that the debtor has suffered from depression, requiring counseling and medication to treat it. As previously noted, the report further indicates that the debtor should be able to earn approximately \$6.00 per hour. The debtor is apparently currently unemployed. Schedule C of the bankruptcy petition reveals that the debtor's other exempt property is extremely limited; a total of only \$5,900.00 in other exemptions (excluding the amounts at issue here) is listed.

The trustee's argument concerning the debtor's monthly surplus of \$223.00 is likewise unpersuasive. The trustee presumes that the debtor will be able to secure a job, perform at that job and earn an estimated \$6.00 per hour. The Court further notes in this regard that the debtor's \$552.00 in monthly expenses -- termed "very low" by the trustee -- does not include any amount for rent or mortgage payments, the accompanying utility costs, or home maintenance costs. See Schedule J of debtor's bankruptcy petition. This is because the debtor currently resides with his parents -- a situation that the Court cannot expect to continue indefinitely. The debtor also budgeted \$25.00 per month for medical and dental expenses -- very low given his condition. It is thus reasonable to conclude that the debtor's monthly expenses

are likely to significantly increase in the future.

Nor is the Bari court's focus on the youth of the debtor persuasive in this case. The cases relied on by that court in justifying its focus on the age factor involved facts significantly different from those at issue here. The Kochell case involved a 44 year old healthy doctor earning \$432,000.00 a year and seeking to exempt retirement accounts totaling \$127,400.00. See In re Kochell, 732 F.2d 564, 564-65 (7th Cir. 1984). The Clark case involved a 37 year old healthy doctor seeking to exempt a \$55,000.00 retirement account. See In re Clark, 18 B.R. 824, 825 (Bankr. E.D. Tenn. 1982). The Bari case itself involved a 50 year old disabled debtor receiving over \$3,100.00 a month in disability payments. See In re Bari, 43 B.R. 253, 254 (Bankr. D. Minn. 1984). These facts are a far cry from the facts here -- a 40 year old disabled debtor with an earning potential of approximately \$6.00 per hour and no pension or retirement account. Moreover, the amount at issue here -- \$5,908.00 -- is very small as future earnings awards are concerned. In light of all of the debtor's circumstances, the fact that he is "only" 40 years of age is not relevant for the Court's determination. The factors identified by the Haga court, therefore, clearly weigh in favor of finding that the sum of \$5,908.00 is "reasonably necessary for the support of the debtor." See WIS. STAT. ANN. § 815.18(3)(i)(d) (West Supp. 1992). The Court does so find.

On the basis of the aforementioned case law, statutory authority, and factual considerations, the Court finds that the debtor is entitled to exempt the entire \$12,808.00 at issue here. Accordingly, the trustee's objection to the debtor's amended exemptions is denied.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.

## END NOTES

1. That section provides in relevant part:

(3) Exempt property. The debtor's interest in or right to receive the following property is exempt . . . :

(i) Life insurance claims, personal injury or wrongful death claims.

1. Any of the following payments:

. . .

c. A payment not to exceed \$25,000, resulting from personal bodily injury, including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

d. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent in an amount reasonably necessary for the support of the debtor and the debtor's dependents.

2. Any property traceable to payments under subd. 1 is exempt.

WIS. STAT. ANN. § 815.18(3)(i) (West Supp. 1992).

2. § 815.18(3)(k) provides:

(3) Exempt property. The debtor's interest in or right to receive the following property is exempt . . .:

(k) Depository accounts - Depository accounts in the aggregate value of \$1,000.

WIS. STAT. ANN. § 815(3)(k) (West Supp. 1992).

3. See schedule J of the debtor's bankruptcy petition.

4. See WIS. STAT. ANN. § 815.18(3)(k) (West Supp. 1992). The trustee does not contest the debtor's entitlement to this exemption.