

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

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[rev'd, Case No. 00-C-145-S (W.D. Wis. May 2, 2000)]

In re Charles and Elizabeth Galeles, Debtors
Bankruptcy Case No. 99-34061-7

United States Bankruptcy Court
W.D. Wisconsin

February 18, 2000

A. Theodore Bleckwenn, Madison, WI, for debtor.
Michael E. Kepler, Kepler & Peyton, Madison, WI, Trustee.

Robert D. Martin, United States Bankruptcy Judge.

MEMORANDUM DECISION

The facts of this case are not in dispute. The debtor's mother, Ann T. McNamee, had a large medical malpractice claim. As part of the settlement of that claim, an annuity was established in 1983 that would provide monthly payments of \$3,333.33 for the duration of her life. There was a minimum guaranteed payment period of 20 years, with a provision that should Ms. McNamee die prior to 20 years, the annuity was payable one half to her husband, and one half to her son, the debtor, Charles Galeles, Jr. The annuity was purchased and is owned by the Wisconsin Patient's Compensation Fund. Neither the debtor nor his employer have contributed any money to fund the annuity, nor did Ann McNamee or her employer.

Ann McNamee died in 1986, and her son began receiving one half of the annuity. He currently receives the sum of \$2,596.35 per month, and the payments should continue until November 1, 2003.

The trustee in this Chapter 7 proceeding, Michael Kepler, filed a timely objection to the debtors' claim that payments from the annuity are exempt under 11 U.S.C. § 522(d)(10)(E). The Federal Rules of Bankruptcy Procedure place the burden of proof on the party objecting to the debtors' exemptions:

In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

F.R.B.P. 4003(c). Section 522(d)(10)(E) provides:

The following property may be exempted under subsection (b)(1) of this section...a payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor....

This court must apply two rules of statutory construction in determining whether the payments at issue are exempt under 11 U.S.C. § 522(d)(10)(E): (1) "where 'the statute's language is plain, the sole function of the court is to enforce it according to its terms,'" and (2) "exemption statutes shall be liberally construed in favor of the debtor." *See In re Cilek*, 115 B.R. 974, 987 (Bankr. W.D. Wis. 1990) *citing U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989); *Matter of Woods*, 59 B.R. 221 (Bankr. W.D. Wis. 1986). I believe that the meaning of the language in § 522(d)(10)(E) is plain on its face. Therefore, I will not consider any supposed Congressional intent that other courts have surmised from legislative history.

To claim an annuity as exempt under 11 U.S.C. § 522(d)(10)(E), three elements must be met: (1) the payments must be payments under an annuity; (2) the payments must be on account of death; and (3) the payments must be reasonably necessary for the debtors' support. If the trustee can show by a preponderance of the evidence that any one of these three elements is not met, the debtors will not be permitted to exempt the annuity payments.

The trustee first argues that the monthly payments received by the debtors as part of a structured settlement are not the kind of payments contemplated by § 522(d)(10)(E). In support of his argument, the trustee relies on a number of cases that have held that a structured settlement annuity is more akin to an account receivable rather than an annuity. The trustee's reliance is misplaced. The plain language of § 522(d)(10)(E) does not limit the type of annuity that can be exempted. Rather the statute reads: "payment...under...an annuity...on account of death...." An annuity is defined by Black's Law Dictionary as "an obligation to pay a stated sum...to a stated beneficiary...a right, often acquired under a life-insurance contract, to receive fixed payments periodically for a specified duration." Black's Law Dictionary 88 (7th Ed. 1999). The payments at issue fall well within this definition of annuity. First, Wisconsin Patients Compensation Fund, the owner of the annuity, has an obligation to make monthly payments to a stated beneficiary until November 1, 2003. The debtor became a payee of the annuity at his mother's death. Second, the debtor has a right to monthly payments under the annuity for a specified duration. Last but not least, the parties to the contract and the contract itself call it an annuity. The first requirement of § 522(d)(10)(E) is met.

The trustee contends that the annuity payments to the debtor are not on account of death because the death that triggered the payments was the mother's death, not the debtor's. However, there is no requirement in the plain language of § 522(d)(10)(E) that the "on account of death" requirement be the death of the debtor. In fact, it is hard to imagine a debtor receiving payment upon his own death. Under a plain reading of § 522(d)(10)(E), "on account of death" requires only that some death trigger the debtor's right to receive the annuity payments. In this case, it was the debtor's mother's death that triggered the debtor's right to the annuity payments. But for her death, the debtor would not receive the annuity payments. Therefore, the second requirement of § 522(d)(10)(E) is met.

The final requirement is that the annuity payments to the debtors be reasonably necessary for their support. The bankruptcy court in *In re Syrtveit*, 105 B.R. 599, 606 (Bankr. D. Mont. 1989, J. Peterson) defined "reasonably necessary" as:

"[T]he reasonably necessary standard requires that the court take into account other income and exempt property of the debtor, present and anticipated...and that the appropriate amount to be set aside for the debtor ought to be sufficient to sustain basic needs, not related to his former status in society or the lifestyle to which he is accustomed but taking into account the special needs, that a retired and elderly debtor

may claim."

Id. citing In re Hunsucker, 106 B.R. 220 (Bankr. D. Mont. 1998); Warren v. Taff, 10 B.R. 101 (Bankr. D. Conn. 1981). Although the debtors presented no evidence at hearing that the annuity payments were reasonably necessary for their support, the debtors' schedules show that their monthly income including the annuity payments is \$4001.00, and the debtors' monthly expenses for a family of four are \$4240.00. The trustee bore the burden of proving that the annuity payments were not reasonably necessary for the debtors' support. The trustee failed to present any evidence that the annuity payments were not reasonably necessary for the debtors' support. Therefore, the third requirement of § 522(d)(10)(E) is met, and the trustee's objection must be overruled.