UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:	)	
	)	
CAROL ANN SPEARS	)	CASE NO. 13-11972
	)	
	)	
Debtor	)	

DECISION ON TRUSTEE'S OBJECTION TO EXEMPTIONS

At Fort Wayne, Indiana, on January 9, 2014.

The trustee in this chapter 7 case has objected to the debtor's claimed exemption for the cash value of a life insurance policy. The debtor's children are the beneficiaries of that policy; they are now adults and are not dependant upon the debtor. That is the basis for the trustee's objection. The matter has been submitted on the parties' joint stipulations of fact and the briefs of counsel.

The parties do not dispute that the debtor's children are adults and are not dependant upon her. Neither do they dispute the cash value of the life insurance policy ($19,192.11). Rather, their dispute centers around their interpretations of the statute creating the exemption. The trustee argues that, in order to properly claim the exemption, the beneficiary/children must be dependents of the insured. The debtor, not surprisingly, disagrees.

The debtor has claimed the exemption in question pursuant to I.C. 27-1-12-14(e) which provides that insurance upon the life of any person, as well as the proceeds or avails of such insurance (defined at I.C. 27-1-12-14(b) to include cash surrender value), "which name as beneficiary . . . the spouse, children, or any relative dependent upon such person" are exempt from the claims of the insured's creditors. I.C. 27-1-12-14(e). Although the designated beneficiaries are the debtor's children, because they are adults and are not dependent on the debtor, the trustee argues

that the claimed exemption is improper. The trustee reads the statute to mean that any children (and presumably the spouse) must also be dependent upon the debtor/insured for the exemption to be available. The court disagrees.

Exemptions are construed liberally in favor the debtor. See, In re Fogel, 164 F.2d 214, 216 (7th Cir. 1947). With that principle in mind, the court's consideration of the issue must begin with the language of the statute. Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108, 100 S.Ct. 2051, 2056 (1980) ("the starting point for interpreting a statute is the language of the statute itself."). If the statutory language is clear, the court's inquiry ends and its role is limited to enforcing the statute as written. Caminetti v. United States, 242 U.S. 470, 485, 37 S.Ct. 192, 194 (1917). Here, the language of the statute is clear. Had the legislature wanted to limit the exemption to children who are dependents of the insured it could have said so. It did not. So long as the beneficiary is the insured's spouse or child, dependancy is not required for the exemption; it only becomes necessary if the beneficiary is some other relative of the insured. In this regard, the court agrees with In re Wandrey, 334 B.R. 427 (Bankr. N.D. Ind. 2005) (Klingeberger, J.) ("'dependant upon such person' . . . modifies solely the antecedent object, 'any relative', and does not restrict the other two classes of beneficiaries").

Although not raised in the original objection, in his brief the trustee advanced the additional argument that the life insurance exemption is unlimited and therefore violates Article I, Section 22 of Indiana's Constitution. See, Matter of Zumbrun, 626 N.E.2d 452 (Ind. 1993); Citizens National Bank of Evansville v. Foster, 668 N.E.2d 1236 (Ind. 1996). This argument is also unsuccessful.

To begin with, the court agrees with the debtor that if the trustee wanted to challenge the constitutionality of the exemption, he should have done so in the original objection and should not

raise the issue for the first time in his brief.[1] Furthermore, the argument that the exemption is an unlimited one proceeds upon the mistaken assumption that the only recognizable limits on exemptions are monetary ones. That is not so. While the Indiana legislature could certainly have chosen to use a monetary limitation for the exemption, it was not required to do so. The legislature can place legitimate, tangible and identifiable limits on exemptions other than by using monetary caps. Consider, for example, Indiana's exemption for health aids, I.C. 34-55-10-2(c)(4). While it has no monetary limit, and for that reason could be described as potentially unlimited, it is limited in other ways: those health aids must be "professionally prescribed." The limitation on the exemption for life insurance is also expressed in non-monetary terms. It is only available if the beneficiary is the spouse, child or dependant relative of the debtor. Even then, the premiums paid on such policies during the year prior to bankruptcy or in fraud of creditors may not be exempted. I.C. 27-1-12-14(f). These are tangible and identifiable limits and limits which prevent debtors from closeting substantial sums from creditors in anticipation of bankruptcy.[2] The lessons of Zumbrun and Foster are that in crafting exemptions the legislature should do so in a way that consciously considers and balances the interests of both debtors and creditors, and, once that has been done, the legislative balance should be respected.

> We accord a high degree of deference both to the legislature's identification of various types of property debtors may keep despite their failure to pay their debts, and to the limits the legislature selects within each type of property. So long as the

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[1]The trustee also failed to comply with the requirements of Fed. R. Bankr. P. Rule 9005.1, which are designed to alert the State of Indiana to such a challenge.

[2]Although Foster held that the insurance exemption "potentially runs afoul" of the Indiana Constitution, Foster, 668 N.E.2d at 1242, it was considering a prior version of the statute. I.C. 27-1-12-14 was amended in 1995 to, inter alia, add paragraph (f) and so it now contains an additional limitation on the exemption.

> legislature articulates some limitation, it is the burden of the party seeking to invalidate a statutory exemption to demonstrate that the limitation does not go far enough for constitutional purposes. Foster, 668 N.E. 2d at 1241.

Even if the current insurance exemption should be construed as lacking an upper limit, before this court could deny the debtor's claimed exemption it would also have to find that the exempted amount exceeds what is reasonably necessary to afford the necessary comforts of life, id. at 1242, and the stipulated facts are not sufficient to allow that. See, Fed. R. Bankr. P. Rule 4003(c) (party objecting to a claimed exemption bears the burden of proof).

The trustee's objection to the debtor's claimed exemption for life insurance will be overruled. An order doing so will be entered.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court