
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)
)
RICHARD H. WARD) Chapter 13 Case
DOLORES E. WARD,) Number 98-42162
)
Debtors)

MEMORANDUM AND ORDER
ON OBJECTION TO CLAIM OF EXEMPTION

The above matter came on for hearing on November 13, 1998. After considering the contentions of counsel, I ordered that the matter be continued thirty (30) days in order to afford the parties and the Trustee an opportunity to determine the potential value of the Debtors' personal injury claim. Having subsequently reviewed applicable Supreme Court and Circuit authority, however, I deem it appropriate to enter these Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtors' case was filed on July 21, 1998. In Schedule "B," they listed a personal injury claim for asbestos related illness showing the value of the claim as "unknown." On "Schedule C - Property Claimed as Exempt," Debtors again listed the claim for asbestos related illness with a value claimed exempt of "0.00" and a current market value of the claim as "actual value unknown." Creditor, Estate of Dorothy Pritchett, objected to this claim of exemption in a timely fashion. At the hearing Debtors' counsel moved that the objection be overruled because creditors were unable to offer any proof as to the value of the personal injury claim. Debtors' counsel contended that the burden of proof is on the objecting creditor to establish the true value

of an exemption claim which is contended to be improper and cited non-binding, persuasive authority to that effect.

In light of controlling case law, I conclude that the objection should be sustained. The Supreme Court has held that where a debtor claims as exempt a law suit valued as “unknown,” the debtor’s intent must be to claim the full value of the lawsuit as exempt regardless of any statutory limits. Taylor v. Freeland & Kronz, 503 U.S. 638, 642, 112 S.Ct. 1644, 1647, 118 L.Ed.2d 280 (1992). Likewise, the Eleventh Circuit has applied this rule to the use of nominal values to indicate contingency. Allen v. Green, 31 F.3d 1098 (11th Cir. 1994). In Green, the debtor filed for Chapter 7 relief and listed as an asset of her estate, under contingent and unliquidated claims, a law suit arising out of an automobile accident showing a value of \$1.00. On her exempt property schedule she also listed the law suit as exempt and under current market value again listed the figure of \$1.00. The trustee understood that the \$1.00 amount was a contingent value but did not object. Nevertheless, after a \$15,000.00 settlement of the personal injury action, the trustee opposed turnover of all the proceeds to the debtor because the \$15,000.00 exceeded the amount which is permitted under applicable exemptions. The Eleventh Circuit held, relying on Taylor, that the debtor had claimed as exempt “the full reported value of her law suit” and that because neither the trustee nor any interested party had objected, she was entitled to the entire settlement fund. Green, 31 F.3d at 1100.

Viewed in light of the Taylor and Green cases, I therefore construe the Debtors’ claim of exemption in this case as follows. Debtors scheduled the personal injury claim and claimed an exemption in that claim using clearly contingent “unknown” and “0.00” evaluations. As a result I hold that Debtors’ intended to claim as exempt “the full value of their lawsuit.” If they literally claimed “0.00” of any recovery it would not have been necessary to list the claim on

Schedule C "Property Claimed as Exempt" at all. Disclosure of the existence of the claim as an asset on Schedule B would have sufficed. Since they listed the claim as exempt in the clearly contingent nominal amount of "0.00," it is entirely possible that the full recovery ultimately realized, regardless of amount, might be held exempt absent any objection. Because the value of the claim is unknown and unliquidated and therefore may or may not exceed the dollar amount of exemptions to which the Debtors are entitled, a creditor timely filed an objection. While ordinarily the burden of proof in prosecuting an objection to exemptions is on the objecting party, here the legal effect of the exemption claimed by the Debtors could be to claim the full value of the lawsuit, regardless of the amount. That value might or might not exceed the allowable exemptions under state and federal law. Accordingly, the claim of exemption is, on its face, improper because it is open-ended. I conclude that the timely objection should be sustained and the exemption, as set forth in the schedules, be disallowed.

Under Green, it is inescapable that neither the Trustee nor creditors can sit idly by when the exemption claim amount and the current market value amount listed are identical or are contingent in amount. To fail to act, under existing law, would permit even a multi-million dollar recovery on a claim to be retained by debtors rather than disbursed, after a limited exemption, to creditors. Understandably debtors do not wish to claim the maximum exemption when they do not know whether those sums will ever be recovered. Nevertheless, creditors cannot be forced to prove the amount of a claim and the amount which can be exempted, when even the debtor has no idea of the value of that asset. Debtors are free to file an amended claim of exemption at any appropriate time during the pendency of this case. IT IS SO ORDERED.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of January, 1999.