

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS**

IN RE:)	
)	
BRIAN T. ANDREWS,)	No. 05-34863
)	
Debtor.)	

OPINION

In this Chapter 7 case, the *pro se* debtor, Brian T. Andrews (“Debtor”), is claiming an exemption under 735 ILCS 5/12-1001(h)(3) of his interest in the estate of his late father’s group life insurance proceeds in the amount of \$8,500. The Trustee objected to the claim of exemption, asserting that the Debtor is not a dependent of his father and the proceeds are not reasonably necessary to support the Debtor. A hearing was set on the Trustee’s objection, but the Debtor did not file a response to the Trustee’s objection or appear at the hearing. The Court sustained the Trustee’s objection and denied the Debtor’s claimed exemption. The Debtor then filed a Motion to Reconsider Objection to Claim of Exemptions, a hearing was held on this motion, and the matter was taken under advisement.

The issue is whether the Debtor was a “dependent” of his father at the time of his father’s death and thus entitled to exempt all or part of the proceeds from his father’s life insurance under the exemption provided in 735 ILCS 5/12-1001(h)(3).

Section 12-1001(h)(3) provides an exemption for a debtor’s right to receive, or property that is traceable to, a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor or a dependent of the debtor. However, there is no definition of “dependent” in the personal property exemption provisions of the Illinois Code of Civil Procedure, and the Court was unable to

find any Illinois state court opinions providing a definition in the context of the exemption statute.¹ Likewise, the Bankruptcy Code does not define “dependent” either, stating only that “dependent” includes a “spouse, whether or not actually dependent.” *See* 11 U.S.C. § 522(a)(1).

In *In re Rigdon*, 133 B.R. 460 (Bankr.S.D.Ill. 1991), Judge Meyers adopted a broad definition of “dependent” for purposes of the exemptions provided in § 12-1001 of the Illinois Code of Civil Procedure, holding that a “dependent” is “an individual who is supported financially, either directly or indirectly by another, and who reasonably relies on such support.” *Id.* at 465; *see also In re Dunbar*, 99 B.R. 320 (Bankr.M.D.La. 1989) (interpreting “dependent” to mean “a person who reasonably relies on the debtor for support and whom the debtor has reason to and does support financially”). The court in *Rigdon* noted that, under this broad definition, a factual finding of dependency would have to be made, after a hearing, on a case-by-case basis.

In *In re Sommer*, 228 B.R. 674 (Bankr.C.D.Ill. 1998), this Court, sitting in the Central District of Illinois, adopted the *Rigdon* court’s interpretation of the Illinois exemption provisions. It also noted that in the relationship between parent and child, at some point there is normally an emancipation where the child begins to live an economically independent life. *Id.* at 678. Stated another way, at some point in time, under most circumstances, the parents’ moral obligation to provide support for their children becomes sufficiently tenuous that it must yield to the

¹The Court is aware of two recent Illinois Court of Appeals cases discussing the personal property exemptions provided in 735 ILCS 5/12-1001(f) and 735 ILCS 5/12-1001(h)(3), but neither case provides a definition of “dependent.” In *Dowling v. Chicago Options Assocs., Inc.*, 2006 W.L. 782861 (Ill. App. 1 Dist. March 28, 2006), the court concluded that the cash surrender value of a life insurance policy was not exempt under section 12-1001(f) because the designated beneficiary of a life insurance policy was a trust fund, and not the “wife or husband of the insured, or a child, parent or other person dependent on the insured,” despite the fact that there was a separate trust document indicating the trust fund was for the benefit of the insured’s minor children. In *People ex rel. Director of Corrections v. Ruckman*, 843 N.E. 882, 883 (Ill.App. 5 Dist. 2005), the State sought reimbursement from an inmate for the costs of his incarceration. The court concluded that the inmate was not entitled to an exemption for an annuity he purchased with the proceeds of his mother’s life insurance policy under section 12-1001(h)(3) because he was incarcerated in the Illinois Department of Corrections at the time of his mother’s death and was therefore a dependent of the state, which provided for all his basic necessities. *Id.* at 884.

countervailing interest of creditors in receiving payment. *See In re Gonzales*, 157 B.R. 604, 610 (Bankr.E.D.Mich. 1993).

A variety of factors can be considered in determining if a debtor is economically dependent on a parent:

1. The debtor's age;
2. The debtor's physical or mental capacity;
3. The debtor's ability to work;
4. Whether the debtor is currently working;
5. Where the debtor resides;
6. Whether the debtor is married;
7. Whether the debtor has dependents;
8. The debtor's income level; and/or
9. Any unusual expenses the debtor may have.

While not controlling, it is instructive to note that the Internal Revenue Service applies a variety of factors to determine if an individual qualifies as a dependent for Federal Income Tax purposes. To be a qualifying child, one must be:

1. A son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, or a descendent of any of such a child;
2. Under the age of 19, or under the age of 24 and a student, or any age and permanently and totally disabled;
3. Who did not provide over half of his or her own support; and
4. With certain exceptions, lived with the claimant more than half of the taxable year.²

See I.R.C. § 152(c).

At the hearing on his Motion to Reconsider Objection to Claim of Exemptions, the Debtor stated that he is twenty-eight years old, is engaged, and has a child (who was eighteen months old at the time the Debtor filed his bankruptcy petition). Schedule I shows that, at the time he filed his petition, the Debtor was employed as a cook making a monthly gross wage of \$1,733.33. The Debtor also indicated that, at one time, he held two jobs simultaneously. This fact is also

²A similar approach, with differing factors, is used to determine if a qualifying relative is a dependent. *See* I.R.C. §152 (d).

substantiated by his Statement of Financial Affairs, in which he lists two sources of income for each year from 2003 - 2005.³

Nothing before the Court indicates when the Debtor's father died or if he was providing any financial support to the Debtor prior to his death. However, even assuming that the Debtor's father *did* provide financial support to the Debtor, under the facts before the Court, the Court finds the Debtor's reliance on such support is not reasonable. The Debtor is well past the age of majority, is engaged to be married, owned a house at the time he filed his petition and has a child of his own. He has clearly reached the point where he should be living an "economically independent life." *See Sommer*, 228 B.R. at 678. There is no indication of any special circumstances (such as the pursuit of an undergraduate degree, illness, incapacity or disability) that would lead to a conclusion that the Debtor's reliance on his father's financial support was reasonable. *See, e.g., In re Grace*, 273 B.R. 570, 572 (Bankr.S.D.Ill. 2002) (concluding debtor's 20-year-old son was a dependent for purposes of exemption under § 12-1001(f) where son was pursuing college education and debtor provided financial support for college expenses and subsidized son's food and transportation expenditures); *Gonzales*, 157 B.R. at 611 (holding 19 and 21-year-old undergraduate college students were still their parents' dependents for purposes of §1325(b) of the Bankruptcy Code); *see also In re Reiker*, 2001 WL 34076048 (Bankr.C.D.Ill. 2001) (concluding that debtor's ex-wife, who was beneficiary of the debtor's life insurance policy, was a dependent for purposes of § 12-1001(f) where, the ex-wife was 70 years old, disabled, and was about to lose her job due to her employer's bankruptcy, and without income from her job, ex-husband's divorce court ordered support of approximately \$325 per month would constitute 1/4th of her income).

³Schedule I also shows that the Debtor receives \$714.69 per month in "other income," which the Debtor designated as "insurance benefit payment," but there is no way to know if these funds are related to the life insurance proceeds at issue here.

At the hearing, the Debtor asserted that he “needs” the proceeds of the life insurance. However, under the plain language of § 12-1001(h)(3), the court must make two determinations: (1) was the debtor a “dependent” of the deceased at the time of his death; and (2) how much of the life insurance payment is “reasonably necessary” for the support of the debtor or a dependent of the debtor. *See* 735 ILCS 5/12-1001(h)(3); *see also Rigdon*, 133 B.R. at 467 (discussing § 12-1001(h)(2), which is very similar to § 12-1001(h)(3), and exempts “payments made on behalf of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor”). In other words, the Court should not consider the Debtor’s present need for the funds in determining whether the Debtor was a dependent of the deceased at the time of the deceased’s death. *Rigdon*, 133 B.R. at 467. Because the Court cannot conclude that the Debtor was a dependent of his father at the time of his death, the Court does not need to reach the question of the Debtor’s need for the life insurance proceeds. Under the circumstances set forth above, the proceeds from the Debtor’s father’s life insurance are not entitled to an exemption under § 12-1001(h)(3), and therefore, the Debtor’s motion for reconsideration should be denied.

This Opinion constitutes this Court’s findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate Order will be entered.

ENTERED: April 17, 2006

/s/ William V. Altenberger
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS**

IN RE:)
)
BRIAN T. ANDREWS,) **No. 05-34863**
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Debtor.)

ORDER

For the reasons stated in an Opinion entered this day, IT IS HEREBY ORDERED that the Motion to Reconsider Objection to Claim of Exemptions filed by the Debtor, Brian T. Andrews, is DENIED.

ENTERED: April 17, 2006

/s/ William V. Altenberger
UNITED STATES BANKRUPTCY JUDGE