

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
ROBERT B. COCHONOUR,) Bankruptcy Case No. 06-60031
)
Debtor.)

OPINION

This matter having come before the Court on Jay E. Hayden Estate's Objections to Debtor's Claimed Exemptions, Martha Hayden Estate's Objection to Debtor's Claimed Exemptions, and Robert Cochonour's Reply to Objections to Debtor's Claimed Exemptions Made by Jay E. Hayden Estate, Jay E. Hayden Foundation, and Martha Hayden Estate; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The material facts in this matter are not in dispute, and are, in pertinent part, as follows:

1. The Debtor is a former Cumberland County State's Attorney and a former Circuit Judge for Cumberland County, Illinois. The Debtor was born on November 18, 1939. The Debtor's spouse died on November 9, 2005.
2. The Illinois Municipal Retirement Fund (IMRF) provides retirement benefits to Illinois government employees, and an eligible employee is entitled to IMRF retirement benefits at age 60, if the employee has at least 8 years of qualified service.
3. The Debtor was State's Attorney for Cumberland County, Illinois, and, therefore, an eligible employee under IMRF for the years 1972 through 1980. The Debtor is entitled to receive IMRF benefits pursuant to 40 ILCS § 5/9-217(a). The Debtor presently receives the sum of \$1,576.98 net per month from the IMRF.

4. The State of Illinois maintains the Judges' Retirement System of Illinois (JRS) pursuant to 40 ILCS § 5/18-161, *et seq.*, which is funded, at least in part, by payroll deductions from active Judges. An Illinois State Court Judge is eligible to receive retirement benefits at age 60 with 10 years of credited service, or at age 62 with 6 years of credited service. The Debtor was eligible to receive retirement benefits under either of these criteria at the time of his retirement. The Debtor presently receives the sum of \$5,541.05 net per month from the JRS.

5. The JRS also provides survivor benefits to Illinois State Court Judges and their spouses. The survivor benefit is funded by a 2.5% payroll deduction from an active Judge's pay. If a Judge's spouse predeceases the Judge, the Judge is entitled to a refund of the contributions made for the survivor annuity. Upon the death of the Debtor's spouse in the instant case, in November 2005, the Debtor became eligible to receive a refund of the amounts that he had paid to JRS on account of survivor's benefits. This potential refund totals \$30,655.39. At present, the refund amount remains with the JRS and has not been refunded to the Debtor.

6. The Debtor also holds an IRA account which he has claimed as exempt, together with the exemptions the Debtor claims in his IMRF pension, his JRS pension, and the refund he is entitled to from survivor benefits paid on account of his deceased spouse.

7. Creditors, Jay E. Hayden Estate and Martha Hayden Estate, have objected to the Debtor's claimed exemptions, and the Debtor has replied to those objections. At hearing on June 19, 2006, the Court allowed the parties five days to file any additional arguments as to their respective positions. In this regard, the Debtor filed an additional brief on June 19, 2006; however, nothing further was received from the Creditors.

Conclusions of Law

After thoroughly reviewing the points and authorities filed both by the objection Creditors and the Debtor, the Court must conclude that the claimed exemptions of the Debtor

in his IMRF benefits and his JRS benefits are clearly exempt under Illinois law. The Debtor cites as authority 40 ILCS § 5/18-161, *et seq.*, and 40 ILCS § 5/9-217(a). Under both of these sections of the Illinois Code, the Debtor is entitled to exempt his IMRF and JRS pensions in their entirety.

At hearing on June 19, 2006, objecting Creditors argued that the lump sum survivor benefit to which the Debtor is entitled from his JRS pension is not exemptible pursuant to the case of Auto Owners Insurance v. Berkshire, 588 N.E. 2d 1230 (Ill.App.Ct. 1992), which stated that lump sum distributions can lose their exempt status unless they are rolled over into another exempt plan, such as an IRA, spendthrift trust, or other protected plan. See: Auto Owners, supra, at 1234. In the instant case, the lump sum survivor benefit has not yet been distributed to the Debtor. As such, the funds have not lost their exempt status, and the issue is not yet ripe. In this case, the funds would lose their exempt status only if the Debtor took a distribution of the lump sum benefit and deposited the proceeds into a non-exempt account, such as a checking account, savings account, or a Certificate of Deposit. At present, however, the funds remain in the JRS, and, under applicable Illinois law, the funds held within the System are exempt from the claims of all creditors. Thus, the Debtor's claim of exemption in the survivor benefit refund must be upheld until such time as the Debtor takes a distribution of said benefits.

As for the Debtor's claim of exemption in his IRA, the Court finds that, pursuant to the Supreme Court case of Rousey v. Jacoway, 544 U.S. 320, 125 S.Ct. 1561 (2005), the Debtor's right to receive payment under his individual retirement account as a result of his age is exempt within the meaning of the exemption provisions of the Bankruptcy Code. As such, the Court finds that the Objections to Debtor's claimed exemptions must be denied in their entirety.

ENTERED: June 29, 2006.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge

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ORDER

For the reasons set forth in an Opinion entered on the 29th day of June 2006;

IT IS HEREBY ORDERED that:

- A. Jay E. Hayden Estate's Objection to Debtor's Claimed Exemptions is DENIED;
- B. Martha Hayden Estate's Objection to Debtor's Claimed Exemptions is DENIED;
- C. Jay E. Hayden Foundation's Objection to Debtor's Claimed Exemptions is DENIED; and,
- D. The Debtor's claimed exemptions in his Judicial Retirement System, Illinois Municipal Retirement Fund, IRA annuity, and entitlement to refund of survivor annuity benefits are upheld.

ENTERED: June 29, 2006.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge