

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

IN RE:

GLEND A SUE WILKINSON

In Proceedings  
Under Chapter 7

Case No. 04-31883

Debtor(s).

OPINION AND ORDER

A hearing was held on October 14, 2004 on the Chapter 7 Trustee's Objection to Amended Exemptions ("Objection"). Ruling on the objection was taken under advisement and counsel submitted briefs.

The facts are undisputed. Debtor Glenda Wilkinson ("Debtor") was divorced from Ronnie Wilkinson ("Ronnie") in the Madison County, Illinois Circuit Court on February 13, 2004. Pursuant to their handwritten Property Settlement Agreement (approved by the Circuit Court Judge), the partes agreed that Ronnie would retain the marital real estate; the parties would retain the personal property in their respective possessions; Ronnie would retain the motor vehicles; Ronnie would pay the joint debts; the parties would pay any debtors in their individual names; the parties would pay their own attorney fees; and Ronnie would pay to Debtor a lump sum of \$20,000 within 60 days of February 13, 2004, and he would pay an additional \$24,000 at the rate of \$ 1,000 per month beginning March 1, 2004. Ronnie paid to Debtor on or about February 27, 2004 the initial \$20,000 payment. No evidence was presented as to whether the \$1,000 monthly payments have been made.

On May 6, 2004, Debtor filed a voluntary bankruptcy petition under Chapter 7 of 11 U.S.C. §101 *et. seq.* She did not list the \$20,000 payment as an asset on Schedule B and did not claim any of this amount as exempt on Schedule C. After inquiry about this asset by the Chapter 7 Trustee, Donald Samson ("Trustee"), Debtor amended Schedule B to include the \$20,000 as an asset. In addition, she amended Schedule C claiming this asset was exempt under three alternative theories:

- (1) the payment constituted an award of maintenance, thereby being totally exempt under 735 ILCS 5/12-1001(g) (4); or
- (2) the payment was consideration for the sale of Debtor's homestead, thereby being exempt to the extent of \$7,500 under 735 ILCS 5/12-906; and/or
- (3) the payment may be exempted to the extent of \$2,000 pursuant to the "wild card" exemption under 735 ILCS 5/12-1001(b).

The trustee counters that the \$20,000 payment was neither maintenance nor proceeds of the sale of real estate and, in any event, Debtor forfeited her right to exempt any part of the payment because she fraudulently concealed this asset.

At the hearing on October 14, 2004, the only evidence presented was Debtor's Exhibit 1, the state court Judgment of Dissolution with the handwritten Property Settlement Agreement attached. In addition, the Court took judicial notice of all papers filed in this case, most notably Debtor's schedules.

A careful review of Debtor's Exhibit 1 causes the Court to conclude that the \$20,000 payment is in the nature of a property settlement and not maintenance. In paragraph 11 of the agreement, the payment is labeled "further property settlement," and was fully paid as a lump sum payment within two weeks of the dissolution. In addition, Debtor presented no evidence that any part of this payment was "reasonably necessary for the support of the debtor. . . ." See 735 ILCS 5/12-1001(g)(4).

The Court also concludes that Debtor cannot exempt \$7,500 of the payment as a homestead exemption. There is simply no reference whatsoever in the settlement agreement that any portion of the \$20,000 payment is consideration for the sale of the real estate. In fact, no evidence was presented as to the relative value of the marital residence or as to the mortgage indebtedness at the time of dissolution. Therefore, the Court could only speculate as to whether or not any equity existed.

Finally, the Court concludes that Debtor is entitled to exempt a portion of the \$20,000 payment under the "wild card" exemption. The Trustee's assertion that Debtor fraudulently concealed this asset was not supported by any evidence. In fact, it appears that after the trustee inquired about the asset, Debtor disclosed it by filing her Amended Schedule B. There may have been deception in failing to disclose this asset but the Court cannot make such a finding absent evidence of intent.

Based on the above, the Trustee's Objection to Amended Exemptions is SUSTAINED. Debtor may only exempt the \$20,000 payment

to the extent of any portion of the "wild card" exemption not previously used.

ENTERED: December 9, 2004

/s/ James K. Coachys  
UNITED STATES BANKRUPTCY JUDGE-3