



IT IS ORDERED as set forth below:

Date: July 16, 2007

W. H. Drake
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBER
	:	
JOHN WAYNE BRIGHT	:	BANKRUPTCY CASE
VICKI LYNN BRIGHT,	:	NO. 05-14093-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtors.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Objection to Homestead Exemption filed by Theo D. Mann, the Chapter 7 Trustee in the above-captioned bankruptcy proceeding. This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 1334; § 157(b)(2)(A).

FINDINGS OF FACT

John and Vicki Lynn Bright (hereinafter the "Debtors") filed a voluntary petition

under Chapter 7 of the Code on October 14, 2005. Theo D. Mann was appointed as the Chapter 7 Trustee. At the time of filing, the Debtors owned and operated a small trucking business known as Airland Expeditors, Inc. (hereinafter the "Corporation").

Mr. Bright passed away in January 2006, which was within one-hundred and eighty days of the petition date. Upon Mr. Bright's death, Mrs. Bright became entitled to receive approximately \$105,000 in insurance proceeds. The parties agree that these funds, which Mrs. Bright received in approximately August 2006, became property of Mrs. Bright's bankruptcy estate pursuant to section 541(a)(5).

On September 6, 2006, Mrs. Bright amended Schedule B to disclose death benefits payable by Ft. Washington Savings Company. At that time, she also amended Schedule C to claim the entire amount of the death benefits as exempt pursuant to Section 44-13-100(a)(11)(C) of the Official Code of Georgia. On October 4, 2006, the Trustee objected to the amendment on the basis that Mrs. Bright had not established her entitlement to the exemption. The Court held a hearing on the Trustee's objection on April 27, 2007.

The sole issue before the Court is whether Mrs. Bright is entitled to exempt the death benefits under Section 44-13-100(a)(11)(C). Section 44-13-100(a)(11)(C) provides that "any debtor who is a natural person may exempt, pursuant to this article, for purposes of bankruptcy . . . the 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 on the date of such individual's death, to the extent reasonably necessary for the

support of the debtor and any dependent of the debtor." O.C.G.A. § 44-13-100(a)(11)(C). The Trustee objects to the exemption on the ground that: 1) Mrs. Bright was not a dependent of Mr. Bright on the date of his death; and 2) the funds were not "reasonably necessary" for the support of Mrs. Bright. The Trustee "bears both the burden of production and the burden of persuasion." *See In re Holt*, 357 B.R. 917 (Bankr. M.D. Ga. 2006); FED. R. BANKR. P. 4003.

Contrary to the Trustee's assertion, the Georgia Code does not define the term "dependent" for purposes of section 44-13-100(a)(11)(C). The definition relied upon by the Trustee is found in section 44-13-1.1, which is located in Article 1 of Chapter 13 of the Georgia Code. Section 44-13-1.1 defines the term "dependent" for purposes of "this article." Section 44-13-100(a)(11)(C) is not found in Article 1, but rather in Article 2. Accordingly, the definition of dependent provided by section 44-13-1.1 is not applicable to section 44-13-100(a)(11)(C). *See In re Holt*, 357 B.R. 917 (Bankr. M.D. Ga. 2006) (noting that "neither [section 44-13-100] nor courts considering the Georgia homestead exemption statute define the term 'dependent'").

Mrs. Bright asserts that the Court should construe the term "dependent" to automatically include the spouse of an individual, regardless of whether the spouse derives any support from income generated by that individual. In support of this argument, Mrs. Bright points to the fact that the language of section 44-13-100(a)(11)(C) is identical to that contained in section 522(d)(11)(C) (the federal exemption) and, under section 522(a)(1), the

term "dependent" includes a spouse, "whether or not actually dependent." The Trustee opposes any reliance on the federal definition of dependent and submits that the Court should not read such a definition into the Georgia statute. *See, e.g., In re Ragan*, 64 B.R. 384, 386 n.2 (Bankr. E.D.N.C. 1986).

In defining the term "dependent" for purposes of the statute at issue, the Court must give the term its "ordinary or common meaning." *See In re Holt*, 357 B.R. 917 (Bankr. M.D. Ga. 2006) (citing O.C.G.A. § 1-3-1(b)). The ordinary meaning of the term "dependent" is "[o]ne who derives his or her main support from another." *Id.* Congress altered the ordinary meaning of the term "dependent" for purposes of section 522(d)(11)(C) by specifically defining that word to include all spouses, regardless of whether they are truly dependent. The Georgia General Assembly did not choose to do so. The Court will not assume that the Georgia legislature intended to permit non-dependent spouses to exempt life insurance proceeds simply because it chose to use *most* of the language used by Congress.

That being said, having reviewed the evidence, including the testimony of Mrs. Bright, the Court finds that Mrs. Bright was a dependent of her husband at the time of his death. Mrs. Bright testified that her only source of income came from the Corporation. While it is true that Mrs. Bright owned 51% of the Corporation, the evidence persuades the Court that Mr. Bright was responsible for well more than 50% of the income produced by the Corporation. Mrs. Bright testified credibly that Mr. Bright "was" the business. In other words, Mr. Bright's knowledge, abilities (driving the truck and acting as mechanic and

dispatcher) and reputation were primarily responsible for the Corporation's customer base and for the successful operation of the business. Mrs. Bright's role in the business was administrative and clerical in nature, as she was not qualified or licensed to drive the truck, and was limited by the fact that she worked only three days a week. Even during Mr. Bright's terminal illness and when he was away from the office, he continued to run the business operations and perform dispatching activities. It is clear that Mrs. Bright, acting alone, could not have operated the business at the level at which it was operating prior to Mr. Bright's death and could not have earned the income upon which the Bright household relied. This conclusion is supported by Mrs. Bright's testimony that, rather quickly following Mr. Bright's death, the Corporation's business slowed dramatically and customers stopped calling.¹ Although the Court does not doubt that Mrs. Bright could have left the Corporation and earned sufficient income to support herself at some other occupation, the point here is that, at the time of Mr. Bright's death, the income upon which Mrs. Bright depended was largely generated by the activities of Mr. Bright.

Having determined that Mrs. Bright was a dependent of her husband at the time of his death, the Court must now determine whether the life insurance proceeds, or a portion thereof, are reasonably necessary for the support of Mrs. Bright and her daughter.² To do

¹ Mrs. Bright testified that the business is operating on a very small basis. The Corporation continues to own one tractor trailer, but it is never used, and she occasionally drives a van to transport small items.

² Having considered Mrs. Bright's testimony, the Court finds that Mrs. Bright's daughter is Mrs. Bright's dependent. Although the daughter is nineteen years old, she

so, the Court must consider whether Mrs. Bright has sufficient income, aside from these funds, to "provide for the basic needs of the debtor and any dependents." *In re Williams*, 197 B.R. 398 (Bankr. M.D. Ga. 1996); *see also In re Howard*, 169 B.R. 77 (Bankr. S.D. Ga. 1994) (sustaining trustee's objection to exemption under Section 44-13-100(a)(11)(D) because debtor's income exceeded expenses by \$500 per month).

Mrs. Bright's testimony revealed that she required a portion of the life insurance proceeds to pay her husband's funeral expenses of \$14,000. The Trustee stated during the hearing that he would not oppose the exemption of funds used to cover the funeral expenses. The testimony also established that Mrs. Bright used \$10,588 of the funds to cure an arrearage on the mortgage on her residence, which the Court finds was reasonably necessary to provide for Mrs. Bright's basic need of shelter. Accordingly, the Court finds that Mrs. Bright is entitled to an exemption of \$24,548 on those grounds.

Mrs. Bright also testified that, following her husband's death, she continued to rely on the scaled-down operation of the Corporation's business to provide for her living expenses. She believed, at the time of the hearing, that she would be able to support herself and her daughter in the future with income generated by the business. However, Mrs. Bright's uncontradicted testimony established that, in order to keep the business from going under, Mrs. Bright was required to pay approximately \$50,000 of business expenses. The

resides with Mrs. Bright while attending college at Georgia State University and works only three days a week.

investment of these funds into the Corporation ensured that Mrs. Bright will continue to have a source of income for her basic support. The Court finds that this is sufficient evidence to support a finding that the funds used for this purpose were reasonably necessary for Mrs. Bright's support.

Finally, Mrs. Bright testified that she used a portion of the insurance proceeds to pay household bills and for health insurance. Although she did not quantify the amount of the proceeds used for this purpose, the Court, having reviewed all of the information available, including the Debtors' schedules, finds that these bills would not have exceeded \$10,000.

Because Mrs. Bright testified that the Corporation now generates sufficient income to support her and her daughter, the remaining insurance proceeds are not reasonably necessary for their support.

It is hereby **ORDERED, ADJUDGED, and DECREED** that the Trustee's Objection to Homestead Exemption is **GRANTED** in part and **DENIED** in part. Mrs. Bright is entitled to exempt \$84,588 of the life insurance proceeds pursuant to O.C.G.A. § 44-13-100(a)(11)(C).

END OF DOCUMENT