

IT IS ORDERED as set forth below:



Date: February 15, 2013

A handwritten signature in black ink, appearing to read "W. Homer Drake", is written over a horizontal line.

W. Homer Drake
U.S. Bankruptcy Court Judge

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

IN THE MATTER OF:	:	CASE NUMBER
	:	
JEREMY CHAD PENTON	:	12-12167-WHD
MELISSA RICHELLE PENTON	:	
	:	
Debtors.	:	
	:	
	:	
	:	
	:	
JAMES BAKER	:	CONTESTED MATTER
CHAPTER 7 TRUSTEE,	:	
	:	
Movant.	:	
	:	
V.	:	
	:	
	:	
JEREMY CHAD PENTON	:	IN PROCEEDINGS UNDER
MELISSA RICHELLE PENTON	:	CHAPTER 7 OF THE
	:	BANKRUPTCY CODE
Respondents.	:	

ORDER

Before the Court is a Motion to Disallow Debtors' Exemption (hereinafter the

“Motion”) filed by James Baker, Chapter 7 Trustee, (hereinafter “Movant” or “Trustee”) in the above-captioned bankruptcy proceeding. After conducting a hearing on Movant’s Motion on January 11, 2013, the Court took this case under advisement. At issue in this controversy is whether Debtors are entitled to the exemption claimed in their bankruptcy proceeding. This matter is a core proceeding, which falls within the subject matter jurisdiction of the Court. *See* 28 U.S.C. § 157(b)(2)(A); § 1334.

FINDINGS OF FACT

On July 31, 2012, Jeremy Chad Penton and Melissa Richelle Penton (hereinafter the “Debtors”) filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. The Debtors disclosed a personal property interest in the form of an annuity, which they described as death benefit proceeds received as a result of being the beneficiary of a deceased participant in the Clayton County, Georgia Public Employees Retirement System (hereinafter the “Pension Plan”). See Resp’t’s Schedules, 15, ECF No. 1. Melissa Penton’s mother, Julia M. Franker, was the participant in the Pension Plan. See Movant’s Ex. Clayton County Pension Plan, Form I. The Pension Plan named Betsy J. Kerr, sister of Julia M. Franker, as the primary beneficiary and named Melissa Penton, daughter of Julia M. Franker, as the secondary beneficiary. See id. Julia M. Franker passed away on October 4, 2011, thus transferring legal title to receive the death benefits under the Pension Plan to Betsy Kerr as the named primary beneficiary. See id. On November 21, 2011, Betsy Kerr disclaimed all of her interest in the proceeds of the Pension Plan, which

resulted in the transfer of the legal title to Melissa Penton as the named secondary beneficiary of the death benefit, in accordance with the Pension Plan. See Resp't Ex. Disclaimer of Interest or Benefits Passing to Beneficiary. The Debtors claimed the death benefit proceeds as exempt property in accordance with Official Code of Georgia Annotated (hereinafter O.C.G.A.) § 44-13-100(a)(2)(E)¹ for the full amount of \$82,718.94. See Resp't Schedules, 18, ECF No. 1.

On September 21, 2012, the Chapter 7 Trustee filed a Motion to Disallow Debtors' Exemption. See Movant's Motion to Disallow, 1, ECF No. 14. The Chapter 7 Trustee argued that the Debtors' claim of exemption pursuant to O.C.G.A. § 44-13-100(a)(2)(E), as to the proceeds received in accordance with the Pension Plan, be disallowed on the basis that the Debtors are splitting the monthly payments in half with Melissa Penton's sister, Rebecca Franker, and as such, that half is not "reasonably necessary for the support of the debtor and any dependent of the debtor".² See Movant's Motion to Disallow, 1-2, ECF No. 14. The Trustee further argued in the Motion that if the Debtors were able to

¹"a) In lieu of the exemption provided in Code Section 44-13-1, any debtor who is a natural person may exempt, pursuant to this article, for purposes of bankruptcy, the following property: (2) The debtor's right to receive: (E) A payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, 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)(2)(E).

²Melissa Penton's adult sister, Rebecca Franker, is a non-debtor and not a dependent of the Debtors, as stipulated by the parties.

split the monthly payments in half with a non-debtor third party, then it is possible that none of the annuity payments are “reasonably necessary for the support of the debtor and any dependent of the debtor.” See Id. The Court set a hearing on the Chapter 7 Trustee’s Motion to Disallow Debtors’ Exemption on January 11, 2013.

Prior to the hearing, the Debtors amended their schedules on January 10, 2013 to reflect that the Debtors now claim to exempt half (\$41,359.47) of the proceeds that Melissa Penton receives from the Pension Plan. See Resp’t Amended Schedules, 8, ECF No. 22. The proceeds from the Pension Plan are administered through Mass Mutual Insurance with a total corpus of \$82,718.94 and have been distributed on a monthly basis in the amount of \$3,638.88, beginning on November 1, 2011 and are to be distributed in such fashion until October 2, 2016. See Movant’s Ex. Clayton County Pension Plan, Form I; see also Resp’t’s Brief, 1, ECF No. 23. The net monthly benefit payments after taxes is \$3,243.88. See Movant’s Ex. Mass Mutual Pension Deposit Statement, July 1, 2012.

The Debtors indicate in the amended schedules and financial statements, as well as through testimony at the hearing, that Melissa Penton distributes half of the monthly annuity payments received (\$1,621.94) to her sister Rebecca Franker. See Resp’t’s Amended Schedules, 6, ECF No. 22; Trial Tr. 11:11:11, January 11, 2013. The Debtors argue that Melissa Penton holds Rebecca Franker’s one half interest in the proceeds solely as an administrator of a constructive trust and disburses half of the annuity

payment to Rebecca Franker on a monthly basis. Melissa Penton testified at the hearing held on January 11, 2013 that she believed that her mother named her as the secondary beneficiary of the pension plan, intending that she distribute half of the proceeds to her sister, Rebecca Franker. Trial Tr. 11:10:58, January 11, 2013. Melissa Penton testified, and Julia Franker's Last Will and Testament states, that all property was to be distributed equally between herself and Rebecca Franker. Trial Tr. 11:11:11, January 11, 2013, see also Resp't Ex. Last Will and Testament of Julia Esther Maddox Franker. Rebecca Franker also testified at the hearing held on January 11, 2013, stating that she also believed that the proceeds were to be distributed in equal shares between herself and Melissa Penton, in accordance with the apparent intent of their mother. Trial Tr. 11:14:07, January 11, 2013.

At the conclusion of the hearing on January 11, 2013, the Court directed both attorneys to brief the issue regarding whether half of the death beneficiary proceeds were held in a constructive trust by Melissa Penton and, therefore, not property of the bankruptcy estate within the definition of section 541 of the Bankruptcy Code.

CONCLUSIONS OF LAW

The Bankruptcy Code provides that the filing of a bankruptcy petition creates an estate comprising "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). At the same time, however, the Code recognizes that the property of the bankruptcy estate should not include any interest in

which the debtor holds only bare legal title. In re Vacum Corp., 215 B.R. 277, 281 (Bankr. N.D.Ga. 1997) (Drake, B.J.). “Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest ... becomes property of the estate ... only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” 11 U.S.C. § 541(d); see also United States v. Whiting Pools, Inc., 462 U.S. 198, 205 n. 10 (1983) (noting in dicta that "Congress plainly excluded property of others held by the debtor in trust at the time of the filing of the petition").

It is well settled in bankruptcy practice that debtors do not own an equitable interest in property held in trust for another, and consequently, such funds do not constitute "property of the estate" for bankruptcy purposes. See City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 95 (3d Cir. 1994). “One situation in which there may be a separation of legal title and equitable interest is when a constructive trust is imposed upon property. In such a case, a debtor may hold bare legal title while another entity claims the beneficial interest in the property. ” In re Cotton, 2004 WL 2983350 (Bankr. N.D. Ga. 2004) (Bonapfel, B.J.). The burden of proving such a relationship falls upon that party seeking to exclude a given asset from the estate as having been held by debtor in trust. In re Mark Benskin & Co., Inc., 161 B.R. 644 (Bankr. W.D. Tenn. 1983).

Be it expressed between the parties or implied from the circumstances, the existence of a trust relationship turns on applicable nonbankruptcy law. In re Vacum

Corp., 215 B.R. 277, 281 (Bankr. N.D.Ga. 1997) (Drake, B.J.). Ultimately, it falls within the discretion of the bankruptcy court to imply a constructive trust from the circumstances, see American Metal Forming Corp. v. Pittman, 52 F.3d 504, 508 (4th Cir. 1995), and such trusts generally shall not be impressed in contravention of bankruptcy policy. See Bunter v. United States, 440 U.S. 48, 54 (1979).

Under Georgia law a constructive trust arises "whenever the circumstances are such that the person holding legal title to property, either from fraud or otherwise, cannot enjoy the beneficial interest in the property without violating some established principle of equity." O.C.G.A. § 53-12-132 (a), See In re Cotton, 2004 WL 2983350 (Bankr. N.D. Ga.) (Bonapfel, BJ). A constructive trust is a remedy created by a court in equity to prevent an unjust enrichment. St. Paul Mercury Ins. Co. V. Meeks, 270 Ga. 136, 138 (1998). "Such a trust is impressed upon property when it is against equity that the person holding title to the property be allowed to enjoy the beneficial interest in the property." Id.

The Court is of the opinion that a constructive trust was established when Melissa Penton began distributing half of the proceeds of the annuity on a monthly basis since the initial Pension Plan payments began in November 2011. The Court finds that half of the proceeds were intended for Melissa Penton, and further finds that the remaining half of the proceeds were intended for Rebecca Franker. The Court reaches this conclusion based on the facts and circumstances surrounding this case. To deprive Rebecca Franker

of her half of the proceeds would create an injustice that equity cannot condone. Further, both Melissa Penton and Rebecca Franker each testified that their mother's estate was to be distributed in two equal shares, providing further evidence that the decedent intended the monthly annuity proceeds to be distributed equally. As a court of equity, this Court holds that a constructive trust exists as to the half of the annuity proceeds that have been designated and distributed to Rebecca Franker. As a result of the constructive trust, half of the annuity proceeds designated to be distributed to Rebecca Franker constitute an equitable interest outside the definition of property of the bankruptcy estate, in accordance with 11 U.S.C. § 541(d).

The Court next addresses whether the Debtors are entitled to exempt the other half of the annuity payments, as claimed in the amended schedules, in accordance with O.C.G.A. § 44-13-100(a)(2)(E). The Debtors argue that they are entitled to exempt Melissa Penton's one half interest in the annuity proceeds pursuant to O.C.G.A. § 44-13-100(a)(2)(E), which provides in relevant part that "[A]ny debtor who is a natural person may exempt ... for the purpose of bankruptcy, the following property: the debtor's right to receive: a payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor or any dependant of the debtor." O.C.G.A. § 44-13-100(a)(2)(E). The Movant and the Respondent both stipulate that the Pension Plan payments meet the definition of a "pension" or "annuity" and that the payments are death benefits made on

“account” of the death of Debtor’s mother. This stipulation meets the first two criteria of O.C.G.A. § 44-13-100(a)(2)(E). The Movant objects to the exemption on the grounds that if the Debtor is able to split the proceeds with her sister, then the payments are not “reasonably necessary for the support of the debtor or any dependent of the debtor.” Movant’s Motion to Disallow, 1-2, ECF No. 14.

The Debtors have documented in their schedules that their current average monthly income is \$4,376.52. See Respt’s Amended Schedules, 12, ECF No. 22. The Debtors’ total monthly income includes their half of the annuity proceeds in the amount of \$1,621.94. Id. The Debtors have listed \$4,318.00 as the average monthly expenses, leaving \$58.52 as the average monthly net income. The Debtors also have three dependent daughters, and the Debtors’ schedules show that the pension payments are relied upon in order to pay their reasonable and necessary living expenses. The Court, therefore, finds that the pension payments are reasonably necessary for the support of the Debtors and their dependents in accordance with O.C.G.A. § 44-13-100(a)(2)(E).

CONCLUSION

After considering all of the evidence, the Court finds that half of the Pension Plan payments received by Melissa Penton are held in a constructive trust in favor of Melissa Penton’s sister, Rebecca Franker and, therefore, are not property of the bankruptcy estate in accordance with section 541(d) of the United States Bankruptcy Code. The Court further holds that the Debtors are entitled to exempt their half of the pension plan

payments in accordance with O.C.G.A. § 44-13-100(a)(2)(E), as these payments are reasonably necessary for the support of the Debtors and their Dependents.

Consequently, the Movant's Motion to Disallow Debtors' Exemption is hereby **DENIED.**

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