



IT IS ORDERED as set forth below:

Date: December 8, 2015

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

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

In re:	:	CASE NUMBER:
	:	
RHONDA MARIE SOBECK,	:	15-42208-MGD
	:	
Debtor.	:	CHAPTER 7
	:	
THOMAS D. RICHARDSON, Trustee,	:	
	:	
Movant,	:	
	:	
v.	:	CONTESTED MATTER
	:	
RHONDA MARIE SOBECK,	:	
	:	
Respondent.	:	

ORDER OVERRULING TRUSTEE'S OBJECTION TO EXEMPTION

This case raises issues concerning a debtor's entitlement to exempt an IRA where funds in the IRA were derived from an IRA inherited from a spouse. Based on what the Court believes

to be undisputed facts,¹ Debtor is entitled to exempt the IRA in this case for two independent reasons: (1) the IRA is held in her own name and subject to exemption under Georgia Code Section 44-13-100(a)(2.1); and (2) an IRA inherited from a spouse is not the type of inherited IRA which the Supreme Court held in *Clark v. Rameker*, 134 S. Ct. 2242 (2014) was not subject to exemption. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (B), and the Court has jurisdiction under 28 U.S.C. §§ 157(b) and 1334(b).

I. Background

Debtor, Rhonda Marie Sobeck filed a Chapter 7 case on September 16, 2015. (Doc. 1). Debtor's spouse died prior to this petition date, on March 28, 2015. (Doc. 27 ¶ 1). At the time of his death, Debtor's spouse had an Individual Retirement Account with State Farm, valued at \$31,352.39. (*Id.*). Funds were withdrawn from the IRA to pay funeral and other expenses. (*Id.* ¶ 2). Debtor was the beneficiary of that account and on April 21, 2015, transferred or rolled over the remaining funds from the spousal IRA to an individual IRA in her own name, also at State Farm. (*Id.*). That is the account listed on Debtor's schedules with a value of \$20,000 and the account in which debtor claims an exemption.

The Trustee filed an Objection to the claim of exemption on October 27, 2015 (Doc. 16), relying on the Supreme Court's decision in *Clark* and also the statute under which the exemption was originally claimed. (Doc. 1 at 18 (citing O.C.G.A. § 18-4-22)). Debtor filed an amendment to Schedule C to claim the exemption under Georgia Code Section 44-13-100(a)(2.1) on November 17, 2015, which appears to make the second ground for objection moot at this point. (Doc. 26).

¹ No evidentiary hearing was held in this matter and the facts used in this Order were those discussed at the hearing by counsel for the Trustee and counsel for the Debtor. If Trustee disputes the Court's statement of facts, he may file a request for an evidentiary hearing as provided at the end of this Order.

II. Discussion

Under Federal Rule of Bankruptcy Procedure 4003(c), the Trustee, as the objecting party, must prove by a preponderance of evidence that Debtor has improperly claimed the IRA as exempt. *In re Cassell*, 443 B.R. 200, 203–04 (Bankr. N.D. Ga. 2010); *aff'd* 713 F.3d 81 (11th Cir. 2013). Georgia has opted out of the federal exemptions under 11 U.S.C. § 522(b)(1), however the exemption provided under Georgia law for IRAs incorporates federal law. O.C.G.A. § 44-13-100(a)(2.1) (exempting a debtor’s interest in an “individual retirement account within the meaning of Title 26 U.S.C. Section 408”). Accordingly, whether the funds are exempt is a question of federal law. *Cf. Clark*, 134 S. Ct. at 2244 n.1. The Supreme Court in *Clark* held that a court seeking to determine whether funds are an exemptible IRA should “look to the legal characteristics of the account in which the funds are held, asking whether, as an objective matter, the account is one set aside for the day when an individual stops working.” *Id.* at 2246 (citing *Rousey v. Jacoway*, 544 U.S. 320, 332 (2005)). The Court determined that inherited IRAs fail that objective test. *Id.* at 2247.

The thrust of the Trustee’s argument for denying Debtor’s exemption is that *Clark* controls this case because Debtor inherited funds from her late spouse’s IRA. (Doc. 16 ¶ 3). The Trustee does not appear to focus on the fact that the IRA held by Debtor as of the petition date is her own IRA, qualified under Section 408(a) of the Internal Revenue Code. That fact alone entitles Debtor to the exemption, absent an exception for a qualified IRA which was funded from an IRA inherited from a spouse. No such exception is warranted by the law or policy in this area for two reasons.

First, *Clark* deals only with “inherited IRAs”. That term is defined in the Internal Revenue Code to explicitly exclude IRAs inherited from a spouse.² This is because spousal IRAs are governed by different tax rules. Unlike inherited IRAs, spousal IRAs can be rolled over into another IRA and additional contributions can be made. Thus, *Clark* is not controlling.

Second, funds in a spouse’s individual retirement account should be considered retirement funds for the other spouse as a matter of policy. The Court in *Clark* noted that protecting funds in IRAs promotes the purpose of the Bankruptcy Code’s exemption provisions by “helping to ensure that debtors will be able to meet their basic needs during their retirement years.” *Clark*, 134 S. Ct. at 2247. This policy is furthered by permitting debtors to provide for both their own and their spouse’s retirements. This comports with the special tax treatment given to IRAs inherited by a spouse as opposed to those inherited by any other party. *Id.* at 2245 (noting a surviving spouse “may ‘roll over’ the IRA funds into his or her own IRA”).

III. Conclusion

For the above reasons, the Court finds Debtor is entitled to exempt the full amount of her IRA account. Accordingly, it is

ORDERED that the Trustee’s Objection to Exemption is **OVERRULED**.

It is **FURTHER ORDERED** that if the Trustee believes that the statement of facts set forth herein is inaccurate or incomplete or the record otherwise needs to be supplemented, he must file a request for evidentiary hearing within 14 days of the entry of this order.

² See 26 U.S.C. § 408(d)(3)(C)(2) (“An individual retirement account or individual retirement annuity shall be treated as inherited if—(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and (II) such individual was not the surviving spouse of such other individual.”)

The Clerk is directed to serve a copy of this Order on Debtor, Counsel for Debtor, and the Chapter 7 Trustee.

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