



IT IS ORDERED as set forth below:

Date: July 19, 2016

**W. Homer Drake
U.S. Bankruptcy Court Judge**

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

IN THE MATTER OF:	:	CASE NUMBER
	:	
DWAYNE ANTHONY CHERRY,	:	16-10841-WHD
	:	
Debtor.	:	
	:	
THEO DAVIS MANN,	:	
	:	
Movant,	:	
	:	
v.	:	
	:	
DWAYNE ANTHONY CHERRY,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Respondent.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Trustee’s Objection to Debtor’s Claim of Exemption, filed by Theo D. Mann (hereinafter the “Trustee”), trustee for the Bankruptcy estate of Dwayne

Anthony Cherry (hereinafter the “Debtor”). This matter came on for hearing on July 13, 2016, at 10:10 AM. No party appeared in opposition to the Trustee’s motion.

The Debtor’s Schedule C shows that the Debtor claims a \$10,000 exemption in a personal injury claim. The Debtor indicates that O.C.G.A. § 44-13-100 allows him to claim the exemption, but he does not note the specific subsection and paragraph. The Trustee has objected to this exemption. The Trustee argues that the Debtor has not shown an entitlement to the exemption pursuant to subsection (a)(11)(D), which allows the exemption of certain types of funds received on personal injury claims, and that the Debtor does not have sufficient amounts available under (a)(6), known as the “wildcard” exemption, to cover the \$10,000 claimed as exempt. The Trustee requests that the Debtor’s exemption be disallowed to the extent it exceeds the amounts allowed by law.

O.C.G.A. § 44-13-100(a)(11)(D) allows the Debtor to exempt “[a] payment, not to exceed \$10,000.00, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.” O.C.G.A. § 44-13-100(a)(11)(D). Because this exemption is limited to particular forms of recovery, a debtor facing an objection must present evidence regarding the nature of the payment in order to show that it falls within the bounds of the statute. *See In re Gies*, 66 B.R. 563, 565 (Bankr. N.D. Ga. 1986) (“There is currently no evidence before the Court to enable it to determine what portions of the debtor’s claim for

his accident can be allocated toward the...exemption and what portions must be excluded as items of property damage or medical expenses”).

Here, the Trustee has objected to the Debtor’s exemption, and the Debtor has not presented any evidence that his interest in the personal injury claim is exemptible pursuant to (a)(11)(D).¹ Therefore, the only way for the Debtor to exempt his interest in the personal injury claim is under the “wildcard” exemption.

O.C.G.A. § 44-13-100(a)(6) allows a debtor to exempt “[t]he debtor’s aggregate interest, not to exceed \$1,200 in value plus any unused amount of the exemption, not to exceed \$10,000, provided under paragraph (1) of this subsection, in any property.” O.C.G.A. § 44-13-100(a)(6). The exemption “provided under paragraph (1)” is commonly referred to as the “homestead exemption,” which allows an unmarried debtor to exempt \$21,500 in value “in real property or personal property that the debtor or a dependent of the debtor uses as a residence.” O.C.G.A. § 44-13-100(a)(1). In the instant case, the Debtor does not claim any amount pursuant to (a)(1), so his “wildcard” exemption is the full \$11,200. However, even though this amount is greater than the \$10,000 the Debtor seeks to exempt, the full amount cannot be applied to his personal injury claim because he has also claimed exemptions in other property that may only be exempted

¹ The Court also notes that the Debtor has not presented any evidence to suggest that his recovery could be exempted under O.C.G.A. § 44-13-100(a)(11)(E), which covers “compensation for loss of future earnings...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)(E).

pursuant to that paragraph, namely: (1) his interests in five bank accounts, totaling \$1,820; (2) his interest in a security deposit, valued at \$1,400; (3) his interest in accounts receivable, valued at \$600; (4) his interest in golf clubs, valued at \$50; and (5) his interest in his mother's house, valued at \$1,000. (*See* Voluntary Petition, Doc. No. 1, at 17). The total amount of these exemptions is \$4,870. When this amount is subtracted from the Debtor's available wildcard exemption, the resultant figure is \$6,330. Thus, the Debtor may only exempt \$6,330 of his interest in his personal injury claim under the wildcard exemption.

In accordance with the foregoing, the Trustee's Objection to Debtor's Claim of Exemption is **SUSTAINED**, and \$4,870 of the Debtor's claimed exemption of \$10,000 in his personal injury claim is disallowed, leaving an allowed exemption of \$6,330.

The Clerk is **DIRECTED** to serve this Order on the Debtor, the Trustee, and the United States Trustee.

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