

In re Dotson 682-07035
CEL 9/2/82

Debtors seek to exempt \$900. each under ORS 23.160(1)(b) as "other personal items." Are bank deposits and cash within that section?

Cash or cash equivalencies can be exempted under ORS 23.160(1)(k) only. "(O)ther personal items" of (1)(b) covers items such as umbrellas and cameras.

The court sustains the trustee's objection without prejudice to debtors' right to amend their B-4 schedules.

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U.S. BANKRUPTCY COURT
DISTRICT OF OREGON.
FILED

SEP 2 1982

MARION H. CHAMBERLAIN, CLERK
BY.....DEPUT

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE

WILLIAM FOUNT DOTSON and
CATHERINE ANN DOTSON,

Case No. 682-07035

MEMORANDUM OPINION

Debtors.

On March 10, 1982, the debtors herein, William and Catherine Dotson, moved to amend their schedule B-4 which had been filed with their bankruptcy petition on January 19, 1982. Amendment was allowed on March 12, 1982 subject to the trustee's right to make timely objection thereto and the debtors claimed as exempt, inter alia, \$900.00 each in "wearing apparel, jewelry and other personal items including bank deposits and cash" pursuant to §23.160(1)(b) of the Oregon Revised Statutes (O.R.S.) which provides:

"23.160 Leviaible property generally; selectable exemptions. (1) All property, including franchises, or rights or interest therein, of the judgment debtor, shall be liable to an execution, except as provided in this section and in other statutes granting exemptions from execution. If selected and reserved by the judgment debtor or the agent of the judgment debtor at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to the judgment debtor, the following property, or rights or interest therein of the judgment debtor, except as provided in ORS 23.220, shall be exempt from execution:

* * *

(b) Wearing apparel, jewelry and other personal items to the value of \$900.00"

The trustee filed objections to the claimed exemptions contending that the exemption provided by O.R.S. 23.160(1)(b) is limited to wearing apparel, jewelry and other tangible personal items and that bank deposits

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1 and cash are not appropriately claimed under the indicated subsection of
2 the statute.

3 A hearing on the matter was held, at the request of the debtors, at
4 which the trustee and the attorney for the debtor both appeared. The
5 debtors' attorney contended that the "other personal items" language in
6 O.R.S. 23.160(1)(b) is broad enough to include bank deposits and cash.
7 The trustee argued that the exemption of O.R.S. 23.160(1)(b) was never
8 intended to cover cash or cash equivalencies.

9 The trustee's position is well-taken. This Court interpreted the
10 scope of the exemption afforded by O.R.S. 23.160(1)(k) in In re Langley,
11 Bankruptcy Case No. 681-06647 (B.C.D. Ore. 1982) in an opinion rendered
12 June 14, 1982.

13 The legislative history of O.R.S. 23.160(1)(k) revealed that the
14 exemption provided by that section was intended to cover cash or cash
15 equivalencies and assets of that nature which were not otherwise exempt.
16 Relevant legislative history includes the report of the proceedings of the
17 House Committee on Judiciary, Subcommittee 2, May 5, 1981 at page 8
18 which states:

19 "MOTION: REP. HENDRIKSEN moved conceptually that
20 language be adopted, prepared by committee counsel,
21 in (k), page 3 of the memorandum, the figure \$200 be
22 changed to \$400 which would apply to other items than
23 merely cash on hand but other assets not otherwise
24 exempt.

25 "The motion carried 4 - 0 with Rep. Bugas, Hendriksen,
26 Smith and Rutherford voting aye. Rep. Lombard and
27 Mason were excused." [Emphasis added]

28 The Court concluded from this and from additional legislative
29 history appearing in the report of the Subcommittee 2 meeting of May 12,
30 1981, which is set out in the Langley opinion, that the "cash and cash
31 equivalencies" intended to be covered by the exemption were property limited
32 to kinds of "assets not otherwise exempt" under any exemption provision
and could not be used to increase any other exemption.

In the legislative history the report of the meeting of the House
subcommittee on May 12, 1981 clarifies the intent. The record of that
meeting includes the following:

1 "MOTION: REP. SMITH moved that rather than using the
2 amendment that allows a \$400 exemption in any property,
3 it should be specified in any personal property, which
4 is intended to use cash or a cash equivalent. He didn't
feel there was a reason to have a \$400 additional exemption
for real property since the homestead exemption would apply.

5 "REP. LOMBARD asked if this would create any confusion
6 for the other categories. He wondered if it would be
7 better to limit it to cash and then say something like
8 cash on hand, time deposit, etc.

9 "REP. SMITH explained that the testimony received indicated
10 that most often it is cash equivalencies that they deal
11 with. This would be modifying the section that dealt
12 with the \$600 exemption for credit union shares.

13 "REP. SMITH felt that as long as it is enumerated among
14 the other exemptions, the \$400 so called pourover does
15 not tack on. He felt that for purposes of identifying
16 [sic] it as personal property, it would be covering cash
17 or cash equivalencies."

18 To give effect to the provision of O.R.S. 23.160(1)(k) that the
19 exemption shall not be used to increase any other exemption, it is
20 necessary to exclude therefrom the "personal items" referred to in O.R.S.
21 23.160(1)(b).

22 Cash or cash equivalencies intended to be covered by O.R.S. 23.160
23 (1)(k) are not "personal items." This language is more reasonably construed
24 to cover items used by a debtor which do not fit a description of wearing
25 apparel or jewelry, but personal items with which some persons surround
26 themselves, not covered by other exemption provisions. Examples may be
27 conjured such as umbrellas, walking sticks, binoculars, cameras, or other
28 like "personal items."

29 If subsection (k) cannot be used to increase subsection (b), as to
30 cash or cash equivalencies, subsections (b) and (k) as to cash or cash
31 equivalencies must be mutually exclusive.

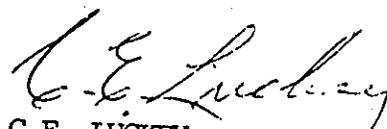
32 To the extent that the "personal items including bank deposits and
cash" claimed by each of the debtors in the amount of \$900 are identifiable
as such as cash equivalencies, the trustee's objection is sustained and the
claimed exemption disallowed. The debtors have claimed \$400 tax refunds
as exempt under O.R.S. 23.160(1)(k).

To the extent that each of the debtors has identifiable interest in
cash equivalencies, however, each may claim up to \$400.00.

1 The legislature has not made easy the proper application of the
2 appropriate subsection of the exemption statute, and therefore in
3 sustaining the trustee's objection to the claim of exemption on the
4 amended B-4, the Court does so without prejudice to the debtors' right
5 to further amend consistent herewith and consistent with this Court's
6 opinion and order in In re Wilson, Bankruptcy Case No. 682-07104, District
7 of Oregon, entered June 29, 1982.

8 A separate order consistent with this Opinion will be entered.

9 ENTERED this 2 day of September, 1982 at Eugene, Oregon.

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12 C.E. LUCKEY
13 Bankruptcy Judge

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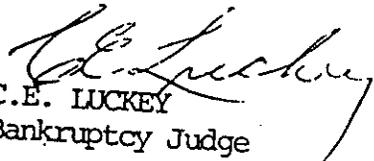
ORDER

The Court has entered its Memorandum Opinion on the trustee's objections to the debtors' amended exemption schedules B-4, and based thereon,

IT IS ORDERED that the trustee's objection to the debtors' claim of exemption "personal items including bank deposits and cash" under the provisions of O.R.S. 23.160(1)(b) is to the extent such property be identifiable as bank deposits and cash, sustained and the claim of exemption disallowed.

IT IS FURTHER ORDERED that to the extent ownership may be identified to enable each debtor to claim up to \$400 cash or cash equivalency under the provisions of O.R.S. 23.160(1)(k), this order shall be without prejudice to the debtors' right to further amend their schedule B-4 in this case within 15 days of the date of this Order.

ENTERED this 2 day of September, 1982 at Eugene, Oregon.


C.E. LUCKEY
Bankruptcy Judge