

In re McAlister 684-07441
12/30/85 Judge Radcliffe

ORS 743.099(1)
743.099(3)

541(a)
302

H & W filed a joint Ch 7 petition, H died of natural causes soon after. Wife claims as exempt the proceeds of a life insurance policy on life of H under the state statute, that the court does not have jurisdiction over the proceeds and that most of the assets were of H only and therefore should not be entitled to the proceeds of the policy/

This court held that the policy proceeds are part of the estate, that the plain meaning of the statute does not allow such exemption and that the surviving debtor may wish to object to claims of creditors who are solely creditors of the deceased husband.

1 beneficiary. It was noted that James Lee McAlister was deceased
2 and the scheduled value of the policy was shown at Ten Thousand
3 Dollars (\$10,000). Debtor also amended schedule B-4, at that
4 time, to claim as exempt, the life insurance proceeds payable to
5 debtor, as beneficiary, in the amount of Ten Thousand Dollars
6 (\$10,000), relying upon ORS 743.099. Subsequently, the trustee,
7 Thomas Huntsberger, objected to this claim of exemption. The sum
8 of Nine Thousand Seven Hundred Seventy-seven Dollars Ninety-three
9 Cents (\$9,777.93) has been paid by the insurer on account of the
10 policy. This money is being held on deposit at Pacific First
11 Federal Bank pending the resolution of this matter.

12 The debtor advances three (3) theories to support her
13 position. First, she argues that this court has no jurisdiction
14 over the life insurance proceeds as they are not part of her
15 bankruptcy estate. Second, in the alternative, she argues that
16 the proceeds paid as a result of the death of her husband are
17 exempt pursuant to ORS 743.099(1). Finally, the debtor argues
18 that most of the creditors scheduled in this bankruptcy were only
19 creditors of her deceased husband. They should not be allowed to
20 claim the insurance proceeds through the vehicle of her
21 bankruptcy estate.

22 The trustee maintains that this court does have jurisdiction
23 over the proceeds of the insurance policy as they are included
24 within the debtor's estate pursuant to the terms of 11 U.S.C. 541.
25 In addition, he maintains that the provisions of ORS 743.099(1)
26 do not exempt the proceeds of a life insurance policy from the
27 beneficiary's creditors, thus, the proceeds are not exempt in the
28 debtor's estate.

1 The debtor argues that this court has no jurisdiction over
2 the life insurance proceeds paid as a result of the death of
3 James Lee McAlister and that they are not part of the estate
4 pursuant to the provisions of ORS 743.099(3). In addition,
5 debtor relies upon Bush v. Shepherd, 186 Or 105, 205 P2d 842
6 (1949), Jansen v. Tyler, 151 Or 268, 47 P2d 969, 49 P2d 372
7 (1935) and Milwaukee Construction Co. v. Glens Fall Insurance
8 Co., 389 F2d 364 (9th Cir. 1968). ORS 743.099(3) provides as
9 follows:

10 (3) A policy of life insurance payable to a beneficiary
11 other than the estate of the insured, having by its
12 terms a cash surrender value available to the insured,
13 is exempt from execution issued from any court in this
state and in the event of bankruptcy of such insured is
exempt from all demands in legal proceeding under such
bankruptcy.

14 The debtor relies upon that portion of the statute providing that
15 the policy and the cash surrender value are "...in the event of
16 bankruptcy of such insured...exempt from all demands in legal
17 proceeding under such bankruptcy."

18 The cases relied upon by debtor do not have facts similar to
19 the case at bar. In addition, all of these cases were decided
20 before the enactment of the Bankruptcy Reform Act of 1978 (the
21 Bankruptcy Code) and 11 U.S.C. 541 contained therein. Property
22 of the estate is broadly defined in 11 U.S.C. 541(a) to include
23 all legal or equitable interests of the debtor in property as of
24 the commencement of the case and, in addition:

25 (5) An interest in the property that would have been
26 property of the estate if such interest had been an
27 interest of the debtor on the date of the filing of the
petition, and that the debtor acquires or becomes
entitled to acquire within 180 days after such date-...

28 (C) as beneficiary of a life insurance policy or of
a death benefit plan...

1 Here, it is clear that the debtor has acquired her interest in
2 the proceeds of the life insurance policy, paid by reason of the
3 death of James Lee McAlister, as the beneficiary under such
4 policy. It is also clear that the debtor has acquired such
5 interest within 180 days after the filing of her petition herein.
6 Cases decided under the Bankruptcy Code have held that even
7 exempt property must initially be regarded as property of the
8 estate and then claimed and distributed as exempt. DeNeen v.
9 Hendricks, (In re Hendricks), 11 Bankr. 48 (Bankr. W.D. Mo 1981).

10 ORS 743.099(3) provides an exemption for the cash surrender
11 value of life insurance and for the life insurance policy itself
12 in the event of bankruptcy of "such insured". The cash surrender
13 value of the life insurance policy is not in issue in this case.
14 Accordingly, the proceeds paid on the life insurance policy,
15 insuring the life of James Lee McAlister, must be considered to
16 be property of the debtor's estate under 11 U.S.C. 541(a)(5)(C).

17 ORS 743.099(1) provides as follows:

18 (1) When a policy of insurance is effected by any
19 person on his own life or on another life in favor of
20 some person other than himself having an insurable
21 interest in the life insured, the lawful beneficiary
22 thereof, other than himself or his legal
23 representative, is entitled to its proceeds against the
24 creditors or representatives of the person effecting
25 the policy.

26 By its plain wording, the statute provides that a beneficiary is
27 entitled to receive the proceeds of a life insurance policy as
28 "...against the creditors or representatives of the person
effecting the policy." There is nothing in the statute that
would exempt the proceeds from the claims of the beneficiary's
creditors. Nevertheless, the debtor argues that this court

1 should give a liberal construction to the statute and interpret
2 the statute as providing such an exemption.

3 This court is bound to give effect to the plain meaning of
4 the statute. Satterfield v. Satterfield, 292 Or 780, 643 P2d
5 336 (1982). In In re Howard, 6 Bankr. 220 (Bankr. S.D. Ohio
6 1980). The court construed an Ohio statute providing that any
7 life insurance policy or endowment policy upon the life of any
8 person, for the benefit of a spouse, child or dependent relative
9 is held...

10 ...together with the proceeds or avails of such
11 contracts...free from all claims of the creditors of
such insured person or annuitant... 6 Bankr. at 222

12 The court concluded that the death benefits are included in the
13 estate of the beneficiary under 11 U.S.C. 541(a)(5)(C). In
14 addition, the court held that the policy and its proceeds were
15 not exempt in the debtor-beneficiary's estate. Accordingly, the
16 life insurance proceeds, paid by reason of the death of James Lee
17 McAlister, to his beneficiary, the debtor, are not exempt in her
18 estate.

19 At the hearing on the trustee's objection to the debtor's
20 claim of exemption, debtor's counsel argued that only the debt to
21 the Oregon Department of Veterans' Affairs was a debt involving
22 the liability of debtor. The remaining debts were all
23 obligations upon which the debtor, James Lee McAlister, had been
24 solely liable. The debtor had joined in the bankruptcy filing as
25 a precautionary measure. 11 U.S.C. 302(b) provides that:

26 After the commencement of a joint case the court shall
27 determine the extent, if any, to which the debtor's
estates shall be consolidated.

28 Thus, although a joint petition by a debtor and such debtor's

1 spouse is permitted under 11 U.S.C. 302(a) for ease of
2 administration, the estates of each spouse are, in legal effect,
3 separate or several. In re Howard, 6 Bankr. 220 (Bankr. S.D.
4 Ohio 1980). The debtor may request that her bankruptcy estate be
5 administered separately from that of her deceased husband and she
6 may object to the claims of creditors who hold claims solely
7 against her deceased husband and under which she has no
8 liability.

9 This court concludes that the trustee's objection should be
10 allowed and that the exemption claimed by the debtor in life
11 insurance proceeds, paid by reason of the death of her husband,
12 should be disallowed.

13 This opinion shall constitute this court's findings of fact
14 and conclusions of law, they shall not be separately stated.

15 DATED at Eugene, Oregon this 30th day of December, 1985.

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19 ALBERT E. RADCLIFFE
20 Bankruptcy Judge
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