

Exemptions
ORS 23.160(1)(j)

In re Samantha M. Smith

696-64564-fra7

4/8/97

FRA

Unpublished

The trustee objected to the Debtor's claimed exemption of funds received by her from a California workers' compensation award for injuries suffered by her while working in California. The funds were held at the petition date in a separate account in the Debtor's parents' names. The property and the exemption were fully disclosed by the Debtor in her petition. Evidence was presented and accepted by the court that the funds were held in a trust relationship with the Debtor retaining the beneficial interest. The trustee argued that only the legal interest may be exempted and that since that was in the parents' names, no exemption could be claimed. Further, the trustee argued that the funds were subject to recovery as a fraudulent transfer.

The court held that a debtor may exempt his or her beneficial interest in otherwise exempt property. The funds themselves, while not exempt as workers' compensation proceeds (ORS 656.234 applies only to Oregon workers' compensation proceeds), could be exempted under ORS 23.160(1)(j)(B) and/or (C) which allows an exemption for funds traceable to payments made for personal injury and for loss of future earnings. The Debtor's beneficial interest was therefore exempt. Prior to the petition date, the Debtor had allowed her parents to withdraw \$1,600 as a loan which they repaid post-petition. The court ruled that the \$1,600 lost its exempt status when it was loaned to the parents and was thus subject to turnover.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE) Case No. 696-64564-fra7
)
SAMANTHA M. SMITH)
)
Debtor.) MEMORANDUM OPINION

I. INTRODUCTION

The Trustee has filed an objection to the Debtor's claimed exemption of funds awarded to her for injuries suffered while she was working in California. For the reasons that follow, the Trustee's objection is denied, but only to the extent that funds can be traced to the award.

II. FACTS

The Debtor was injured while performing her duties as a mental health counselor in Citrus Heights, California. She filed a claim for worker compensation benefits with the California Division of Workers' Compensation and was awarded \$19,000. Certain amounts were deducted from the total award and the

1 remaining balance of \$13,180 was paid directly to the Debtor by
2 the workers' compensation insurer.

3 The funds were placed in a savings account at Evergreen
4 Federal Savings in an account opened by the Debtor's parents,
5 Clifford and Elizabeth Smith, for the sole purpose of holding
6 these funds. Debtor testified without contradiction that the
7 account, while in her parents' names, was entirely for her
8 benefit, and that no withdrawals were to be made without her
9 knowledge and consent. Debtor testified that she set up this
10 arrangement to make it more difficult for a man she was then
11 living with to cajole her into giving him access to the funds.¹
12 Prior to filing her bankruptcy petition, the debtor had agreed to
13 lend her parents \$1,600 and authorized them to withdraw the funds
14 from the account for that purpose. An additional \$1,300 was
15 withdrawn for this purpose post-petition. The entire \$2,900 was
16 repaid on November 6, 1996, several weeks after the petition was
17 filed.²

18 At the petition date the account contained \$7,552.34, plus
19 interest accrued from June 24, 1996. The debtor fully disclosed
20 her interest in the funds on Schedule B as well as the account
21 number and the fact that the account was in her parents' names.
22 She claimed an exemption for the funds under ORS 656.234, which
23 allows an exemption for workers' compensation proceeds, and

24
25 ¹Debtor testified that nearly all the debt she seeks to
26 discharge in her bankruptcy case was incurred for her boyfriend's
benefit.

²Debtor filed her petition on September 13, 1996.

1 listed the exemption amount at \$10,000.

2 At the first meeting of creditors held on November 5, 1996,
3 at which the Debtor's parents were present, the Trustee remarked
4 that he believed that the placement of the funds into the account
5 constituted an avoidable transfer and that he would lay claim to
6 the account. Shortly thereafter, the Debtor's parents decided to
7 relinquish their control of the funds and tendered them back to
8 the Debtor. The funds were thereafter held in an account in the
9 Debtor's name which was "frozen" by agreement of the parties'
10 attorneys. The Debtor subsequently amended her claim of
11 exemption, claiming them as exempt under ORS 23.160(1)(j).

12 III. ANALYSIS

13 The Debtor argues that she should be allowed an exemption
14 for her beneficial interest in the funds being held by her
15 parents. The Trustee counters that only the legal interest may
16 be exempted, and that the legal interest was held by the Debtor's
17 parents. Because the legal interest was not held by the Debtor,
18 the funds were not property of the estate at the petition date
19 and could be recovered by the estate through the exertions of the
20 Trustee. As "recovered" property, the Debtor would no longer be
21 able to avail herself of the allowable exemptions pursuant to 11
22 U.S.C. §§ 551 and 522(g). See In re Glass, 60 F.3d 565 (9th Cir.
23 1995). Further, the Trustee argues that the Oregon statute
24 invoked to claim an exemption in the funds is not applicable in
25 this instance.

1 A. Applicability of Exemption Statute

2 The Debtor originally claimed the funds were exempt under
3 ORS 656.234. That statute exempts from execution those funds
4 received under workers' compensation, but only if the funds were
5 awarded under the Oregon Workers' Compensation Law. Because the
6 funds were actually awarded under California workers'
7 compensation laws for injuries suffered in California, ORS
8 656.234 would not be applicable in this instance.

9 The Debtor, however, amended her exemption schedule to claim
10 the funds exempt under ORS 23.160(1)(j)(B) and ORS
11 23.160(1)(j)(C). Those provisions read as follows:

12 23.160 Leivable property generally; selectable
13 exemptions. (1) All property, including franchises, or
14 rights or interest therein, of the judgment debtor,
15 shall be liable to an execution, except as provided in
16 this section and in other statutes granting exemptions
17 from execution. If selected and reserved by the
18 judgment debtor . . . at the time of the levy, or as
19 soon thereafter before sale thereof as the time shall
20 be known to the judgment debtor, the following
21 property, or rights or interest therein of the judgment
22 debtor, . . . shall be exempt from execution:

18 * * *

19 (j) The debtor's right to receive, or property
20 that is traceable to:

21 * * *

22 (B) A payment, not to exceed \$10,000, on account
23 of personal bodily injury, not including pain and
24 suffering or compensation for actual pecuniary loss, of
25 the debtor . . .; or

26 (C) A payment in compensation of loss of future
earnings of the debtor . . ., to the extent reasonably
necessary for the support of the debtor or any
dependent of the debtor.

 While one may argue that property which is specifically
exempted by one statute is not also exemptable under a more

1 general statute,³ that is not the case here. The funds cannot be
2 exempted under ORS 656.234 because that statute only exempts
3 funds received under the Oregon Workers' Compensation Law. If
4 the funds otherwise qualify for exemption under ORS
5 23.160(1)(j)(B) and/or (C), those statutes may be utilized to
6 exempt the funds in this case.

7 B. Exemption in Beneficial Interest

8 1. Existence of Trust Relationship

9 In Oregon, a resulting trust is formed "wherever the
10 circumstances surrounding the disposition of property raise an
11 inference, not rebutted, that the transferor does not intend that
12 the person taking or holding the property, or a third person,
13 should have the beneficial interest therein." Belton v. Buesing,
14 240 Or. 399, 407 n. 4, 402 P.2d 98, 102 (1965). The Debtor
15 offered un rebutted testimony that she retained the beneficial
16 interest in the funds and that the purpose for the trust
17 relationship was to insulate the funds from the demands of her
18 then boyfriend. The court is convinced from the evidence
19 presented in this case that a resulting trust, if not an express
20 trust, was formed when the funds in question were transferred to
21 the Debtor's parents and that the Debtor retained a beneficial
22 interest in those funds.

23 2. Interests Which May Be Exempted

24 ORS 23.160, the statute under which the exemption is being
25 claimed, grants an exemption from execution for specified

26 ³The court makes no ruling with regard to this question.

1 property, or "rights or interest therein" of the debtor. There
2 is substantial authority that a beneficial interest in exempt
3 property is also exempt. See In re Wallaert, 149 B.R. 665, 666
4 (Bankr. W.D. Wash. 1992) ("an equitable interest in residential
5 property is sufficient to support a homestead exemption under
6 Washington law"); In re Moffet, 107 B.R. 255 (Bankr. C.D. Cal.
7 1989) (California law allows exemption of debtor's interest as a
8 beneficiary holding a life estate under a self-settled living
9 trust). I am of the opinion that, ,under Oregon law as well, the
10 Debtor's beneficial interest in the funds held in the account in
11 her parents' names is exempt to the extent the funds themselves
12 are otherwise exempt.

13 C. Amount of Exemption

14 11 U.S.C. 522(b) (2) states, inter alia, that a debtor may
15 exempt from property of the estate property which is exempt under
16 State or local law that is applicable on the date of the filing
17 of the petition.⁴ On the petition date, funds traceable to a
18 payment made to Debtor for a personal injury were held by the
19 Debtor's parents in the amount of \$7,552.34. Under ORS
20 23.160(1) (j)⁵, those funds are exempt. Debtor's beneficial
21

22 ⁴Pursuant to 11 U.S.C. § 522(b), Oregon excluded use of
23 federal exemptions. ORS 23.305.

24 ⁵Debtor stated that the funds in question are exempt under
25 both ORS 23.160(1) (j) (B) and (C). While there may be an element
26 of both in the award (loss for personal injury and loss of future
earnings), it is unclear from the record what allocation, if any,
should be made. The court is satisfied, however, especially
given the lack of any objection on those particular grounds, that
the funds at issue are exempt under one or both of the statutes.

1 interest in those funds is likewise exempt. Funds which had been
2 transferred from the account at the petition date for the purpose
3 of the loan to Debtor's parents lost their status as funds
4 traceable under ORS 23.160(1)(j) and therefore lost their exempt
5 status.

6 IV. CONCLUSION

7 Debtor's beneficial interest in funds held in her parents'
8 names at the petition date in the amount of \$7,552.34 is exempt
9 under 11 U.S.C. § 522(b) and ORS 23.160(1)(j). Funds in excess
10 of that amount less any post-petition interest earned now held by
11 the Debtor in a separate account in her name remain property of
12 the estate and must be turned over to the Trustee. An order
13 consistent with the foregoing will be entered.

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17 FRANK R. ALLEY, III
18 Bankruptcy Judge
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