

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.

9/2/82

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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 Leviable 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

18b

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  
5 feel there was a reason to have a \$400 additional exemption  
6 for real property since the homestead exemption would apply.

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

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

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

20 To give effect to the provision of O.R.S. 23.160(1)(k) that the  
21 exemption shall not be used to increase any other exemption, it is  
22 necessary to exclude therefrom the "personal items" referred to in O.R.S.  
23 23.160(1)(b).

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

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

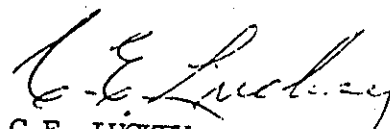
34 To the extent that the "personal items including bank deposits and  
35 cash" claimed by each of the debtors in the amount of \$900 are identifiable  
36 as such as cash equivalencies, the trustee's objection is sustained and the  
37 claimed exemption disallowed. The debtors have claimed \$400 tax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

39 To the extent that each of the debtors has identifiable interest in  
40 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.

11   
12 C.E. LUCKEY  
13 Bankruptcy Judge

U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
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ORDER

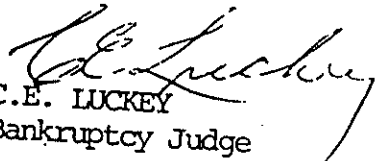
Debtors.

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