

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE

*In re*

DAVID JOSEPH MILLER,  
Debtor.

No. 95-20664  
Chapter 7

M E M O R A N D U M

APPEARANCES:

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MARCIA PHILLIPS PARSONS  
UNITED STATES BANKRUPTCY JUDGE

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This matter is before the court upon the objection filed by Erwin National Bank (the "Bank"), a creditor, to the debtor's claim of exemption in proceeds from the estate of his deceased mother. The issue to be decided by the court is whether an amendment to a claimed exemption reducing the dollar amount sought as exempt triggers a new 30-day objection period under Fed. R. Bankr. P. 4003(b). This is a core proceeding. 28 U.S.C. § 157(b)(2)(B).

I.

The debtor commenced this chapter 7 case on May 9, 1995, by the filing of a voluntary petition. On the same day that he filed his petition, the debtor also filed the various required schedules, including Schedule C entitled "Property Claimed As Exempt" wherein the debtor asserted a \$4,000.00 exemption, pursuant to TENN. CODE ANN. § 26-2-102, in expected disbursements the debtor anticipated receiving as a beneficiary under the will of his mother, Elizabeth Miller, who died testate in Washington County, Tennessee in 1993. Under Tennessee law, personal property up to an aggregate value of \$4,000.00<sup>1</sup> may be exempted by an individual from the claims of

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<sup>1</sup>TENN. CODE ANN. § 26-2-102 provides as follows:

Personal property to the aggregate value of four thousand dollars (\$4,000) debtor's equity interest shall be exempt from execution, seizure or attachment in the hands or possession of any person who is a bona fide citizen permanently residing in Tennessee, and such person shall be entitled to this exemption without regard to his vocation or pursuit or to the ownership of his abode. Such person may select for exemption the items

(continued...)

creditors. The \$4,000.00 personal property exemption was the only exemption claimed by the debtor on Schedule C other than an exemption in clothing with a stated value of \$200.00 pursuant to TENN. CODE ANN. § 26-2-103.<sup>2</sup>

A meeting of creditors pursuant to § 341 of the Bankruptcy Code was held and concluded on May 31, 1995. The proceeding memorandum for the meeting reflects that counsel for the Bank attended the meeting. Thereafter, on July 3, 1995, 33 days after the conclusion of the meeting of creditors, the Bank filed an objection to the debtor's claimed exemptions, asserting that the debtor was not entitled to exempt any of the proceeds from his mother's estate. The Bank maintained in the objection that the debtor's permissible exemptions had already been determined by a state court and that the debtor was barred by the doctrine of *res judicata* from changing those exemptions. In the alternative, the Bank asserted that even if the debtor was entitled to claim an exemption in proceeds from his mother's estate, he had already utilized this exemption by removing the sum of \$4,751.20 from his deceased mother's bank account.

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<sup>1</sup>(...continued)

of the owned and possessed personal property, including money and funds on deposit with a bank or other financial institution, up to the aggregate value of four thousand dollars (\$4,000) debtor's equity interest.

<sup>2</sup>TENN. CODE ANN. § 26-2-103(a) provides in pertinent part that "[i]n addition to the exemption set out in § 26-2-102, there shall be further exempt to every resident debtor the following specific articles of personalty: (1) All necessary and proper wearing apparel for the actual use of himself and family ...."

On July 5, 1995, the debtor filed an amendment to his scheduled list of exemptions wherein the debtor reduced his claimed exemption in proceeds from his mother's estate by \$520.00, i.e., from \$4,000.00 to \$3,480.00, and instead substituted various household furnishings with an aggregate value of \$520.00. The amendment also restated the \$200.00 clothing exemption and added an exemption for tools of the trade in the amount of \$500.00 pursuant to TENN. CODE ANN. 26-2-111(4).<sup>3</sup>

A hearing on the Bank's objection was held September 18, 1995, during which the parties presented evidence on the merits of the objection. Thereafter, in preparing a memorandum opinion for the purpose of ruling on the merits of the objection, the court observed that the objection had been filed more than 30 days past the conclusion of the meeting of creditors. Pursuant to Fed. R. Bankr. P. 4003(b), any objections to the list of property claimed as exempt must be filed within 30 days after the conclusion of the meeting of creditors unless further time is granted by the court.

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<sup>3</sup>TENN. CODE ANN. § 26-2-111(4) provides that:

[i]n addition to the property exempt under § 26-2-102, the following shall be exempt from execution, seizure or attachment in the hands or possession of any person who is a bona fide citizen permanently residing in Tennessee:

...

- (4) The debtor's aggregate interest, not to exceed seven hundred fifty dollars (\$750.00) in value in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

No extension of time for filing an objection was sought or obtained in this case. Because the court questioned its authority to rule on the merits of the objection in light of the U.S. Supreme Court's ruling in *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S. Ct. 1644 (1992), that a trustee or creditor may not contest the validity of a claimed exemption after this 30-day period has expired, the court entered an order allowing the parties ten days in which to file briefs regarding the timeliness issue. The parties had not previously addressed the issue either in briefs or at the hearing since the debtor had not challenged the timeliness of the objection.

The parties have now filed briefs on this issue and the matter is ready to be decided by the court. The Bank asserts in its brief that the objection to the exemption was timely filed because Fed. R. Bankr. P. 4003(b) not only provides 30 days after the conclusion of the meeting of creditors in which to file an objection to a claimed exemption but also 30 days after "the filing of any amendment to the list." The Bank argues that because its objection was filed within 30 days of the debtor's amended exemption list, it was timely. Although no affidavit was submitted in support of the brief, the statement is made in the brief that counsel for the debtor announced at the meeting of creditors that an amendment to the debtor's exemption list would be filed, that on June 27, 1995, the debtor signed the amendment to his schedules, and that the Bank signed and mailed its objection to the court on June 29, 1995. Apparently, the Bank was provided a copy of the amendment before it

was filed with the court because the objection refers to the amount of proceeds sought to be exempted in the amended exemption list, *i.e.*, \$3,480.00,<sup>4</sup> even though the amendment was not filed until after the filing of the objection.

In response to the Bank's brief, the debtor asserts that because the amendment merely reduced the amount originally claimed as exempt in the proceeds of his mother's estate, the objection by the Bank to that exemption claim was untimely. The debtor maintains that the effect of the amendment was to provide the Bank an opportunity to object only to the new items listed by the amendment, that being the exemption of household furnishings in the amount of \$520.00 and the tools of trade exemption in the amount of \$500.00. The debtor argues that because the objection to the debtor's claim of exemption in his mother's estate was not filed until more than 30 days past the conclusion of the meeting of creditors, the objection must be overruled due to its untimeliness.

## II.

Resolution of this issue requires an interpretation of Fed. R. Bankr. P. 4003(b), the bankruptcy rule establishing the 30-day deadline for objecting to the list of property claimed exempt. Rule 4003(b) provides as follows:

The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule

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<sup>4</sup>Actually, the objection incorrectly states that the debtor is seeking to exempt \$3500.00 from his mother's estate.

2003(a) or the filing of any amendment to the list or supplemental schedules unless, within such period, further time is granted by the court. Copies of the objection shall be delivered or mailed to the trustee and to the person filing the list and the attorney for such person.

A literal reading of the rule would appear to indicate that not only does a creditor have 30 days after the conclusion of the meeting of creditors to file an objection to the claimed exemptions, but also an additional 30-day period after any amendment. Under this standard, any amendment, even one that simply restated the exemptions originally claimed, would trigger a new 30-day period for filing objections to all exemptions. The courts, however, have neither read nor interpreted Rule 4003 so literally.

While the Sixth Circuit Court of Appeals has not had an opportunity to construe this provision, two other circuit courts have and are in agreement that, upon the filing of an amended exemption list, a new 30-day objection deadline arises only with respect to property added by the amendment. See *In re Bernard*, 40 F.3d 1028 (9th Cir. 1994), *cert. denied*, *Bernard v. Coyne*, \_\_\_ U.S. \_\_\_, 115 S. Ct. 1695 (1995), and *Matter of Kazi*, 985 F.2d 318 (7th Cir. 1993). In *Bernard*, a Ninth Circuit Court of Appeals case, the debtors filed with their petition a schedule of exemptions in which they claimed as exempt a \$250,000.00 annuity policy. After the § 341 meeting of creditors was concluded on April 27, 1992, the debtors, on May 8, 1992, amended their list of exempt property to add an automobile and a union pension fund. Thereafter, on June 5,

1992, more than 30 days past the conclusion of the meeting of creditors, but within 30 days of the filing of the amendment, a creditor filed an objection to the claimed exemption in the annuity policy. Despite the fact that the objection was filed within 30 days of the amendment, the court concluded that the objection was untimely. In the court's view, Rule 4003 provided a new 30-day objection period upon the filing of an amended list of exemptions "only with respect to the exemptions added via the amendment." *In re Bernard*, 40 F.3d at 1031. Because the creditor's objection did not pertain to either of the two exemptions added by the amendment, the objection was overruled. *Id.*

Similarly in *Kazi*, a case decided by the Seventh Circuit Court of Appeals, the debtors listed in their original schedules a claimed exemption of \$430,000.00 in certain pension trust funds. No objection to the claimed exemption was filed within 30 days of the conclusion of the meeting of creditors. Thereafter, the debtors filed an amended exemption schedule adding certain IRAs as exempt property and a creditor filed an objection to the claimed exemptions in not only the IRAs, but also the pension trust funds. The court concluded that the objection to the pension funds exemption was untimely, rejecting the creditor's argument that the language of Rule 4003(b) does not limit objections to actual amendments but allows objections to any items appearing on the original list as well. As stated by the court "[i]f exemptions previously claimed have become final by the lack of a successful objection prior to the amendment, the objection may only go to

those exemptions affected by the amendment. The filing of an amended schedule does not reopen the time to object to the original exemptions." *Matter of Kazi*, 985 F.2d at 323.

With the exception of a decision rendered prior to the Supreme Court's ruling in *Taylor*, it appears that the bankruptcy courts considering this issue have all agreed with the conclusions reached by the circuit courts of appeal. See *In re Hickman*, 157 B.R. 336, 339 (Bankr. N.D. Ohio 1993) (trustee had 30 days from date of amendment adding automobile as exempt property to file objection, but could not object to real property originally claimed as exempt); *In re Payton*, 73 B.R. 31, 33 (Bankr. W.D. Tex. 1987) (debtor's amendment to list of exemptions in deleting an item did not reopen the time for objecting to exemption claimed in boat since the amendment did not alter the exemption claim in the boat); *Matter of Gullickson*, 39 B.R. 922, 923 (Bankr. W.D. Wis. 1984) (amendment cannot increase the time in which creditor may object to claimed exemption in real property originally listed). See also 8 COLLIER ON BANKRUPTCY ¶ 4003.04[1] (15th ed. 1995) ("if the exemptions previously claimed have been finalized by the lack of a successful objection prior to the amendment, the new objections may go only to those exemptions affected by the amendment and may not reopen the propriety of all other exemptions claimed"); cf. *In re Douglas*, 59 B.R. 836, 838 (Bankr. D. Kan. 1986) (pre-*Taylor* case holding that "procedural confusion" resulting from the debtor's decision to restate all of her exemption claims by way of the amendment opened up challenge to those originally listed).

The cases cited above each involved factual situations where the amendment either deleted or added exemptions without altering the original claimed exemption that was thereafter challenged. Thus, the amendment in the present case is somewhat distinguishable from those in the cited cases because the debtor's amended exemption list did alter the original exemption asserted in the proceeds of his deceased mother's estate by reducing the amount claimed as exempt. And, a couple of the cases cited above, although in dictum, indicate that if the amendment "altered" or "affected" the original exemption, the amendment reopens the objection window. See e.g., *Matter of Kazi*, 985 F.2d at 323; *In re Payton*, 73 B.R. at 33. However, an examination of Rule 4003 in conjunction with 11 U.S.C. § 522(1), as these provisions have been interpreted by the U.S. Supreme Court in *Taylor* and its progeny, leads this court to conclude that an amendment simply reducing the dollar amount claimed exempt does not reopen the 30-day objection period of Fed. R. Bankr. P. 4003(b).

11 U.S.C. § 522(1) provides as follows:

The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

*Id.* (Emphasis supplied). The Supreme Court in *Taylor* observed that although § 522(1) does not specify the time for objecting to a claimed exemption, this time limit is provided by Rule 4003(b),

which as quoted above requires that any objection be filed within 30 days after the conclusion of the meeting of creditors or within 30 days of any amendment. *Taylor*, 112 S. Ct. at 1648. Because Rule 4003(b) by negative implication indicates that creditors may not object after 30 days, and § 522(1) renders the property exempt after the 30-day objection period has passed, the Supreme Court concluded that a trustee could not contest the exemption thereafter regardless of whether the debtor had a good faith or colorable statutory basis for claiming the exemption. The *Taylor* decision makes it clear that "failure to file a timely objection is an absolute bar to consideration of the merit of the exemptions." *Matter of Kazi*, 985 F.2d at 320.

Even though *Taylor* did not deal with the amendment aspects of Rule 4003(b), it does stand for the proposition that the time limit provided by the rule should be strictly enforced. Both of the circuit court decisions discussed above relied upon *Taylor* in refusing to allow the trustee to object to the original exemptions after the amendment, with the Seventh Circuit observing in *Kazi* that to do otherwise "would controvert the principles of finality expressed in *Taylor*." *Matter of Kazi*, 985 F.2d at 323.

Reference must also be made to a decision by Judge Cook of this district, wherein the court was presented with the related issue of whether a new 30-day objection period arises under Fed. R. Bankr. P. 4003(b) upon the conversion of a chapter 11 case to chapter 7 and the conclusion of the meeting of creditors in the chapter 7, even though the 30-day objection period had already

expired in the chapter 11 case. See *In re Brown*, 178 B.R. 722 (Bankr. E.D. Tenn. 1995). In light of *Taylor's* expansive interpretation of 11 U.S.C. § 522(l) that property sought to be exempted "is exempt" once the time for objections has run, the *Brown* court concluded, in an excellent analysis of this issue, that no new objection period is created by a conversion. *Id.* Judge Cook reasoned that because the effect of an exemption is to remove property from the bankruptcy estate and vest it in the debtor, the exemption is final and unobjectionable once the objection period has passed since there is no mechanism for the debtor's property to reenter the bankruptcy estate upon conversion. *Id.* at 726-27.

Applying the analysis of the *Brown* decision to the present case, once the 30-day deadline for filing objections to the debtor's \$4,000.00 exemption claim passed, \$4,000.00 in proceeds left the bankruptcy estate and vested in the debtor, subject only to any amendment by the debtor revoking the exemption which would recapture the property for the estate. See Fed. R. Bankr. P. 1009.<sup>5</sup> Because the amendment only revoked the exemption for \$520.00 of proceeds, the remaining \$3,480.00 in exempt proceeds remained outside the estate and outside the reach of any creditor. Accordingly, the amendment did not create a new 30-day period for objecting to the exemption in \$3,480.00 of proceeds from the

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<sup>5</sup>Fed. R. Bankr. P. 1009(a) provides in part that "[a] voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed." By definition, this rule includes the amendment of the list of exempt property filed pursuant to 11 U.S.C. § 522(l) and Fed. R. Bankr. P. 4003(a). See *Lucius v. McLemore*, 741 F.2d 125 (6th Cir. 1984).

debtor's deceased mother's estate. Therefore, to the extent the objection by the Bank pertains to the debtor's claim of exemption in his deceased mother's estate, the objection will be overruled and denied as untimely.

Any objection by the Bank to the new items of personalty claimed as exempt would, of course, be timely. However, it is not clear from the objection that Erwin National Bank has objected to the claimed exemption in the items of household furnishings. As stated above, the basis of Erwin National Bank's objection is that the debtor's exemptions should be denied because, prior to the debtor's bankruptcy filing, a state court held that the debtor was entitled to certain exemptions against the Bank and that determination of exemptions is *res judicata* as to any assertion of exemptions by the debtor in the present case. The court has compared the debtor's amended exemptions with the list of exemptions that were claimed and allowed in the state court chancery action. It appears that all of the household furnishings and the tools of the trade items claimed as exempt in the amended exemption list were also included in the list of exemptions permitted by the state court and for the same amounts. Accordingly, Erwin National Bank's argument that the state court determination of the debtor's exemptions is binding on this bankruptcy proceeding based on the legal principle of *res judicata* is moot because all of the items of personalty added by the amendment are identical to the items asserted as exempt in the state court action.

Erwin National Bank also alleges that the claimed exemption of

a bed valued at \$100.00 is significantly undervalued. At the conclusion of the hearing on September 18, 1995, the court stated as a part of the record its findings of facts and conclusions of law with respect to the valuation of this bed, overruling the objection of Keesecker Appliances & Furniture Co. challenging the valuation of the bed. Because both the Bank and Keesecker tendered the same proof in support of their objections, the court will accordingly overrule the Bank's objection as to this item.

The court will enter an order in accordance with this memorandum overruling Erwin National Bank's objection to the debtor's claim of exemptions.

ENTER: November 15, 1995

BY THE COURT

  
MARCIA PHILLIPS PARSONS  
UNITED STATES BANKRUPTCY JUDGE