

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re)
)
Ronald J. Pratt) Case No. 04-46043-172
Michelle L. Pratt) Chapter 7
) Document No. 25
Debtors.)

ORDER

The matter being considered here is the Trustee's Objection (File Document No. 25) to the Debtors' Amended Claim of Exemptions, Schedule C (File Document No. 20). The Debtors claimed an exemption in the amount of \$1,200.00 in a checking account at Eagle Bank, and in the amount of \$5,000.00 in life insurance proceeds. The Trustee objected to those exemptions that were based on the Missouri Probate Code (Mo. Rev. Stat. §§474.260, 474.290), which permits certain allowances from a probate estate and provides for such allowances to be exempt from creditors of the decedent. The Trustee argued that these provisions are not applicable to a bankruptcy estate. The Trustee also objected to those exemptions claimed by the Debtors pursuant to state statutes that are related to regulation of insurance practices (Mo. Rev. Stat. §§376.530, 376.550, 376.360, 377.090, and 377.330). The basis for this objection was that certain of these statutes do not apply on their face, and that none operate to provide an exemption in the factual situation presented here. The Debtors did not file a written response to the Trustee's objection.

This is a core proceeding pursuant to Section 157(b)(2)(B) of Title 28 of the United States Code. The Court has jurisdiction over the parties and this matter pursuant to 28 U.S.C. Sections 151, 157 and 1334, and Rule 81-9.01 of the Local Rules of the United States District Court for the Eastern District of Missouri.

On their original Schedule B-Personal Property, the Debtors listed a checking account at First Community Credit Union with a balance of \$200.00. No exemption was claimed for this account. At the Meeting of Creditors held on July 8, 2004, the Debtors disclosed that the amount

in the First Community account at the commencement of the case was in fact, \$1,200.00. The Trustee requested turnover of this amount.

On July 22, 2004, the Trustee was notified that Mr. Pratt was killed in a car accident and that Mrs. Pratt was the beneficiary of a life insurance policy in the amount of \$5,000.00. No life insurance policy or death benefit had been disclosed or claimed as exempt on the Debtors' Bankruptcy Schedules. On July 24, 2004, the Trustee requested turnover of the insurance proceeds pursuant to 11 U.S.C. § 541(a)(5).

On October 11, 2004, following the Trustee's filing of a motion to compel turnover, the Debtor informed the Trustee that she would not turnover the money in the credit union account or the proceeds from the life insurance policy.

On October 27, 2004, the Debtor filed amended Schedules B and C. On Schedule B, the Debtor disclosed a checking account at Eagle Bank in the amount of \$1,200.00, again listed the First Community Credit Union account balance at \$200.00, and disclosed the insurance proceeds of \$5,000.00. On Schedule C-Claims of Exemption, the Debtor claimed the Eagle Bank account as exempt under Mo. Rev. Stat. §474.260, claimed no exemption in the First Community account, and claimed the insurance proceeds exempt under Mo. Rev. Stat. §§376.530, 376.550, 376.560, 377.090, 377.330, 474.260 and 474.290.

Property of the estate consists of all legal and equitable interests of the debtor in property as of the commencement of the case. **11 U.S.C. §541(a)(1)**. Property of the estate also includes any interest in property that would have been property of the estate if such interest had been an 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 as a beneficiary of a life insurance policy or of a death benefit plan or by bequest, devise, or inheritance. **11 U.S.C. §541(a)(5)(A) and (C)**.

The Court finds and concludes that the bank accounts and the life insurance proceeds

became property of the Bankruptcy estate pursuant to 11 U.S.C. §541. The bank accounts were property of the estate upon commencement of the case. **11 U.S.C. §541(a)(1)**. As beneficiary, Mrs. Pratt became entitled to receive the insurance proceeds within 180 days of the filing of the petition. **11 U.S.C. §541(a)(5)(C)**.

In Missouri, property of the Bankruptcy estate may be claimed as exempt as provided by state law. **See 11 U.S.C. §522(b)(1)**. A debtor's right to claim an exemption is determined by the debtor's status at the time of filing the bankruptcy petition. **In re Walston**, 190 B.R. 855, 858 (Bankr. S.D. Ill. 1996); **In re Thorpe**, 251 B.R. 723 (Bankr. W.D. Mo. 2000). Mrs. Pratt is not eligible to claim exemptions based on her present status as a surviving spouse, because her status as such did not exist as of the commencement of the case.

Section 474.260 of the Missouri Revised Statutes provides for a "reasonable allowance" to be paid from a probate estate for a dependent spouse and minor children whom the decedent was obligated to support and, in fact, did support prior to death. This allowance is exempt from claims against the decedent's probate estate. **Mo. Rev. Stat. §474.260 (2004)**.

However, Section 474.260 does not provide an exemption to the Debtor in the Bankruptcy case for her interest in the Eagle Bank checking account or the life insurance proceeds. Such property is subject to administration by the Trustee in the bankruptcy estate. The money in the Eagle Bank joint checking account did not become part of the Decedent's probate estate. Rather, the account became an asset of the bankruptcy estate upon the filing of the Bankruptcy petition, prior to the death of the Decedent. In addition, at the commencement of this case, the Decedent's wife was not entitled to claim an allowance under Mo. Rev. Stat. §474.260, because her co-Debtor Husband's death did not occur until after the Bankruptcy petition had been filed. The Missouri statutes cited here do not direct that a decedent spouse allowance must be paid from a bankruptcy estate. These statutes are directed at the collection and distribution of assets from a probate

estate. Life insurance proceeds payable to a beneficiary are not includable in the probate estate. **Mo. Rev. Stat. §461.001, Prudential Insurance Company of America v. Gatewood**, 317 S.W. 2d 382, 388 (Mo. 1958).

Mo. Rev. Stat. §474.290, also relied upon by the Debtor, provides that a homestead allowance is to be paid to a surviving spouse, and that such allowance is exempt from claims against the *probate estate*. **Mo. Rev. Stat. §474.290 (2004)**. However, in this case, the insurance proceeds are not subject to the provisions of Mo. Rev. Stat. §474.290. The homestead allowance provided for in this statute operates from within a probate estate. As explained above, insurance proceeds payable to a beneficiary are not included in a probate estate, and no probate estate has been opened for the Decedent here. Mrs. Pratt is not eligible to claim the status of a surviving spouse as of the commencement of the Bankruptcy case. Further, the insurance proceeds, as property of Mrs. Pratt's Bankruptcy estate, may be distributed to Mrs. Pratt's creditors.

In the Amended Schedule C, the Debtor also claimed an exemption in the life insurance proceeds pursuant to several insurance statutes. Mo. Rev. Stat. §376.530 permits a married woman to insure the life of her husband. If she uses her separate funds to pay the premiums for such insurance, the proceeds of the policy are payable to her free from the claims of her husband's representatives or his creditors. **Mo. Rev. Stat. §376.530 (2004)**. In this matter being considered here, the policy proceeds are property of Mrs. Pratt's bankruptcy estate, and are being sought by the Trustee for distribution to the creditors in the Bankruptcy case. The insurance statutes cited by the Debtor do not provide an exemption in the Bankruptcy case.

Mo. Rev. Stat. §376.550 permits an unmarried woman to insure the life of her father or brother and receive the net insurance proceeds as provided for married women in §376.530. **Mo. Rev. Stat. §376.550**. This statute is inapplicable to this Bankruptcy case.

Mo. Rev. Stat. §376.560, even though listed by the Debtor, was repealed in 1982.

Mo. Rev. Stat. §377.090 and §377.330 apply to unmatured life insurance contracts and do not provide a debtor in a Bankruptcy case with an exemption in the policy proceeds. **See In re Pettigrew**, 115 B.R. 214, 215 (Bankr. E.D. Mo. 1990); **In re Williams**, 82 B.R. 518, 519 (Bankr. W.D. Mo. 1988).

The Court finds and concludes that none of the statutory references cited by the Debtor provides an exemption for the Debtor's interest in the Eagle Bank account, or for her interest in the life insurance proceeds, in the Bankruptcy case. The Debtor did not claim an exemption for the value of the First Community Credit Union account. Therefore,

IT IS ORDERED that this matter is concluded; and that the Trustee's Objections to the Debtor's Amended Claims of Exemption are sustained; and that such claims of exemption are not allowed; and that all other requests in this matter are denied.

DATED: February 28, 2005

St. Louis, Missouri



James J. Barta
Chief U. S. Bankruptcy Judge

Copy mailed to:

Office of the United States Trustee
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Suite 6.353
St. Louis, MO 63102

E. Rebecca Case, Trustee
Stone, Leyton & Gershman
7733 Forsyth Blvd., Suite 500
Saint Louis, MO 63105

Joseph P. Cunningham, III
Cunningham, Rayfield et al.
Attorney for Debtors
PO Box 229
2370 Truman Blvd.
Crystal City, MO 63019

Janice R. Valdez
Stone, Leyton & Gershman
Attorneys for Trustee
7733 Forsyth Blvd., Suite 500
Saint Louis, MO 63105