

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

John M. Cirilli, Trustee, Plaintiff, v. Leonard D. Bronk, Defendant
(In re: Leonard D. Bronk, Debtor)
Bankruptcy Case No. 09-15224-7
Adv. Case No. 10-44

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

November 29, 2012

John M. Cirilli, Cirilli Law Offices, S.C., Rhinelander, WI, for Trustee/Plaintiff
Jared Redfield, Redfield Law Offices, LLC, Stevens Point, WI, for Defendant

Thomas S. Utschig, United States Bankruptcy Judge

DECISION

On January 7, 2011, the Court entered a judgment which disallowed Mr. Bronk's exemption claim as to five college savings accounts, granted his exemption in an annuity, and concluded that he was entitled to a discharge. Mr. Bronk appealed the determination as to the college accounts, and the trustee cross-appealed the outcome as to the annuity and the discharge.

The district court issued its decision on October 1, 2012. The district court affirmed the decisions as to the discharge and the college accounts, but reversed and remanded the issue of the annuity for additional factual findings. The district court also vacated this Court's January 2011 judgment in its entirety, presumably in anticipation of entry of a new judgment at the conclusion of the remanded proceedings. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(B), and the Court has jurisdiction under 28 U.S.C. § 1334. The following constitutes the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052.

For the sake of brevity, familiarity with the prior orders issued both by this Court and the district court will be assumed. The issue on remand is whether the annuity Mr. Bronk purchased on the eve of filing bankruptcy qualifies for an exemption under Wis. Stat. § 815.18(3)(j). He funded the annuity with approximately \$42,000.00 of otherwise non-exempt assets. The propriety of that transaction has already been reviewed and is not presently before the Court.

Instead, the issue is the nature of the annuity itself. The district court concluded that Wis. Stat. § 815.18(3)(j) only provides an exemption for an annuity if the annuity specifically conditions distributions “by its terms on the recipient’s age, illness, disability, death, or length of service.” District Court Op. at p. 17. If not, the annuity can only be exempted under Wis. Stat. § 815.18(3)(f) and Mr. Bronk’s exemption would be capped at \$4,000.00 because the annuity was purchased within two years of the filing.

After remand, the Court directed Mr. Bronk to submit a copy of the annuity contract. See Adversary Case No. 10-44, ECF Docket No. 58. The parties have stipulated that no other facts are relevant to the determination. The contract indicates an “initial purchase payment” of \$42,000.00. The annuity date (i.e., the end of the annuity term) is listed as January 3, 2035. The contract specifies certain surrender charges that would apply if Mr. Bronk were to remove the funds early (it appears that the surrender charges start at 7% in the first year and decrease on a sliding scale until after year five). There are also various annuity rate tables which reflect that monthly distributions are based on a combination of two factors: the amount of money in the annuity and the annuitant’s age at the time of distribution. The same is true of other annuity options available under the plan - namely, that the exact amount of the payments made to Mr. Bronk depend upon his age at the time. The annuity also contemplates payment of a “death benefit” in the event of his death.

The exemption provisions are supposed to be liberally construed so that they “secure their full benefit to the debtor,” although courts should not extend exemptions beyond what is embraced in the statute. See Wis. Stat. § 815.18(1); Opitz v. Brawley, 10 Wis. 2d 93, 95-96, 102 N.W.2d 117, 119 (Wis. 1960) (citing Julius v. Druckrey, 214 Wis. 643, 649, 254 N.W. 358, 361 (Wis. 1934)); Northwest Bank & Trust Co. v. Minor, 275 Wis. 516, 82 N.W.2d 323, 324 (Wis. 1957). By the annuity’s own terms, this Court can only conclude that any distributions to Mr. Bronk are conditioned upon his “age, illness, disability, death, or length of service” as required under Wis. Stat. § 815.18(3)(j). Neither Mr. Bronk’s current age nor his intent at the time of funding the annuity appear relevant to this determination, as the exemption itself makes no reference to the intentions of the annuity’s creator.

The trustee notes that under the annuity’s terms Mr. Bronk might be able to withdraw the funds prior to his death and pay a modest “surrender charge.” Here again, the terms of the statute itself do not direct the denial of the exemption on this basis. The statute conditions the exemption upon the method by which *distributions* are made to the recipient, not the terms of any potential early withdrawal. As such, Mr. Bronk’s annuity qualifies for exemption under Wis. Stat. § 815.18(3)(j). The trustee’s objection to the exemption is overruled.

The Court shall enter a judgment consistent with this decision. As the prior judgment was vacated by the district court pending further findings regarding the

annuity, the Court shall also enter judgment as to the matters of Mr. Bronk's discharge and the denial of his exemption claim for the college savings accounts.