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7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF CALIFORNIA
9

10 In re
11 ARIE LEE HAYES

Case No. 05-15853-A-7K
KDG-2

12 Debtor.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
TRUSTEE'S OBJECTION TO
AMENDED CLAIM OF EXEMPTION

13
14 The evidentiary hearing on the objection by the chapter 7
15 trustee to the debtor's amended claim of exemptions concluded on
16 April 27, 2006. Following the hearing, the court took the matter
17 under submission. This memorandum contains findings of fact and
18 conclusions of law required by Federal Rule of Bankruptcy
19 Procedure 7052 and Federal Rule of Civil Procedure 52. This is a
20 core proceeding as defined in 28 U.S.C. §157(b)(2)(B).

21 The Bankruptcy Case.

22 Arie Lee Hayes filed her chapter 7 petition on July 26,
23 2005. In the Schedules of Assets and Liabilities filed with the
24 petition, she scheduled as an asset her residence at 4704 Lookout
25 Mountain Court, Bakersfield, California (the "Residence"). The
26 schedules value the Residence at \$180,000, subject to a secured
27 claim in the amount of \$157,387. The debtor claimed an exemption
28 in the amount of \$50,000 on Schedule C.

1 The debtor's Statement of Financial Affairs filed with the
2 petition stated that her sole source of income was from her
3 employment with the City of Delano. Schedule I stated that she
4 was employed as a correctional officer with the City of Delano
5 earning a monthly income of \$4,200.

6 The meeting of creditors was held August 26, 2005. The
7 debtor affirmed to the trustee that the Schedules of Assets and
8 Liabilities were accurate. She did not tell the trustee about
9 any change of employment status or health status. The trustee
10 concluded that the debtor had undervalued the Residence. The
11 trustee believed that a sale of the Residence would likely yield
12 about \$18,000 for the bankruptcy estate. Therefore, the Trustee
13 filed a report that the case was an asset case and requested that
14 creditors be notified to file claims.

15 In early October 2005, the debtor filed an amended Schedule
16 C and an amended Schedule I. In the amended Schedule C, she
17 asserted that she was entitled to an exemption of \$150,000 in the
18 Residence pursuant to California Code of Civil Procedure
19 § 704.730(a)(3). The debtor amended Schedule I to claim no
20 income from employment. Instead she said she was disabled and
21 that her disability income was \$2,076 per month.

22 On October 25, 2005, the Trustee timely filed an objection
23 to the amended claim of exemption. At that time the Trustee had
24 no information, because the debtor had given none, about the
25 nature of the debtor's disability.

26 The debtor opposed the Trustee's objection to her claim of
27 exemption and on November 16, 2005, filed her declaration in
28 support of that opposition. The debtor testified that she did

1 not become disabled until July 14, 2005, and was not disabled
2 when she first consulted with a bankruptcy attorney. She signed
3 her bankruptcy papers on July 25, 2005, but at that time she had
4 not yet received any disability pay. She stated that she was
5 still disabled and had no idea when her disability would end. An
6 exhibit to her declaration indicates that Ms. Hayes was pregnant
7 with an estimated delivery date of January 17, 2006. The exhibit
8 was signed by her physician, Wendy Crenshaw, M.D. According to
9 Dr. Crenshaw, the disability began on July 14, 2005. The debtor
10 concurred with that date.¹

11 The Trustee requested an evidentiary hearing, which the
12 debtor opposed. Therefore, after the hearing at which both
13 parties argued on December 13, 2005, the court initially took
14 this matter under submission. At that time, the debtor's counsel
15 argued that the disability the debtor was claiming was disability
16 because of her pregnancy.

17 However, on January 12, 2006, the debtor filed an ex parte
18 motion to reopen the proceeding for additional testimony. She
19 stated, through her attorney, that "the debtor failed to disclose
20 that in addition to being pregnant, with complications, she has
21 several tumors that will require treatment by surgery or
22 _____

23 ¹Both the opposition and the declaration in support of the
24 opposition contain language that the court will strike. The
25 opposition refers to the Trustee and her counsel as committing
26 perjury and making "reckless, malicious and demeaning
27 assertions." The declaration of Ms. Hayes implies that "members
28 of a certain racial group" have greater problems with
bankruptcies in the Bakersfield area. Neither of these
assertions are supported by any evidence. Both are unsupported
and irrelevant personal attacks. The court will strike this
language.

1 chemotherapy." Ms. Hayes had not authorized her attorney to
2 disclose this to the court because she thought her tumors were a
3 private matter. However, because the attorney for the Trustee
4 had subpoenaed her medical records, she concluded there was no
5 reason not to disclose the personal information.

6 The court granted the debtor's motion to reopen, and an
7 evidentiary hearing was held initially on March 23, 2006, and
8 concluded on April 27, 2006. At the hearing, the court heard
9 testimony from Arie Lee Hayes; Rosanne Z. Blanco, the chapter
10 Trustee; and Wendy Crenshaw, M.D. Documentary evidence was
11 admitted.

12 Background Facts.

13 Arie Lee Hayes was pregnant when she filed her chapter 7
14 case. She testified that she did not state this in her initial
15 bankruptcy papers because she did not start receiving California
16 state disability benefits until July 26, 2005, right after she
17 filed the petition. Dr. Crenshaw concurred that the date of
18 disability was no later than July 14, 2005.

19 Prior to her pregnancy, Ms. Hayes had fibroid tumors which
20 had been removed in a myomectomy in 2004. The fibroid tumors
21 were benign.

22 In June 2005, after she became pregnant, Ms. Hayes was on
23 light duty at her workplace. Later, by at least July 14, 2005,
24 Dr. Crenshaw recommended that Ms. Hayes stop working because of
25 the enlarging fibroids which were a risk factor for preterm
26 labor. According to Dr. Crenshaw, the disabling condition that
27 caused her to recommend Ms. Hayes stop working and be put on bed
28 rest was the pregnancy and nothing else. Dr. Crenshaw explained

1 that the fibroids were a complication of the pregnancy. Because
2 Ms. Hayes had been put on bed rest, she was in no jeopardy, and
3 there were no postpartum complications. Ms. Hayes delivered her
4 child by cesarean section on January 11, 2006. She had the
5 cesarean section because of the prior myomectomy. The prior
6 surgery, not a new complication, caused the cesarean section.

7 As of February 21, 2006, Ms. Hayes was doing well except for
8 an enlarged uterus and was told by her physician that she could
9 return to work in three weeks. Dr. Crenshaw saw Ms. Hayes on
10 February 21, 2006. She did not observe any physical problems and
11 cleared her to return to work. According to Dr. Crenshaw, there
12 were no complications during pregnancy or delivery.

13 Dr. Crenshaw also testified that although Ms. Hayes still
14 has fibroid tumors, they would not preclude her from engaging in
15 her work with the City of Delano.

16 When Ms. Hayes was pregnant, she had pain and was worried
17 about having a miscarriage. She now intends to go back to work
18 once she decides what to do about the tumors. Ms. Hayes thinks
19 the tumors do prevent her from doing the work she trained for.
20 She still thinks she is disabled because of the tumors.

21 Applicable Law.

22 The Exemption Statute.

23 Ms. Hayes claims an exemption under California Code of Civil
24 Procedure § 704.730(a)(3). That section allows an increased
25 homestead exemption (\$150,000) to a person who is:

26 "physically or mentally disabled and as a result of that
27 disability is unable to engage in substantial gainful
28 employment. There is a rebuttable presumption affecting the
burden of proof that a person receiving disability insurance
benefit payments under Title II or supplemental security

1 income payments under Title XVI of the federal Social
2 Security Act satisfies the requirements of this paragraph as
3 to his or her inability to engage in substantial gainful
4 employment."

5 First, the debtor must have a physical or mental disability.
6 Second, as a result of that disability, the debtor must be unable
7 to engage in substantial gainful employment. See, In re Rostler,
8 169 B.R. 408, 411 (Bankr. C.D. Cal. 1994).

9 Bankruptcy Code § 522(b)(1)² provides individual debtors
10 with a choice between federal and state exemption systems unless
11 debtor's state prohibits debtors from electing federal
12 exemptions. California does prohibit its citizens from claiming
13 exemptions under § 522(d).

14 Instead, California has established its own exemption
15 system. In California, a debtor may elect a set of exemptions
16 designed especially for bankruptcy or may elect the general
17 California exemptions from enforcement of money judgment. See,
18 California Code of Civil Procedure § 703.140(a). In re Rostler,
19 supra, at 410-411. When a debtor elects the exemptions at
20 § 704.730(a), the debtor must be eligible to claim that
21 exemption as of the date of the petition. Id., at 411.

22 The Burden of Proof.

23 Federal Rule of Bankruptcy Procedure 4003(c) states that:

24 "In any hearing under this rule, the objecting party has the
25 burden of proving that the exemptions are not properly
26 claimed."

27 Several reported decisions have addressed the meaning of

28 ²This case was filed before the effective date of the
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
("BAPCPA"). Therefore, all citations herein are to the pre-
BAPCPA Code.

1 this rule. The Ninth Circuit considered the question in In re
2 Carter, 182 F.3d 1027, 1029 (9th Cir. 1999). The Ninth Circuit
3 stated:

4 "A claimed exemption is 'presumptively valid.' 9 Collier on
5 Bankruptcy ¶ 4003.04 (15th ed. rev. 1998); In re Patterson,
6 128 B.R. 737, 740 (Bankr. W.D. Tex. 1991). Carter claimed
7 \$39,000 as an exemption under CCP § 704.070, and this claim
8 is presumptively valid. Once an exemption has been claimed,
9 it is the objecting party's burden (the trustee in this
10 case) to prove that the exemption is not properly claimed.
11 See Fed. R. Bankr. P. 4003(c). Initially this means that
12 the objecting party has the burden of production and the
13 burden of persuasion. The objecting party must produce
evidence to rebut the presumptively valid exemption. In re
Lester, 141 B.R. 157, 161 (S.D. Ohio 1991). If the
objecting party can produce evidence to rebut the exemption,
the burden of production then shifts to the debtor to come
forward with unequivocal evidence to demonstrate that the
exemption is proper. See In re Moneer, 188 B.R. 25, 28
(Bankr. N.D. Ill. 1995); Fed. R. Evid. 301. The burden of
persuasion, however, always remains with the objecting
party."

14 In re Carter, at 1029, fn. 3.

15 In 1994, a bankruptcy court from the Southern District of
16 New York explained the debtor's burden in more detail. In re de
17 Kleinman, 172 B.R. 764 (Bankr. S.D. N.Y. 1994).

18 "Exempting property is not a game of hide and seek, . . .
19 and the initial burden falls upon the debtor to
20 particularize her exemptions in order to permit a trustee to
21 ascertain, without any further substantial inquiry, those
properties which a debtor believes to be exempt from
distribution to creditors."

22 Id. at 770 (internal quotations, italics and citations omitted).

23 Most recently, a concurring opinion in an exemption decision
24 by the Ninth Circuit Bankruptcy Appellate Panel has called into
25 question the continuing validity of Rule 4003(c). In re Davis,
26 323 B.R. 732 (9th Cir. BAP 2005). Concurring in the majority
27 opinion that the trustee had satisfied his burden of proof in his
28 objection to the debtor's claim of exemption in retirement plans,

1 Judge Klein opined that Rule 4003(c) likely holds a trustee to a
2 higher burden of proof than necessary in certain circumstances.

3 "At least with respect to state-law exemptions, the better
4 view, after the Supreme Court's decision in Raleigh v. Ill.
5 Dep't of Revenue, 530 U.S. 15, 120 S.Ct. 1951, 147 L. Ed. 2d
6 13 (2000), may be that, if challenged, the debtor has the
7 burden to establish entitlement to a claim of exemption
under state law by the same standard that applies in the
courts of that state. If so, then the objecting party does
not properly bear the burden of proof."

8 In re Davis, supra, at 741.

9 According to Judge Klein, Rule 4003(c) is a procedural rule
10 that attempts to accomplish a substantive task. After Raleigh,
11 it is settled that a burden of proof in bankruptcy is a
12 substantive matter. It generally is an essential element of a
13 claim itself. Id. Therefore, state law exemptions in bankruptcy
14 are probably subject to the burdens of proof that are prescribed
15 by state law. Id. In California, the proponent of an exemption
16 bears the burden of proof. Id.

17 This way of analyzing the burden of proof is particularly
18 persuasive when considering § 704.730(3)(B). This is because
19 that section itself describes that if a debtor is receiving
20 benefits under the Social Security Act, she is entitled to a
21 rebuttable presumption affecting the burden of proof that she is
22 unable to engage in substantial gainful employment.

23 Assuming, however, that Rule 4003(c) is applicable, the
24 trustee has the burden to prove that the debtor has not properly
25 claimed her amended exemptions. Nonetheless, once challenged by
26 the trustee's timely filed objection, the debtor has the burden
27 to come forward with facts presenting a prima facie case that she
28 is entitled under California law to the exemption that she has

1 claimed. The ultimate burden of persuasion remains on the
2 trustee.

3 Even without abrogating Rule 4003(c), there are good reasons
4 for allocating to the debtor the burden to come forward with
5 evidence establishing her prima facie entitlement to her amended
6 claim of exemptions. The debtor has a unique access to the facts
7 that she claims entitle her to the larger exemptions. Absent
8 discovery, none of those facts are within the reach of the
9 trustee. This is particularly true where, as here, the debtor
10 did not disclose any of the facts that she claims entitle her to
11 the larger exemption at the meeting of creditors or in the
12 Schedules of Assets and Liabilities, even the amended Schedules
13 of Assets and Liabilities.

14 The question then becomes whether the debtor has come
15 forward with sufficient evidence to establish such a prima facie
16 claim.

17 Discussion.

18 Are the requirements for claiming an increased homestead
19 exemption because of disability present here? First, the debtor
20 has established that she was pregnant on the date she filed her
21 bankruptcy petition. As of that date, her doctor had recommended
22 that she be on bed rest and cease working through her pregnancy.
23 She was at that point eligible for disability payments from the
24 State of California. Thus, her condition existed as of the date
25 she filed her bankruptcy case. The question for decision is
26 whether, as a result of that condition, Ms. Hayes was unable to
27 engage in substantial gainful employment as a result of her
28 pregnancy existing on the date of the bankruptcy petition, which

1 pregnancy was affected by her fibroids.³

2 Put another way, does inability to engage in substantial
3 gainful employment imply that such inability is a continuing or
4 permanent condition? The Trustee points out that the Social
5 Security Act defines "disability," using language similar to that
6 found at Cal. Code of Civil Procedure § 740.730 (a)(3)(B). Under
7 Title II of the Social Security Act, § 223(d)(1) (42 U.S.C. §
8 423(d)(1)), disability means:

9 "(A) inability to engage in any substantial gainful activity
10 by reason of any medically determinable physical or mental
11 impairment which can be expected to result in death or which
has lasted or can be expected to last for a continuous
period of not less than twelve months . . ."

12 On the other hand, the California statute under which the
13 debtor received disability payments is less stringent. The
14 California Unemployment Insurance Code defines disability at
15 § 2626(a). That section states:

16 "(a) An individual shall be deemed disabled on any day in
17 which, because of his or her physical or mental condition,
he or she is unable to perform his or her regular or
customary work.

18 (b) For purposes of this section, "disability" or "disabled"
19 includes:

20 (1) illness or injury, whether physical or mental,
21 including any illness or injury resulting from pregnancy,
childbirth, or related medical condition."

22 Thus, under the California statute, disability is determined on a
23 day by day basis. Disability includes illness or injury
24 resulting from pregnancy related circumstances.

26 ³Ms. Hayes is not entitled to the rebuttable presumption of
27 § 704.730(3)(B) because she is not receiving disability insurance
28 benefits or supplemental security income payments under federal
law.

1 On the date she filed her bankruptcy case, Arie Lee Hayes
2 was pregnant. She was eligible for and did receive California
3 disability payments because due to her pre-existing fibroids, her
4 doctor recommended bed rest during her pregnancy. In January
5 2006, Ms. Hayes delivered a healthy baby, and by February 21,
6 2006, her doctor stated that there was no reason she could not
7 return to her normal job duties.

8 The Trustee has met her burden of proof that the debtor's
9 amended claim of exemption should be disallowed. The Trustee
10 originally objected because without explanation the debtor
11 amended her claim of exemptions to assert a claim of disability.
12 In the face of that objection, the debtor came forward with facts
13 indicating that she had been pregnant since before she filed her
14 petition and that she was receiving temporary disability benefits
15 under California law. Her doctor testified that at least as of
16 February 21, 2006, Ms. Hayes was able to engage in substantial
17 gainful employment - that is, she was able to go back to her
18 regular job duties as a correctional officer for the City of
19 Delano.

20 The phrase "unable to engage in substantial gainful
21 employment" is best interpreted as requiring a condition that
22 exists for a significant period of time. The reference in
23 § 704.730(a)(3)(B) to rebuttable presumption that a person
24 receiving disability insurance benefit payments under the Social
25 Security Act is unable to engage in substantial gainful
26 employment does provide guidance to the court. The Social
27 Security Act definition of "disability" requires a condition that
28 lasts for a continuous period of not less than twelve months.

1 See, In re Rostler, supra, at 412.

2 Arie Lee Hayes was pregnant when she filed her bankruptcy
3 case. Her doctor recommended bed rest, and Ms. Hayes applied for
4 and had become entitled to temporary disability benefits under
5 California law by the time she filed her bankruptcy petition on
6 July 26, 2005. By January 11, 2006, Ms. Hayes had delivered a
7 healthy baby, and by February 21, 2006, her doctor stated that
8 she was able to return to work and had no physical problems that
9 would prevent her from working. Under all these circumstances,
10 the court is unable to conclude that Ms. Hayes is entitled to a
11 \$150,000 homestead exemption rather than the \$50,00 homestead
12 exemption to which she would otherwise be entitled.

13 For the foregoing reasons, the trustee's objection will be
14 sustained. Counsel for the trustee may submit an appropriate
15 form of order.

16 DATED: July 18, 2006

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18 /S/
19 WHITNEY RIMEL, Judge
20 United States Bankruptcy Court
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