

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
99 MAR 15 PM 3:33
DIST OF SOUTH CAROLINA

IN RE:

Case No. 98-09750-W

Donna L. Glidden,

JUDGMENT

Debtor.

Chapter 7

ENTERED

MAR 15 1999

S. R. P.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order
of the Court, the Trustee's Objection to the Debtor's Claim of Exemptions is sustained.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
March 15, 1999.

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CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

✓ ✓ MAR 15 1999 ✓ (RFA)
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DEB COR, DEB COR'S ATTORNEY, TRUSTEE

SHERRELL PHIPPS

Deputy Clerk

✓ (WST)

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at _____ O'clock & _____ min

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

MAR 15 1999

ARGOE, CLERK
Bankruptcy Court
South Carolina (7)

IN RE:

Case No. 98-09750-W

Donna L. Glidden,

ORDER

ENTERED

Debtor.

Chapter 7

MAR 15 1999

S. R. P.

THIS MATTER comes before the Court upon the Chapter 7 Trustee's objection to the exemption claimed by the Debtor, Donna L. Glidden, f/k/a Ms. Donna L. Dalichau ("Debtor" or Ms. Glidden") in a structured settlement agreement arising from a settlement of a lawsuit with the City of Adelanto, California.¹ The Debtor initially claimed the structured settlement to be an "annuity or retirement allowance," exempt pursuant to South Carolina Code of Laws, Ann. § 9-1-1680.² Immediately before the trial, the Debtor amended her Schedule C to claim the structured settlement exempt as a disability benefit pursuant to South Carolina Code § 15-41-30(10)(c). Based upon the evidence admitted at trial and the testimony of the Debtor, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Debtor is, by profession, a corrections officer. In 1993, after she had been dismissed by the City of Adelanto, California as a corrections officer at the City's corrections facility, she brought suit against it, and others, in the United States District Court for the Central District of

¹ This Settlement pays the Debtor \$2,000.00/month until she reaches the age of 65 on December 15, 2011, less a portion for her attorney's fees.

² South Carolina has opted out of the Federal Exemptions contained in 11 U.S.C. § 522. South Carolina Code § 9-1-1680 provides that funds payable under the Retirement System for employees of the State of South Carolina are exempt. Hereinafter all references to the Code of Laws of South Carolina (1976) shall be by section number only.

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California, alleging a violation of her civil rights pursuant to 42 U.S.C. § 1983 as a result of her termination and further alleging a violation of the Fair Labor Standards Act based upon the failure of the City of Adelanto to pay correctional officers overtime for attendance at briefing sessions prior to their work shifts.

On March 26, 1996, the Debtor settled the litigation with the City of Adelanto, California and the parties executed a Compromise Agreement and Mutual Release (the "Settlement Agreement"). The "Terms of Compromise Agreement" contained in paragraph seven (7) of the Settlement Agreement and incorporated into the Judgment provide as follows:

7. (a). Defendant [City of Adelanto] shall pay to Plaintiff [Ms. Glidden, f/k/a Ms. Donna L. Dalichau] as damages \$50,000.00 no later than March 27, 1996, by way of a check made payable to Donna Dalichau and Gregory G. Petersen.
- (b). Defendant shall pay to Plaintiff's attorney Gregory G. Petersen, \$75,000.00 as and for attorney's fees no later than March 27, 1996, by way of a check made payable to Gregory G. Petersen.
- (c). Defendant shall pay to Plaintiff as a disability payment to compensate for the pain, suffering and emotional distress, \$2,000.00 per month commencing April 1, 1996 and continuing until April 15, 2010, when the current contract between the City of Adelanto and the Adelanto Correctional Facility ends. If the contract is renewed without interruption, plaintiff is to continue to receive \$2,000.00 per month until the age of 65. If the contract is renewed within the 12 month period and there is a lapse in payment during the interim, plaintiff is to resume receipt of \$2,000.00 per month until a period of time beyond age 65 that represents the gap in non payments.

If plaintiff has received \$340,000.00 pursuant to paragraph (e) herein prior to April 15, 2015, the monthly payments of \$2,000.00 shall cease on April

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15, 2010.

Plaintiff shall have the right to designate a designee(s) during her lifetime to receive the \$2,000.00 or any portion thereof as well as designee(s) to be paid in the event of her death before full payment is received as stated herein.

(d). From April 1, 1998 to April 15, 2015, Plaintiff may elect to have medical coverage for herself as a single person with no dependents. The Defendant will pay \$100.00 per month toward the costs of the premium. Any premium in excess of \$100.00 per month shall be paid by Plaintiff. The premium paid by the Plaintiff may be deducted from her \$2,000.00 per month. At this point in time the additional medical premium would be \$47.00. Plaintiff must notify Defendant in writing to begin or temporarily end her coverage.

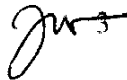
(e). Defendant further shall pay to Plaintiff \$340,000.00; \$290,000.00 as damages and \$50,000.00 as attorney's fees.

(f). Plaintiff's employee file/package shall have all references to being fired removed and shall reflect that she left on good terms.

The Settlement Agreement was approved by the Court on May 9, 1996 in a Judgment which ended the case.

On November 4, 1998, the Debtor filed a voluntary Chapter 7 petition in South Carolina. In the Debtor's Statement of Financial Affairs, she stated that as part of her income, in 1996 she received \$11,997.00 as "income from structured settlement" and in 1997 she received \$15,996.00 also as "income from structured settlement." On the "Debtor's Claim for Property Exemption", the Debtor lists the following under "Other Exemptions Under South Carolina Law":

[t]he right to an annuity or a retirement allowance or to the return of contributions, an annuity or retirement allowance itself, any optional benefit or other right accrued or accruing from the South



Carolina Retirement System (§ 9-1-1680), the Retirement System for Judges and Solicitors (§ 9-8-190), the Retirement System for the General Assembly (§ 9-9-180), the Police Officers Retirement System (§ 9-11-270), or any private retirement system operated by a municipality as provided for under § 9-1-1680.

The Debtor listed § 9-1-1680 as the basis for her exemption.

Immediately prior to the trial on the Trustee's objection to the Debtor's exemption, the Debtor filed an "Amended Debtor's Claim for Property Exemption" and, in addition to South Carolina Code Ann. § 9-1-1680, also listed the settlement award as exempt as a disability, illness or unemployment benefit.

At the trial on the Trustee's objection, the Debtor testified that she has worked as a corrections officer since 1995 in the States of Washington, Arizona, South Carolina and Virginia. The Debtor testified that the reason she was disabled was because she could no longer work in California, but did not elaborate on the reasons she was barred from working there. The Debtor continues to be able to pursue her profession as a corrections officer and is apparently in good health.

CONCLUSIONS OF LAW

I. South Carolina State Retirement

The Debtor first claims that the structured settlement is exempt pursuant to South Carolina Code § 9-1-1680 which provides as follows.

The right of a person to an annuity or a retirement allowance or to the return of contributions, an annuity, or retirement allowance itself, any optional benefit, or any other right accrued or accruing to any person under the provisions of this chapter, and the monies of the system created under the provisions of this chapter or any private retirement system operated by a municipality, are exempted from any state or municipal tax, except the taxes imposed pursuant



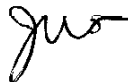
to Chapters 7, 15, and 16 or Title 12, and exempted from levy and sale, garnishment, attachment, or any other process and are unassignable as specifically otherwise provided in this chapter.

It is evident that South Carolina Code § 9-1-1680 is exclusive to the South Carolina Retirement System and private retirement systems operated by a municipality. The Debtor's Settlement Agreement with the City of Adelanto, California is a settlement of a lawsuit and was not established by or through a retirement system operated by a municipality and therefore South Carolina Code § 9-1-1680 is not applicable.

II. South Carolina Code § 15-41-30

The Debtor next claims that the Settlement Agreement is exempt under the provisions of South Carolina Code § 15-41-30(10)(c) which exempts the Debtor's "right to receive a disability, illness or unemployment benefit." Section 15-41-30(10)(c) is a word-for-word adoption of 11 U.S.C. § 522(d)(10)(c).

In an effort to determine the true nature of the payments to the Debtor, the Court initially notes that there are inconsistencies between the language used within the Settlement Agreement and the Judgment (the "Documents") to characterize the payments. While the payments are denominated as "disability payments", they are also designated "to compensate for pain, suffering, and emotional distress", a type of damage which usually results from a tort or intentional wrong, such as a civil rights violation. The Debtor's Schedules and Statement of Affairs identified the source of the payments as a settlement of a lawsuit for an unjust firing. Furthermore, the payments are to be made over a term which coincides with the employment contract between the City and the Correctional Facility and not with the duration or expected period of any physical or mental disability. Most importantly, there is no reference in the



Documents nor any evidence to indicate an actual impairment of or injury to the Debtor, or any loss of ability to work. Clearly, the Debtor could and did continue to work without apparent restriction in her profession as a correctional officer in several different states, earning more than \$33,000.00 per year for each of the years 1995-1997. A disability is defined as “an actual impairment to perform tasks usually encountered in ones employment and the loss of wages resulting therefrom”. Black's Law Dictionary 415 (5th ed. 1979). It does not appear that the Debtor has suffered such an impairment nor lost wages because of it.

Weighing the credibility and sufficiency of the evidence, the Court is not convinced that the payments are “disability payments” within the exemption intended by the South Carolina Legislature when it enacted South Carolina Code § 15-41-30(10)(c). It appears simply that the Settlement Agreement was a structured settlement of the Debtor’s causes of action against the City of Adelanto, California arising from her allegations of a violation of her civil rights pursuant to 42 U.S.C. § 1983, with the payments being characterized as disability payments and being made over time for tax reasons.

In 1982, debtor entered into a structured settlement of his injury claims. As is customary, the tort settlement was designed to deny debtor control of the funds paid to compensate for his injuries so that he could exclude the payments from his gross income for federal income tax purposes.

In re Hayes, 168 B.R. 717 (Bkrcty. D. Kan. 1994).

It is the substance of the arrangement rather than the labels affixed to it which determines whether the payments are exempt. Based upon the arguments and evidence presented by the Trustee in this case, the Trustee has met his initial burden of rebutting the prima facie validity of the Debtor’s exemption claim. The burden therefore shifts to the Debtor to prove the claimed

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exemption is proper and allowable. At the trial, not only did the Debtor appear in good physical and mental health, free from any apparent disability, but she identified her disability as "her inability to continue to work as a correctional officer in the State of California" which forced her move to other states.

For all of these reasons, the Debtor has failed to meet her burden of proof to show that the Settlement Agreement is exempt pursuant to South Carolina Code § 15-41-30(10). It is therefore

ORDERED that the Trustee's objection to the Debtor's exemption in the structured settlement is sustained.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
March 15, 1999.



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(Reyes)

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

SHEREE R. PHIPPS

Deputy Clerk

✓ (W.T.)