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1 UNITED STATES BANKRUPTCY COURT
2 IN AND FOR THE DISTRICT OF ARIZONA

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5	In Re:)	Chapter 7 Proceedings
6	ARDRIA LOUISE LACEFIELD,)	Case No. 2:03-bk-22470-CGC
7	Debtor.)	
8)	UNDER ADVISEMENT DECISION
9)	RE: TRUSTEE'S OBJECTION TO
)	EXEMPTION

10 **I. Introduction**

11 Debtor Ardria Lacefield filed Chapter 7 on December 30, 2003. In her original Schedule
12 C, Debtor claimed as exempt \$483.62 that she characterized as qualified retirement benefits
13 pursuant to Arizona Revised Statute ("A.R.S.") section 33-1126(C). While Debtor's original
14 Schedule C seemed to indicate that Debtor was claiming a total exemption of only \$483.62, her
15 original Schedule I, and subsequent pleadings and arguments to the Court, have clarified that in
16 fact she is seeking an exemption in the \$483.62 she receives *monthly* from her deceased mother's
17 retirement plan.

18 The Trustee timely filed an objection in February, 2004, contending that the \$483.62 was
19 not in fact retirement benefits but an inheritance from Debtor's mother subject to the \$20,000 cap
20 set forth in A.R.S. section 33-1126(A)(1). Debtor failed to file a response to the Trustee's
21 objection, and the Court subsequently entered an order denying the exemption based on the
22 Trustee's objection and Certificate of No Objection. In response to the Order, Debtor filed a
23 motion to set aside the Order denying Debtor's exemption and, approximately a week later,
24 amended Schedules B and C. The Trustee filed a response to the motion to set aside, in which
25 he also objected to the amended schedules. At the May 18, 2004, hearing on the motion to set
26 aside, the Court gave Debtor's counsel the benefit of the doubt and concluded that he for some
27 reason did not receive notice of the Trustee's objection. The Court then set aside the Order and
28 instructed Debtor to file a response to the Trustee's objection, and the Trustee a reply to the

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1 response, at which time the matter would be ruled on by the Court.

2 That is where we stand today.

3 **II. Decision**

4 A. Motion to Amend

5 Rule 1009 of the Federal Rules of Bankruptcy Procedure states, "A voluntary petition, list,
6 schedule, or statement may be amended by the debtor as a matter of course at any time before the
7 case is closed." As mentioned *supra*, Debtor's first go around on her Schedules was a bit
8 confusing at best with respect to the \$483.62 she listed as exempt. Schedule C appeared to list
9 the value of exemption as \$483.62 total. Similarly, Schedule B indicated that she received only
10 a total of \$483.62 in retirement benefits. However, Schedule I disclosed that Debtor receives
11 \$483.62 a month in retirement benefits. Her subsequent amendment of her Schedules corrected
12 these inconsistencies, clarifying that the retirement benefits are in fact continuous monthly
13 payments of \$483.62. Further, Debtor listed additional grounds for claiming the funds exempt
14 (beyond simply the retirement benefits provision of A.R.S. section 33-1126(C)), including A.R.S.
15 sections 33-1126(A)(1) and (A)(4) and Indiana Code 21-6.1-5-17.

16 The Trustee argues that Debtor acted in bad faith and attempted to deceive the Trustee by
17 failing to designate the funds as continuing monthly payments. The Court disagrees, finding no
18 attempt to mislead the Trustee or conceal these funds. Therefore, the Court will allow the
19 amendments.

20 B. Exemption

21 With respect to the exemptions, the Trustee objects on two fronts essentially. First, the
22 Trustee argues that it is now too late to attempt to fit these funds into some other type of
23 exemption provision - in essence attempting to force Debtor to stick to her exemption claim
24 under section 33-1126(C). The Court disagrees, in part because it would rather address the issue
25 on the merits as opposed to a technicality and because in the end the Trustee is right on the merits
26 in any event.

27 Second, the Trustee addresses the merits of each exemption ground claimed. Let's start
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1 with Debtor's original claim that the monies are exempt under A.R.S. section 33-1126(C), which
2 provides that "[a]ny money or other assets payable to a participant in or beneficiary of, or any
3 interest of any participant or beneficiary in, a [qualified] retirement plan" is exempt. This clearly
4 does not apply to Debtor. Pre-petition, Debtor inherited upon her mother's death the \$483.62 a
5 month her mother was receiving in retirement funds from her mother's Indiana State Teacher's
6 Retirement Fund. The key distinction here is that it was Debtor's mother's retirement fund and
7 not Debtor's retirement fund. Debtor was not a participant in or a beneficiary of the retirement
8 plan. Her mother was. Debtor receives these funds only as a result of her mother's death and
9 solely as an inheritance.

10 Debtor also claims an exemption in these funds under section 33-1126(A)(4), which states
11 that "[a]ll money, proceeds or benefits of any kind to be paid . . . to . . . any beneficiary under
12 any policy of health, accident or disability insurance or any similar plan or program of benefits
13 in use by any employer" are exempt. Debtor provides no explanation as to how these inherited
14 retirement benefits satisfy this provision.

15 Last, Debtor claims an exemption based on Indiana law. Pursuant to section 522 of the
16 Bankruptcy Code, a Chapter 7 debtor may exempt certain property from the bankruptcy estate and
17 place it beyond the reach of creditors. States may choose to opt-out of the federal exemption
18 scheme, limiting the exemptions available in bankruptcy cases to those allowed under state law.
19 Arizona chose to opt-out of the federal exemption scheme over twenty years ago, *In re Stinson*,
20 36 B.R. 946 (9th Cir. BAP 1984), and consequently Debtor is only entitled to exemptions provided
21 under Arizona statutes, as that is the law of that state in which the "debtor's domicile has been
22 located for the 180 days immediately preceding the date of the filing of the petition." 11 U.S.C.
23 section 522(b)(2)(A). Indiana law is simply inapplicable.

24 In what appears to be one last ditch effort to hang on to the full value of these funds,
25 Debtor asserts that these funds are not property of the estate in the first place under 11 U.S.C.
26 section 541 and the United States Supreme Court case of *Patterson v. Shumate*, 504 U.S. 753, 112
27 S. Ct. 2242, 119 L.Ed.2d 519 (1992). Again, however, as with Debtor's previous arguments,

1 she fails to grasp the critical distinction here. While the Court in *Patterson* held that certain tax
2 qualified ERISA retirement plans can be excluded from becoming part of the bankruptcy estate,
3 the case is easily distinguishable from the case here. In *Patterson*, the Chapter 7 trustee sought
4 to recover the debtor's interest in *his* retirement plan for inclusion in the estate. *Id.* The funds
5 at issue in the present case do not arise out of the Debtor's interest in *her* retirement plan. The
6 nature of the funds changed from retirement to inheritance when her mother's death made Debtor
7 the sole beneficiary of the payments, but not as a participant in the plan, but as a death
8 beneficiary. Therefore, *Patterson* does not apply to the present case and the funds are property
9 of the estate. If this were Debtor's mother's bankruptcy case, the situation would be different.
10 As the Trustee stated in his April 27, 2004, objection, "Inherited assets, simply because they were
11 protected ERISA assets in the hands of the original beneficiary, are not protected in the hands of
12 the death beneficiary." *See also In re Sims*, 241 B.R. 467 (Bankr. N.D. Okla. 1999).

13 As such, the Trustee is correct that the funds are exempt under A.R.S. section 33-
14 1126(A)(1) as an inheritance, but only up to \$20,000 statutory cap. Anything exceeding \$20,000
15 is property of the estate.

16 **III. Conclusion**

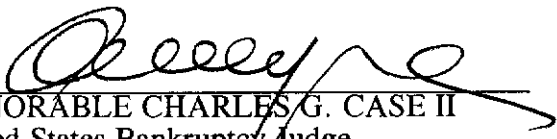
17 Therefore, for the foregoing reasons, the Court allows Debtor's amendments to her
18 Schedules. With respect to her claimed exemption in the retirement funds she inherited upon her
19 mother's death, the Court finds that Debtor is entitled to an exemption in those funds up to
20 \$20,000 pursuant to A.R.S. section 33-1126(A)(1).

21 Further, it is hereby ordered that Debtor must provide the Trustee with an accounting of
22 all payments received to date within twenty days of the date of this Order and continuing
23 accountings of all future payments up to the \$20,000 exemption cap. All funds received or to be
24 received in excess of the \$20,000 exemption are property of the estate. The mechanics of
25 executing this Order will be left first to the parties. If they cannot agree, either party may file an
26 appropriate motion with the Court.

27 So ordered.

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DATED: July 20, 2004


HONORABLE CHARLES G. CASE II
United States Bankruptcy Judge

~~COPY~~ of the foregoing mailed and/or via facsimile
this ~~10th~~ day of July 2004, to:

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