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JUDGE: M. A. Mahoney

PARTIES: James Murray Strickland

CHAPTER: 7

ATTORNEYS: A. R. Maples, Jr., C. W. Spencer, Jr.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

JAMES MURRAY STRICKLAND

Case No. 99-13568

Debtor.

**ORDER SUSTAINING TRUSTEE'S OBJECTION TO DEBTOR'S
EXEMPTION OF FEDERAL EMPLOYERS' LIABILITY ACT CLAIM**

A. Richard Maples, Jr., Mobile, AL, Attorney for Trustee
Carey W. Spencer, Jr., Pelham, AL, Attorney for Debtor

This case is before the Court on the objection of the trustee to the debtor's claim of exemption. This is a matter over which the Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to enter a final order. For the reasons given below, the Court concludes that the debtor cannot exempt any recovery from a prepetition claim under the Federal Employers' Liability Act (45 U.S.C. § 51 et seq.) from creditor's claims except under ALA. CODE § 6-10-6 (1993).

FACTS

James Strickland worked for the Norfolk Southern Corporation for 23 years 11 months before filing his Chapter 7 bankruptcy case on October 15, 1999. He was injured on the job before his bankruptcy filing. He claimed as exempt under ALA. CODE § 25-5-86 (1992) his Federal Employers' Liability Act (FELA) claim which he valued at \$950,000. The case, according to counsel's arguments, has apparently been filed, but not tried.

LAW

The debtor claims that his FELA claim is exempt under ALA. CODE § 25-5-86 (1992).

Title 25 deals with “Industrial Relations and Labor.” Chapter 5 covers “Workers’ Compensation.” Section 25-5-86 states:

For purposes of this article and article 4 of this chapter:

* * * * *

(2) claims for compensation, awards, judgments, or agreements to pay compensation owned by an injured employee or his or her dependent shall not be assignable and shall be exempt from seizure or sale or garnishment for the payment of any debt or liability.

The introductory language, i.e., “[f]or purposes of this article and article 4 of this chapter,” was added effective May 19, 1992.

The debtor asserts that this statute should be interpreted to cover awards under federal law such as FELA as well as workers’ compensation claims under state law. The debtor argues that the intent of the statute is to exempt payments to workers for work related injuries. The debtor also asserts that two bankruptcy cases have allowed FELA claims to be treated as exempt. *In re Albrecht*, 89 B.R. 859 (Bankr. D. Mont. 1988) (holding claim was exempt as a disability benefit under 11 U.S.C. § 522(d)(1)(C)); *In re Lagrow*, 165 B.R. 34 (Bankr. C.D. Ill. 1994) (holding FELA claim exempt in a limited amount as a claim under Ill. Stat. 5/12-1001(h)(4)).

The trustee argues that ALA. CODE § 25-5-86 (1992) does not apply to FELA claims and only ALA. CODE § 6-10-6 (1993) is available to Strickland. A FELA claim is not the same as a workers’ compensation claim and the Alabama Code has correctly never been stretched so far as to include one.

1.

This is a case of first impression in Alabama. The Court can find no other cases which discuss whether a FELA claim or other claim not covered by the Alabama Workers' Compensation Act is exempt from levy or exempt in a bankruptcy case. The Court will discuss the purposes of the acts and their general outline in this section. Section two covers how the Alabama exemption statute was written to cover only workers' compensation awards under that statute. Section three discusses other exemption alternatives. Section four discusses the cases cited to the Court.

The workers' compensation scheme of the State of Alabama was established "to place upon industry the burden of disability and death resulting from industrial accidents." *Ford v. Mitcham*, 53 Ala. App. 102, 105, 298 So.2d 34, 36 (1974). It was established to preclude the possibility of a double recovery. *Holder v. Weatherly*, 456 So.2d 812, 813 (Ala. Civ. App. 1984). The statutory scheme was designed as a substitute for tort actions for recovery. *Ford v. Michan, supra*. The program provides a payment schedule of weekly or monthly payments to an injured employee based upon his pre-accident wage base. The program also provides recipients with protection from execution and levy of their monthly benefits. It does not cover employees of railroads whose injuries are covered by 45 U.S.C. § 51 et seq.

The Federal Employers' Liability Act (45 U.S.C. § 51) was enacted in 1908. It provides that "every common carrier by railroad . . . shall be liable in damages to any person suffering injury while he is employed by such carrier." This statute supersedes all state law covering the same issues. *Wabash R. Co. v. Hayes*, 234 U.S. 86, 34 S. Ct. 729, 58 L. Ed. 1226 (1914). There is no provision in the law providing any exemption from levy or exemption. Disability retirement benefits may be offset against any subsequent FELA claim award if the benefits

program was established to protect the federal employer from liability. *Clark v. Burlington Northern, Inc.*, 726 F.2d 448 (8th Cir. 1984). Another federal law provides retirement benefits for railroad employees and 45 U.S.C. § 231(m) of the statute makes the retirement benefits (not FELA benefits) exempt from execution.

2.

ALA. CODE § 25-5-86 specifically states, after its amendment in 1992, that its provisions are “[f]or purposes of this article [Article 5] and Article 4 of this chapter.” These two articles clearly deal only with workers’ compensation awards under Alabama Code title 25. This prefatory caveat precludes the statute from having a more general effect. The limiting language makes clear that the Alabama legislature intended to make only Alabama workers’ compensation awards exempt.

3.

The only other possible applicable statute is ALA. CODE § 6-10-6 (1992).¹ It provides an exemption for:

The personal property of . . . [a debtor], except for wages, salaries, or other compensation . . . to the amount of \$3,000 in value.

¹Alabama also has a statute titled “Employer’s Liability for Certain Injuries.” ALA. CODE § 25-6-1 et seq. (1992). This statute contains an exemption provision too. ALA. CODE § 25-6-2 which states that “[d]amages recovered by the . . . employee . . . are not subject to the payment of debts or any legal liabilities incurred by him.” This statute covers only employers and employees excepted from the Workers’ Compensation Act and was the predecessor to the Workers’ Compensation Act. *C. F. Holstead Contractor, Inc. v. Lowery*, 282 So. 2d 909, 911 (1973). It does not apply to employees covered by FELA. *McDuff v. Kurn*, 233 Ala. 619, 172 So. 2d 886 (1937). In fact, the debtor’s brief acknowledges that ALA. CODE §§ 25-6-1 and 25-6-2 do not apply to Mr. Strickland. Section 25-6-2 is not a general exemption provision. It states that “[d]amages recovered are not subject to payment of debts.” The “damages” it references are those awarded under § 25-6-1.

Personal property has been found to include everything except realty. *Green v. Harbin*, 615 F. Supp. 719, n.2 (N.D. Ala. 1985). Therefore, a claim for personal injury would be included.

4.

The cases cited by both sides as the only cases even remotely related are distinguishable. *In re Albrecht, supra*, relies on federal exemption law to find a FELA claim protected. Section 522(d)(10) of the Bankruptcy Code is a “generic” exemption in that it applies to any “disability . . . benefit.” The Alabama statute, unlike the federal one, is not generic. It is specific about what benefits it is covering.

In *In re Lagrow, supra*, an Illinois state statute specifically exempted any “personal bodily injury” payments up to \$7,500. No similar broadly worded statute exists in Alabama. Again, the Illinois statute is generic; Alabama’s is specific.

CONCLUSION

The Court finds that Alabama knew how to exempt compensation to be paid to an injured employee from execution and levy. ALA. CODE §§ 25-5-86 and 25-6-2 (1993). It did not provide a similar exemption for federally governed injuries nor did the federal statute. Only § 6-10-6 covers FELA awards in Alabama. Although exemption statutes are to be liberally construed, *Russell & Johnson v. Oneata*, 73 So. 986 (1917), courts cannot completely ignore statutory construction and invent exemptions through expansive interpretations.

IT IS ORDERED that the trustee’s objection to exemption is SUSTAINED and the debtor, James Murray Strickland, is limited to an exemption of the claim under ALA. CODE § 6-10-6 (1993) to the extent appropriate within the \$3,000 limit.

Dated: January 26, 2000

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE