

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:

RASHARD D. HUNT,
DEBTOR.

CASE NO. 23-12027-JCO
Chapter 13

**ORDER SUSTAINING THE CHAPTER 13 TRUSTEE'S OBJECTION TO THE
DEBTOR'S CLAIM OF EXEMPTION**

This matter came before the Court on the Chapter 13 Trustee's Objection to the Debtor's Claim of Exemption.(Doc. 55). Proper notice of hearing was given and appearances were noted on the record. Upon consideration of the Trustee's Motion, Brief in Support thereof, and the arguments of counsel at the hearing, this Court finds that the Trustee's Objection is due to be SUSTAINED for the reasons below.

PROCEDURAL BACKGROUND AND RELEVANT FACTS

Rashard Hunt (the "Debtor") filed his Chapter 13 Bankruptcy Petition on September 1, 2023. (Doc. 1). On January 26, 2024, the Debtor filed an Amended Schedule C claiming various items totaling \$6,683.94 as exempt under Ala. Code §6-10-6 and his \$28,000.00 interest in a 2018 Freightliner Cascadia as exempt under Ala. Code §6-10-126. (Doc. 50). The Chapter 13 Trustee objected to the Debtor's claim of exemption in the Freightliner on the grounds that Ala. Code §6-10-126 does not provide an exemption right. (Doc. 55). Debtor's counsel stated at the hearing that the Freightliner was essential to the Debtor's business and should be exempt. At the setting, the Court indicated that it would allow the parties to brief the issue of whether the Debtor was entitled to claim an exemption under Ala. Code §6-10-126 and then would take the matter under advisement. Sufficient time has elapsed for briefing and this matter is now ripe for adjudication.

DISCUSSION

The plain language of Ala.Code §6-10-126 does not support a Debtor's independent claim of personal exemption. The statutory language provides,

(a) No waiver of exemption in any written instrument shall be held to apply to or include or authorize the levy of an execution or attachment on any of the following property for any debt contracted:

(1) Cooking utensils, cooking stoves, table, tableware, chairs, bed and bed clothing in actual use by the family;

(2) Wearing apparel;

(3) A vehicle used by and essential to the debtor's business;

(4) Tools used personally by and essential to the debtor's business;

(5) The library of the debtor.

(b) Any levy upon such property is absolutely void.

(c) This section shall not apply to such property set out in subdivisions (3) and (4) of subsection (a) pledged in a consensual security agreement.

Ala. Code § 6-10-126.

It is well settled law, that where the language of a statute is unambiguous, the expressed intent must be given effect as meaning exactly what it says. *Stewart v. Jones*, 35 B.R. 392, 394 (S.D. Ala. 1983)(citing *Kimbrell v. State*, 272 Ala. 419, 132 So.2d 132, 137 (1961)). The plain language of Section 6-10-126 reflects that its purpose is to render a written waiver of an exemption right ineffectual in the specifically enumerated circumstances. Other courts which have interpreted Section 6-10-126 as well as its legislative history have reached the same conclusion. *In re Morris*, 2007 WL 2120177, at 2 (Bankr. N.D. Ala. July 18, 2007)(citing *In re Robinson*, 240 B.R. 70, 92 (Bankr. N.D. Ala. 1999)(noting that although Section 6-10-126 protects certain personalty from a waiver made by the debtor, it does not create rights separate and distinct from those delineated in the Section 6-10-6 personal property exemption); see also, *In re Bulger*, 91 B.R. 129, 130

(Bankr. M.D. Ala. 1988) (citing *First Ala. Bank v. Mims*, 66 B.R. 20 (M.D.Ala.1986) (explaining “Section 6–10–126 is not an exemption statute.”).

The United States District Court for the Southern District of Alabama previously explained that the language in the introductory sentence of Section 6-10-126, clearly indicates that it only applies to situations in which the debtor has granted a waiver of exemption, and is not an independent exemption statute. *Stewart at 395*. In the context of bankruptcy, Judge Mitchell has also held that Section 6-10-126 does not create an additional exemption and does not permit Debtors to exempt property of an unlimited value, regardless of whether specifically enumerated in section 6-10-126. *In re Morris*, No, 07-01781 (Bankr.N.D. Ala. July 18, 2007.) Thus, this Court concludes consistent with its reading of the plain language of Section 6-10-126 and the rulings of numerous other courts that have considered this issue, that Alabama Code Section 6–10–126 simply protects certain personalty from a waiver made by the debtor but does not create rights separate and distinct from those delineated in Alabama Code Section 6–10–6 which provides for personal property exemptions.

CONCLUSION

For these reasons, it is hereby ORDERED, ADJUDGED, and DECREED that the Chapter 13 Trustee’s Objection to the Debtor’s Exemptions is SUSTAINED and the Debtor’s claimed exemption in the Freightliner under Ala. Code §6-10-126 is DISALLOWED.

Dated: June 5, 2024


JERRY OLDSHUE
CHIEF U.S. BANKRUPTCY JUDGE