

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

IN RE: )  
 )  
Thomas Leroy Dickey and )  
Elizabeth Walker Dickey, ) Case No. 24-12681  
 )  
Debtors. )

ORDER ON OBJECTION TO EXEMPTIONS

This case is before the court on the chapter 13 trustee's objection (doc. 22) to debtor's claim of exemptions on several insurance policies. The objection states as follows: "Schedule C exempts 3 separate whole life insurance policies through Mutual of Omaha using Ala. Code 6-10-8, 27-14-29. Trustee requests a copy of each whole life insurance policy." The court entered an order (doc. 65) for the trustee to file a brief, which must "include a statement – with specificity – of the question(s) that the trustee is asking the court to decide." The parties filed a stipulation (doc. 72) of agreed facts, but the only issue currently before the court based on the trustee's brief (doc. 68) is "whether the holder of a life insurance policy is entitled to exempt any or all of the 'cash value' of such whole life insurance policy or if such exemption is only available to the beneficiary under such policy."

Alabama's exemptions for life insurance policies are found at Alabama Code §§ 6-10-8 and 27-14-29 and come in several different flavors. The statutes are not easy to interpret, and the ability to exempt a policy depends on several factors, including the identity of the owner, the identity of the insured, whether the beneficiary is a spouse of the insured, or whose creditors are at issue. Judge William Sawyer explained the different types of Alabama life insurance exemptions in *In re Rudd*, 483 B.R. 354 (Bankr. N.D. Ala. 2012). But the parties here seek the

answer to an underlying question: can the owner of a life insurance policy – as opposed to the beneficiary – claim the exemption in his own bankruptcy?

Both statutes at issue are written in terms of the beneficiary being entitled to the insurance policy proceeds and avails. Under Alabama Code § 6-10-8,

[i]f a policy of insurance . . . is effected by any person or his or her own life or on another life in favor of a person other than himself or herself . . . the lawful beneficiary . . . , other than the insured or the person so effecting such insurance, . . . shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same . . . . A husband or a wife, in his or her own name or in the name of a trustee, may insure the life of his or her spouse for the benefit of himself or herself, or for the benefit of himself or herself and any child or children of the marriage; or a husband or a wife may insure his or her own life for the benefit of his or her spouse, or for the benefit of his or her spouse and children, or for the benefit of their children, either in the names of such children or in the name of a trustee; and such insurance and the proceeds and avails thereof . . . is exempt from liability for the debts or engagements of the insured, or for the torts of the insured, or for any penalty or damages recoverable of the insured.

(Emphasis added). Under this statute, the exemption against the owner's creditors does not apply if the owner is the beneficiary, unless the insured is the owner's spouse. *See In re McWhorter*, 312 B.R. 695, 696-97 (Bankr. N.D. Ala. 2004).

Under Alabama Code § 27-14-29,

(a) If a policy of insurance . . . is effected by any person on his life or on another life in favor of a person other than himself . . . the lawful beneficiary . . . , other than the insured or the person so effecting the insurance or his executors or administrators, shall be entitled to its proceeds and avails against the creditors, personal representatives, trustees in bankruptcy, and receivers in state and federal courts of the person insured and of the person effecting the insurance . . . .

(b) If a policy of insurance . . . is effected by any person on the life of another in favor of the person effecting the same . . . , the latter shall be entitled to the proceeds and avails of the policy as against the creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts of the person insured. If the person effecting such insurance, or the assignee of such insurance, is the wife of the insured, she shall also be entitled to the proceeds and avails of the policy as against her own creditors, personal representatives, trustees in bankruptcy, and receivers in state and federal courts.

(Emphasis added). “The exemption provided under paragraph (a) of this section is limited as to the creditors of the insured and/or policy owner. While paragraph (b) appears to extend an exemption to the beneficiary-spouse, that exemption only applies if the beneficiary-spouse was the person who effected the insurance.” *In re McWhorter*, 312 B.R. at 697; *see also In re Rudd*, 483 B.R. at 360.

Although both statutes speak in terms of the beneficiary taking the life insurance proceeds/avails free and clear from creditors of the owner, two Alabama bankruptcy courts have held that the owner is also entitled to claim the exemption in his own bankruptcy case (assuming the other statutory requirements are met). In *In re Morris*, 30 B.R. 392 (Bankr. N.D. Ala. 1983), the debtor owned six life insurance policies with his sons as beneficiaries. The court held that the debtor as owner could exempt the policies in his bankruptcy case under Alabama Code § 6-10-8:

From the language of the statute itself and interpretative case law, the purpose of the statute is not to set aside an exemption for the benefit of the debtor, but to provide for the maintenance and support of a class of people, primarily the spouse and children. While the benefit inures directly to the named beneficiary, it is an exemption of the debtor, which he can claim regardless of the power to change the name of the beneficiary.

*Id.* at 395 (internal citations omitted). Similarly, in *In re Hyde*, 200 B.R. 694 (Bankr. N.D. Ala. 1996), the debtor owned two policies under which he was insured and his wife was the beneficiary. The court cited *In re Morris* with approval and held that the debtor-owner could claim the exemption in his own bankruptcy:

It is clear from the plain language of the statutes and from the analysis set forth in *In re Morris* that insurance on the life of any person is exempt against the creditors of the insured and policyowner under Sections 27-14-29 and 6-10-8. In addition, subsection 27-14-29(c) of Alabama Code includes the cash surrender

value of a life insurance policy in the definition of proceeds and avails. Accordingly, the subject life insurance policies and the cash surrender of such policies are exempt against the creditors of the debtor.

200 B.R. at 695-96.

This result make sense. If the owner could not claim the exemption in bankruptcy against his own creditors, the exemption for the benefit of beneficiaries would be lost. There is no mechanism by which a beneficiary could claim an exemption in the owner's bankruptcy case. This court will thus follow *In re Morris* and *In re Hyde* and holds that – assuming the other statutory requirements have been met – the owner of a life insurance policy is entitled to claim the life insurance exemption in his or her bankruptcy case.

The court is not reaching a final decision at this time about whether the policies involved in this particular case are exempt and resets the trustee's objection for further hearing at 8:30 a.m. on June 18, 2025, Courtroom 2 West, 113 St. Joseph Street, Mobile, AL 36602.<sup>1</sup> If the parties resolve the exemption issues before the hearing, they should promptly notify the undersigned's law clerk.

Dated: June 10, 2025

  
HENRY A. CALLAWAY  
U.S. BANKRUPTCY JUDGE

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<sup>1</sup> The court notes from the parties' stipulation that it appears that at least one the policies at issue has no cash value at all (if it can even be considered a whole life insurance policy).