IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

In Re:

RODNEY DIXON DORAND, Case No. 21-30205

Debtor.

PRELIMINARY ORDER ON OBJECTIONS TO EXEMPTIONS AND ORDER SETTING STATUS CONFERENCE

The debtor Rodney Dixon Dorand is in chapter 7 bankruptcy. Creditors the Estates of Robert Moss and Brenda Moss by Danae Brown, Executrix, and the Estates of Charles Saunders and Peggy Saunders by Amanda Andrews, Administrator,[1] and the chapter 7 trustee have objected (docs. 35, 79) to the debtor's claim of exemptions as to several assets: (1) an Individual Retirement Account ("IRA"), the funds from which (about $814,000) are currently held by the trustee; (2) about $11,000 in social security funds; (3) real property located at 58 Dunetop Terrace, Santa Rosa Beach ("Dunetop"); and (4) a life insurance policy with a cash value of about $145,000.

Following a non-evidentiary hearing on the objections, Judge Karen Specie entered an order (doc. 116) in September 2021 stating, among other things, that "[b]ecause of the volume of materials submitted, the varied legal issues, and the parties' inability to agree on what issues need evidence (even after a 2.5-hour, non-evidentiary hearing), it remains unclear precisely what each party asserts as to each asset claimed exempt." (*See id.*, at pp. 2-3). Judge Specie ordered further briefing, including that the parties attach "copies of evidentiary documents they claim prove their version of the facts" and provide "copies of all exhibits of record on which they rely." (*See id.*, at pp. 3, 18). After Judge Specie reassigned the case in February 2022, the undersigned entered a supplemental

[1] The court will refer to the plaintiffs as either "plaintiffs" or "the Alabama creditors."

order (doc. 171) "that all of the pleading, briefing, and exhibits related to the exemption issues . . . be submitted to the court in binders so that the court has all written argument and evidence related to the exemption issues in one place."

The parties have now fully briefed the exemptions issues and submitted voluminous exhibits notebooks. Based on the court's careful review of the parties' submissions, the record here, and the relevant law, the court issues the following preliminary order and sets this case for a further status conference.

Background

The debtor and his then-wife Barbara Dorand established the "Rodney D. and Barbara H. Dorand Living Trust" ("the Living Trust") in 1997. (*See* trust agreement, doc. 180-10). The Living Trust is a self-settled trust which became irrevocable upon Barbara's death in 2016.

In January 2015, the Circuit Court of Tallapoosa County, Alabama entered a judgment (doc. 182-1) in favor of the Alabama creditors for $1.6 million against the debtor and seven others in a suit arising out of a failed condominium development. Four years later, the state court defendants filed a motion to set aside the state court judgment, which was denied on September 30, 2019. (*See* state court order and docket, docs. 182-3 and 182-10). The creditors domesticated the judgment in Florida in December 2020. (*See* doc. 182-9; creditors' amended claim no. 1).

A writ of garnishment was issued to Morgan Stanley, the custodian of the debtor's IRA, in the Alabama state court. The debtor filed a "Claim of Exemption" to the writ in October 2020 (docs. 67-1,[2] 182-6) and an "Amendment to Claim of Exemptions" in December 2020 (doc. 182-7). The Alabama creditors contested the exemption (doc. 67-2). The state court held a hearing on

[2] The creditors did not refile certain exhibits into the record, but included exhibits from previous filings with their exhibit notebooks.

December 21, 2020 and denied the claim of exemption on January 4, 2021. (*See* transcript, doc. 180-5; order, docs. 67-4, 182-8). In January 2021, the state court entered a judgment and then an amended judgment against garnishee Morgan Stanley, the custodian of the IRA, for $856,622.39. (*See* judgments, doc. 180-1). The debtor then filed for chapter 7 bankruptcy on April 1, 2021.

Legal Analysis

For different reasons, the debtor and creditors argue that assets of the Living Trust are not property of the bankruptcy estate. The court disagrees and will first set out its analysis on what constitutes property of the estate. The court will next address claim and issue preclusion. Finally, the court will discuss the exemptability of four assets of the estate: the IRA, the social security funds, Dunetop, and the life insurance policy.

The Living Trust

Because both Rodney and Barbara Dorand had children from previous marriages, the Living Trust maintains Rodney and Barbara's separate interests in property: "Any separate property, including any individual interests in property, and the proceeds from such property, which is or becomes trust property, shall remain the separate property of a Trustmaker." (*See* trust agreement, doc. 180-10, at p.3-2). On Barbara's death, the trust property was divided into two separate trusts: the Marital Trust and the Family Trust (which is not at issue). (*See id.*, at p.8-1).

The Marital Trust consists of the debtor's "interest in the community portion of the trust property, if any, and his . . . separate portion of the trust property." (*See id.*). There is also a provision related to minimizing the estate tax on Barbara's estate. The debtor is and at all relative times has been both trustee and beneficiary of the Living Trust. (*See* debtor's resp. to trustee's obj. to exemptions, doc. 100, at p.2).

The Marital Trust is divided into two shares, with all of the debtor's portion going into Marital Share One:

> **a. Marital Share One**
>
> Our Trustee shall allocate all of the surviving Trustmaker's separate portion of the trust property and all of the surviving Trustmaker's community portion of the trust property, if any, to Marital Share One.
>
> **b. Marital Share Two**
>
> Marital Share Two shall consist of the balance, if any, of the property passing to the Marital Trust.
>
> If any allocation under this Article results only in the funding of Marital Share One, our Trustee shall administer this agreement as if Marital Share Two did not exist.

(Trust agreement, doc. 180-10, at p.9-1). The parties have not identified any assets which would be in Marital Share Two.

As both trustee and beneficiary, the debtor has the right to pay himself both income and principal from the Marital Trust:

> **a. The Surviving Trustmaker's Right to Income**
>
> Our Trustee shall pay to or apply for the surviving Trustmaker's benefit, at least monthly during the surviving Trustmaker's lifetime, all of the net income from Marital Share One.
>
> **b. The Surviving Trustmaker's Right to Withdraw Principal**
>
> Our Trustee shall pay to or apply for the surviving Trustmaker's benefit such amounts from the principal of Marital Share One as the surviving Trustmaker may at any time request in writing.
>
> No limitation shall be placed on the surviving Trustmaker as to either the amount of or reason for such invasion of principal.

(*Id.*, at p.9-2).

The trust agreement provides that the validity of the agreement is "determined by reference to the laws of the State of Alabama." (*See id.*, at p.18-7). But questions about "the construction or

administration of the various trusts contained in th[e] trust] agreement [are] determined by reference to the laws of the state in which the trust is then currently being administered." (*See id.*).

Bankruptcy Code § 541 "provides that, with some exceptions, 'all legal or equitable interests of the debtor in property as of the commencement of the case,' is property of the estate and subject to administration by a chapter 7 trustee." *See In re Romagnoli*, 631 B.R. 807, 814 (Bankr. S.D. Fla. 2021) (citation omitted). "A chapter 7 trustee 'stands in the shoes' of a debtor with respect to the debtor's interest in assets which become part of the estate." *Id.* (citation omitted). But "the trustee takes no greater rights than the debtor himself had." *Id.* (citation, quotation marks, and brackets omitted). "Where the debtor's interest is in a trust, the trustee acquires only those interests that the debtor had in the trust." *Id.* at 814-15. The parties do not dispute the validity of the trust agreement, so the court applies the law of Florida, the state in which the Living Trust is being administered.

Florida has adopted the Uniform Trust Code. *See In re Rensin*, 600 B.R. 870, 881 (Bankr. S.D. Fla. 2019). Under Florida Statutes § 736.0505, "[w]hether or not the terms of a trust contain a spendthrift provision, [w]ith respect to an irrevocable trust, a creditor . . . may reach the maximum amount that can be distributed to or for the settlor's benefit."[3] If the trustee of an irrevocable trust "'has discretion to distribute the entire income and principal to the settlor, the effect of this

[3] Alabama Code § 19-3B-505 is the same. *See also generally In re Tait*, No. 08-01015, 2008 WL 4183341 (Bankr. S.D. Ala. Sept. 10, 2008). While the Living Trust contains a spendthrift provision (*see* doc. 180-10, at p.18-4), that provision states that trust property cannot be used to satisfy the claims of creditors "except for our interests in the various trusts or trust property subject to this agreement" and "other than our creditors to the extent of each of our respective interest in the trust or trust property." In other words, the exception swallows the rule and creditors of the debtor can reach the trust property. At any rate, under Florida law, a spendthrift provision in a self-settled trust has no effect. *See In re Brown*, 303 F.3d 1261, 1267-68 (11th Cir. 2002); *In re Rensin*, 600 B.R. at 880.

subsection is to place the settlor's creditors in the same position as if the trust had not been created.'" *See In re Rensin*, 600 B.R. at 881 (citation omitted).

The debtor (who is also trustee) has discretion to distribute the entire Martial Share One of the Marital Trust corpus to himself. Under Florida law, then, his creditors can "attach any and all assets of the trust. Put another way, the assets in the [Marital Trust] are not protected from execution under Florida law." *See In re Rensin*, 600 B.R. at 881. Thus, the assets of the Marital Trust are property of the estate under § 541 and "are subject to administration in this bankruptcy case." *See id.*; *see also In re Murphy*, No. 6:04-ap-154, 2007 WL 3054989, at *11 (Bankr. M.D. Fla. Oct. 16, 2007) (assets in an irrevocable trust for which the debtor was both settlor and beneficiary "would certainly constitute property of the bankruptcy estate, subject to administration for the benefit of [the debtor]'s creditors"). Of course, the trust assets are still subject to applicable Florida exemptions. *See In re Rensin*, 600 B.R. at 881-82.

Claim and issue preclusion

The debtor's claim of exemptions in this bankruptcy are based on Florida law. The Alabama creditors and trustee argue the Full Faith and Credit Doctrine and Alabama preclusion law bar the debtor's claim of exemptions related to the IRA, social security benefits, and life insurance.

After his IRA was garnished in the Alabama state court action, the debtor claimed the following exemptions under Alabama Rule of Civil Procedure 64A (*see* doc. 67-1) with no specific mention of Florida law:

- "Head of family wages." [The court notes that this exemption is available in Florida but not Alabama.]
- "I provide more than one-half of the support for a child or other depending, have net earnings of more than $750 per week, but have not agreed in writing to have my wages garnished."

- "Social Security benefits."
- "Retirement or profit-sharing benefits or pension money."
- "Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract."

His "Amendment to Claim of Exemptions" (doc. 182-7) contains an inventory of assets, including addresses of the properties he owns and more information about his retirement benefits (the IRA at issue) and life insurance policy but, again, no specific mention of Florida law.

The Alabama creditors filed a contest to the claim of exemption under Alabama Rule of Civil Procedure 64B, enumerating the following objections (*see* doc. 67-2), and did not mention Florida law either:

I. The claim of exemption filed by Rodney Dorand is defective. The claim of exemption does not include an inventory as required by Rule 64B of the Alabama Rules of Civil Procedure. Failure to include the inventory requires the Court to reject the claim of exemption.

II. Rodney Dorand's claimed Individual Retirement Account funds are not exempt from garnishment because Rodney Dorand has engaged in prohibited transactions as defined by the IRS tax code and those funds have lost their exempt status.

III. Any assets of the Rodney D. And Barbara H. Dorand Living Trust are not and have never been subject to any legal protection as retirement funds or subject to any other valid exemption.

IV. There is a personal judgment against the Rodney D. Dorand And Barbara A. Dorand living [sic] Trust which makes all of the assets of the Trust subject to seizure without respect to the interests of any intended beneficiaries of the Trust.

V. Rodney Dorand cannot claim a personal exemption over any assets owned by the Rodney D. And Barbara H. Dorand Living Trust since those funds are not "personal" but are the corpus of a trust, this is true even if Rodney Dorand is the intended beneficiary of the Trust.

VI. The Plaintiffs reserve the right to argue additional grounds for the Court to find the funds are not subject to any valid exemption as the Plaintiffs are still gathering discovery related to these issues.

The state court held a hearing (*see* transcript, doc. 180-5) and Florida exemption law was not raised or argued by either side. The only discussion of any Florida law is in the state court brief in opposition to the debtor's state court claim of exemption in which the Alabama creditors cite three Florida cases. (*See* doc. 67-2, at pp. 11-12). The creditors cited two Florida cases for the proposition that a court may take judicial notice of the contents of its own court file and related to alleged procedural defects in the debtor's claim of exemption pursuant to Alabama Rule of Civil Procedure 64B and the Alabama Code. The creditors cited a third case for what constitutes a prohibited transaction under federal law with respect to an IRA.

The Alabama state court order denying the exemptions states in its entirety:

> This matter is before the Court on a Claim of Exemption filed by Rodney Dorand, who is a judgment debtor herein. The claim was relative to garnishments filed by the Plaintiffs. The Plaintiffs filed a proper contest to the claim of exemption, making both procedural and substantive challenges to the same. After consideration of all pleadings, exhibits, submissions, and oral argument, the Claim of Exemption filed by Defendant is hereby DENIED.

(Docs. 67-4, 182-8).

"The Full Faith and Credit Doctrine requires a court to accord the same preclusive effect to a judgment as would the rendering court." *In re Cody*, 297 B.R. 906, 909 (Bankr. M.D. Fla. 2003). The practical effect of this doctrine is that this court applies Alabama preclusion law to the state court's exemption order. *See In re Harris*, 2021 WL 2946295, at *2 (11th Cir. July 14, 2021); *Beem v. Ferguson*, 713 F. App'x 974, 983 (11th Cir. 2018).

Both issue and claim preclusion require identity of parties, a point on which there is no dispute. In addition, claim preclusion (sometimes called res judicata) under Alabama law requires:

(1) A prior judgment on the merits;

(2) rendered by a court of competent jurisdiction;

(3) with the same cause of action presented in both actions.

See Chapman Nursing Home, Inc. v. McDonald, 985 So. 2d 914, 919 (Ala. 2007). If these elements are met, "'then any claim that was, or that could have been, adjudicated in the prior action is barred from further litigation.'" *See Bond v. McLaughlin*, 229 So. 3d 760, 767 (Ala. 2017) (citation omitted). Claim preclusion does not apply "to bar a claim that could not have been brought in a prior action." *See id.* at 767-68.

For issue preclusion (also known as collateral estoppel) to apply under Alabama law:

(1) the issue must be identical to the one involved in the previous suit;

(2) the issue must have been actually litigated in the prior action; and

(3) the resolution of the issue must have been necessary to the prior judgment.

See McCulley v. Bank of Am., N.A., 605 F. App'x 875, 878 (11th Cir. 2015); *Lee L. Saad Constr. Co. v. DPF Architects, P.C.*, 851 So. 2d 507, 520 (Ala. 2002). "'Only issues *actually decided* in a former action are subject to" issue preclusion. *See Lee L. Saad Constr. v. DPF*, 851 So. 2d at 520 (citation omitted) (emphasis in original).

This court does not believe that claim preclusion applies. At the outset, the court doubts that an Alabama court would find a defendant's claim of exemptions is a "cause of action" that will support a "judgment" for purposes of claim preclusion or that such court would allow the creditors' offensive use of claim preclusion (*i.e.*, as a sword not a shield) in this context. *See Austill v. Prescott*, 293 So. 3d 333, 354-56 (Ala. 2019) (Mitchell, J., concurring).

Even so, the debtor's entitlement to an exemption is determined as of the date the debtor filed for bankruptcy. *See In re Yerian*, 927 F.3d 1223, 1229 (11th Cir. 2019). The debtor's entitlement to exemptions as of the bankruptcy was not and thus could not have been presented as a defense in the state court action.[4] *See generally In re States*, 237 B.R. 847 (Bankr. M.D. Fla. 1999) (applying

[4] The trustee mentions *Rooker-Feldman* in her brief, but that doctrine is inapplicable for the same reason.

Florida claim preclusion law, which also requires the same cause of action); *see also Bond*, 229 So. 2d at 767-68. The United States Supreme Court in *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 140 S. Ct. 1589 (2020), has questioned so-called "defense preclusion" when the defense necessarily could not have been raised below. Nor has this court located any law that the state court even could or should have considered another state's exemption law rather than Alabama or federal exemptions.[5] In any case, the evidence before the court is ambiguous at best as to whether the state court considered Florida exemption law; Florida law was barely mentioned except for the three cases discussed above, none of which were cited for any Florida exemption. While the creditors argue that the state court applied Florida law, nothing in the state court record – including the state court order denying the debtor's claim of exemptions – sheds much light on that issue.[6]

Issue preclusion does not apply, either. As with claim preclusion, the issue of the debtor's exemption at the time of the bankruptcy filing was not and could not have been litigated in the state court case, nor was resolution of that issue necessary to the state court's order. Again, the evidence does not show that identical issues were involved because it is unclear whether the Florida exemptions were actually litigated. *See, e.g.*, *In re Allen*, 203 B.R. 786, 794 (Bankr. M.D. Fla. 1996) (discussing "actually litigated" requirement). Even if they were, there is no evidence that resolution of those exemptions was necessary to the state court's order. The state court pointed out that both procedural and substantive grounds were raised; it did not state whether it was denying the exemptions on procedural grounds, substantive grounds, or both.

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[5] The trustee states in her brief (doc. 182, at p.7) that "Alabama does not allow Debtors to claim extraterritorial exemptions."

[6] Judicial estoppel does not prohibit the debtor from arguing that the state court did not consider Florida law, as nothing in that record shows that Florida law was specifically raised in that court. And the court has already pointed out that the state court could not have decided the issue of the applicability of Florida exemptions at the time the debtor filed for bankruptcy.

Therefore, the court preliminarily rejects the creditors' and trustee's argument that the exemptions related to the IRA, social security funds, and life insurance should be overruled based on preclusion principles.

The IRA

Over 20 years ago, the debtor created an IRA account with Morgan Stanley. In June 2016, the Living Trust made two transfers totaling $16,500 (one for $6,500 and one for $10,000) to the IRA. The debtor has claimed the total cash value of the IRA as exempt. In general, an IRA is exempt under Florida Statutes § 222.21(2)(a). The Alabama creditors argue that (1) the debtor testified in the state court action that the Living Trust owned the IRA, and thus the IRA is no longer exempt because 26 U.S.C. § 408 limits IRA ownership to an individual;[7] (2) transfers into the IRA of $6,500 and $10,000 forfeited the IRA's exempt status; and (3) the Alabama state court judgment against Morgan Stanley for $856,622.39 created a right of setoff in favor of Morgan Stanley under Bankruptcy Code § 553 and those funds never became property of the estate.

The debtor's deposition testimony – without the benefit of any account documents – that he believed the Living Trust owned the IRA is not dispositive and does not warrant the application of judicial estoppel argued by the creditors. *See Slater v. U.S. Steel Corp.*, 871 F.3d 1174, 1181 (11th Cir. 2017) ("Judicial estoppel should not be applied when the inconsistent positions were the result of inadvertence or mistake because judicial estoppel looks towards cold manipulation and not an unthinking or confused blunder.") (citation, quotation marks, and brackets omitted); *see also Belkova v. PNC Bank, N.A.*, No. 3:18-ap-0180-JAF, 2020 WL 5745969, at *2 (Bankr. M.D. Fla. Mar. 25,

[7] The trustee contends on page 5 of her brief (doc. 182) that the IRA was never transferred into the Living Trust, "there was merely a change of address."

2020) (judicial estoppel is "'invoked at a court's discretion'") (citation omitted).[8] While that mistaken testimony created confusion at the outset, the documentary evidence and deposition testimony of Morgan Stanley's corporate representative Staci Corley have since established that the IRA was always in the debtor's individual name. That same evidence also shows that the $10,000 transfer was a qualified rollover from his deceased wife's IRA and that the $6,500 transfer was an allowable "catchup" contribution by the debtor. (*See, e.g.*, Corley dep., doc. 180-3, at 23:4-24:5, 33:16-22, 43:18-46:2, and ex. 8).

The state court judgment against garnishee Morgan Stanley does not affect the IRA's exempt status, either. That order (*see* doc. 180-1) states in pertinent part:

> The Judgment amount represents moneys Morgan Stanley . . . has admitted holding in accounts owned by either Rodney Dorand individually or the Rodney D. and Barbara H. Dorand Living Trust including an account designated as an Individual Retirement Account by Rodney Dorand. Morgan Stanley . . . is authorized to set-off this payment from any funds in its possession and held for the benefit of either Rodney Dorand individually or the Rodney D. Dorand and Barbara H. Dorand Living Trust. This specifically includes the right of Morgan Stanley to set-off funds held in an account designated as an Individual Retirement Account. Rodney Dorand's claim of exemption as to retirements funds was denied by the Court at Document 450. Upon remittance of these funds to the Circuit Clerk of Tallapoosa County, Alabama the judgment against Morgan Stanley . . . will be satisfied.

Under the order, Morgan Stanley may set off only if and when it pays the state court judgment – which has not happened. The debtor owes no debt to Morgan Stanley and there is no mutuality under Bankruptcy Code § 553. *See In re McKay*, 420 B.R. 871, 877 (Bankr. M.D. Fla. 2009) ("The elements of setoff are not present. The parties do not owe mutual prepetition debts to each other."). Similarly, Bankruptcy Code § 544 does not apply because the debtor owes no debt to Morgan Stanley.

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[8] Judicial estoppel may not apply at all since the debtor's statement was made in a deposition in this proceeding, not a separate proceeding. *See Radenhausen v. U.S. Coast Guard*, No. 3:13-cv-268-J-39JRK, 2015 WL 12861136, at *6-7 (M.D. Fla. Jan. 30, 2015).

The court will hold an evidentiary hearing on the IRA exemption if the trustee and creditors request one. The court does not propose for the parties to rehash arguments already made. But based on the evidence currently before it, the court will find that the creditors and trustee have not met their burden under Federal Rule of Bankruptcy Procedure 4003(c) to show that the IRA exemption is improper.

The social security funds

In his schedules (doc. 24), the debtor claims as exempt "[f]our months of Social Security payments" in a Morgan Stanley account in the amount of $11,176.00 under Florida Statutes § 222.201 and Bankruptcy Code § 522(d)(10)(A).[9] The Morgan Stanley account is held by the Living Trust and, for the reasons set forth above, is property of the bankruptcy estate unless otherwise exempt. The court agrees with the debtor that the funds are traceable and retain their exempt status because the Morgan Stanley Account Records (*see* doc. 67-3) identify when funds from social security were transferred into the account. *See In re Belmont*, No. 6:15-bk-03714-CCJ, 2015 WL 7717203, at *1 (Bankr. M.D. Fla. Nov. 23, 2015).

The court has been unable to identify which four months are at issue. Each deposit appears to be in the amount of $2,585.70, in which case four months would be $10,342.80, not $11,176.00. While the court agrees that the funds are traceable, there are different methods for determining

[9] Although Florida has opted out of the exemption schedule of the Bankruptcy Code, Florida Statutes § 222.201 allow an individual debtor to also exempt "any property listed in" Bankruptcy Code § 522(d)(10). *See In re Ladd*, 258 B.R. 824, 826 (Bankr. N.D. Fla. 2001). The debtor chose to take the exemption in § 522(d)(10)(A), which means "he may exempt, among other things, his right to receive a future social security benefit, but not an accumulated benefit that has already been distributed." *See Matter of Treadwell*, 699 F.2d 1050, 1052 (11th Cir. 1983) (citation, quotation marks, and brackets omitted); *see also In re Pomar*, 234 B.R. 135, 137 (Bankr. M.D. Fla. 1993). No party raised this issue, though, and the debtor can amend his schedules to claim the federal statutory exemption under 42 U.S.C. § 407. *See Matter of Treadwell*, 699 F.2d at 1052-53.

whether the traceable exempt funds ever left the account. *See, e.g.*, *In re Tydings*, No. 19-20889-drd-7, 2020 WL 1510025, at *2-3 (Bankr. W.D. Mo. Mar. 27, 2020) (setting forth "a simplified explanation of each of the most common tracing methods"); *see also generally In re Wharton-Price*, No. 9:15-bk-03126-FMD, 2015 WL 4230856 (Bankr. M.D. Fla. July 6, 2015). This court intends to apply the pro rata or percentage method.

If the parties intend to go forward with this issue, the court will hold an evidentiary hearing and will require the debtor to (1) state which four months are at issue and how the debtor arrived at the amount of $11,176.00; (2) identify what documents support that contention; (3) disclose whether funds ever left the account after each deposit and up to the petition date, and include documents evidencing all deposits and withdrawals from the date of the disputed deposits up to the petition date; and (4) if funds did leave the account, state whether he agrees with the court's application of the pro rata approach and, if not, why the court should not apply that approach in determining the exemption if funds did leave the account. The court expects the parties to attempt to agree on an exempt amount before any hearing, as this is a relatively low-dollar amount which does not justify extensive litigation.

Dunetop

Dorand has lived at Dunetop since 2013. In October 2016, Dorand established the Rodney D. Dorand Revocable Trust ("Dorand Revocable Trust"). Around the same time, Dorand's daughter and son-in-law conveyed Dunetop by warranty deed to "RODNEY D. DORAND (and successors thereto), Trustee of the Rodney D. Dorand Revocable Trust . . . ." (*See* doc. 180-6; *see also* Dorand dep., doc. 67-3, at 22:13-25). The funds (in the amounts of $150,000, $275,000, $5,000, and $12,470.95) to purchase Dunetop came from the Living Trust. (*See* debtor br., doc. 180, at p.17; *see also* Dorand dep., doc. 67-3, at 38:10-39:6).

The debtor contends that Dunetop is exempt in its entirety under Florida's homestead exemption. The trustee argues that the Dorand Revocable Trust's ownership of Dunetop "has a substantial effect on the exempt status of the property" (*see* trustee br., doc. 182, at p.10) and that all the debtor has is a life estate interest. The Alabama creditors argue, based on *First National Bank of Chipley v. Peel*, 145 So. 177 (Fla. 1933), that Dunetop is not exempt because the Alabama state court judgment was entered before Dorand acquired Dunetop. They also argue that any exemption is lost under Bankruptcy Code § 522(o).

The court will first address the trustee's arguments. Revocable trusts "are widely used will-substitute devices that provide flexibility in managing the settlor's assets during his or her lifetime. In other contexts, revocable trusts are treated similarly to wills." *See Engelke v. Estate of Engelke*, 921 So. 2d 693, 697 (Fla. Dist. Ct. App. 2006). Under Florida Statute § 736.0505, part of the Florida Trust Code, "[t]he property of a revocable trust is subject to the claims of the settlor's creditors during the settlor's lifetime to the extent the property would not otherwise be exempt by law if owned directly by the settlor." In other words, as recognized by another Florida bankruptcy court, the chapter 7 trustee's ability to reach the debtor's interest in property in a trust is limited by applicable Florida exemptions such as the homestead exemption. *See In re Romagnoli*, 631 B.R. 807, 813-17 (Bankr. S.D. Fla. 2021). Indeed, the homestead exemption is sacrosanct under Florida law. *See, e.g.*, *In re Edwards*, 356 B.R. 807, 810-11 (Bankr. M.D. Fla. 2006); *In re Potter*, 320 B.R. 753, 759 (Bankr. M.D. Fla. 2006). The Dorand Revocable Trust's ownership of Dunetop does not affect the exemption. *See In re Romagnoli*, 631 B.R. at 813-17; *see also generally In re Alexander*, 346 B.R. 546 (Bankr. M.D. Fla. 2006). Further, even if all the debtor has is a life estate, the Dorand Revocable Trust is the owner of the remainder interest and the homestead exemption would still apply under the analysis of *In re Romagnoli*, 631 B.R. 807, and *In re Alexander*, 346 B.R. 546.

Turning to the creditors' arguments, in *Peel* and cases applying it (*see* creditors' br. on homestead exemption, doc. 184, at pp. 10-15), the debtors owned non-exempt real property at the time a judgment was entered against them, so the lien attached to the property at that time. The debtors then converted or tried to convert the property (which they already owned) into their homestead to avoid the judgment lien, even though the property had not been their homestead and was not exempt at the time the judgment lien was perfected. That is not the case here, where Dunetop has been the debtor's homestead the entire time he has owned it.

However – and this is a big however – Bankruptcy Code § 522(o) requires the court to reduce the debtor's homestead exemption to the extent such value is attributable to any portion of any non-exempt property that the debtor disposed of within 10 years of the bankruptcy filing with the intent to hinder, delay, or defraud a creditor. *See In re Roberts*, 527 B.R. 461, 473 (Bankr. N.D. Fla. 2015). The debtor argues that § 522(o) does not apply because the funds used to purchase Dunetop came from the Living Trust, not the debtor. (*See* debtor br., doc. 180, at p.19). As discussed above, the court disagrees and finds that the debtor's portion of the Living Trust assets were under the debtor's control and were subject to the claims of the debtor's creditors under Florida law, such that they constitute "property that the debtor disposed of" under § 522(o). If the creditors and trustee prove fraudulent intent, *see generally In re Roberts*, 527 B.R. 461, the debtor's exemption in Dunetop will be lost to the extent of any value attributable to non-exempt funds used to purchase it. The court will set this issue – whether the debtor's homestead exemption may be lost under § 522(o) and to what extent – for an evidentiary hearing.

Life insurance

Florida Statutes § 222.14 exempts "the cash surrender value of life insurance policies issued upon the lives of citizens or residents" of Florida, with an exception that does not apply here.

However, "[t]his provision . . . has been interpreted to only protect policies in which the owner is also the insured." *See Clampitt v. Wick*, 320 So. 3d 826, 831 (Fla. Ct. App. 2021) (emphasis in original). Other courts disagree. *See In re Rensin*, 600 B.R. 870, 882 (Bankr. S.D. Fla. 2019) (ownership of annuity by trust did not affect exemption).

The debtor here does not personally own the policy. The life insurance annual report dated February 2020 (doc. 180-9) shows the Living Trust as the policy owner and the debtor as the insured. There is no evidence that the ownership of the policy changed between the date of the report and the petition date in April 2021. Although the trust assets (as discussed above) are subject to the claims of creditors and part of the debtor's estate, the trust is a separate legal entity. The court has not been able to find any Florida case law directly on point regarding insurance policies owned by living trusts, possibly because it does not often occur.

Even if it is exempt, there is another potential issue with the life insurance policy. The evidence currently before the court is that the debtor repaid a loan on the policy in the amount of $137,609.85 from the Living Trust account shortly after losing a motion in state court (*see* Morgan Stanley Account Details, docs. 182-4 and 182-5; Dorand dep., doc. 67-3, at 45:11-23) – thus converting a non-exempt asset into an exempt asset (assuming that the policy is exempt). Although this situation does not fall within Bankruptcy Code § 522(o) because it does not involve a homestead, the conversion of nonexempt assets into exempts assets can constitute a voidable fraudulent transfer. *See* Florida Statutes § 222.29 and 222.30(2) ("Any conversion by a debtor of any asset that results in the proceeds of the asset becoming exempt by law from the claims of a creditor of the debtor is a fraudulent asset conversion as to the creditor, whether the creditor's claim to the asset arose before or after the conversion of the asset, if the debtor made the conversion with the intent to hinder, delay, or defraud the creditor."); *In re Allen*, 203 B.R. 786, 791-92 (Bankr. M.D. Fla. 1996); *Clampitt*, 320 So. 3d at 830 n.1.

Given the unclear status of the law on the issues of whether ownership is an exemption requirement and whether ownership by a living trust would suffice, plus the potential necessity of an evidentiary hearing on the fraudulent transfer issue, the court reserves ruling on the life insurance policy pending further proceedings and discussion with the parties.

Conclusion

This is a preliminary ruling, not a final order. The court intends to issue a final order ruling on all the exemption issues after it has completed the evidentiary hearings discussed in this order. The court sets this case for a telephonic status hearing on July 11, 2022 at 9:00 a.m. to discuss how to proceed further with this case, including a potential global mediation of all issues and dates for evidentiary hearings in fall 2022. The conference call dial-in number is 1-877-336-1831, access code 1356129, security code 1886.

Dated: June 10, 2022

Hon. A. Callaway

HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

In Re:

RODNEY DIXON DORAND, Case No. 21-30205

Debtor.

FINAL ORDER ON OBJECTIONS TO EXEMPTIONS (DOCS. 35, 79, 204) AND ORDER CANCELLING PRETRIAL CONFERENCE AND TRIAL

In this chapter 7 bankruptcy case, the trustee and several creditors objected to the debtor's claim of exemptions as to numerous assets. After the court made some preliminary rulings, the parties reached a settlement on everything except the debtor's Individual Retirement Account ("IRA"). This order constitutes the court's ruling on the debtor's exemption of his IRA.

Creditors the Estates of Robert Moss and Brenda Moss by Danae Brown, Executrix, and the Estates of Charles Saunders and Peggy Saunders by Amanda Andrews, Administrator,[1] and the chapter 7 trustee have objected (docs. 35, 79, 204) to the debtor Rodney Dorand's claim of exemptions as to several assets: (1) approximately $814,00 in funds from an IRA; (2) about $11,000 in social security funds; (3) real property located at 58 Dunetop Terrace, Santa Rosa Beach ("Dunetop"); and (4) a life insurance policy with a cash value of about $145,000.

Following a non-evidentiary hearing on the objections, Judge Karen Specie entered an order (doc. 116) in September 2021 stating, among other things, that "[b]ecause of the volume of materials submitted, the varied legal issues, and the parties' inability to agree on what issues

[1] The court will refer to the plaintiffs as either "plaintiffs" or "the Alabama creditors."

need evidence (even after a 2.5-hour, non-evidentiary hearing), it remains unclear precisely what each party asserts as to each asset claimed exempt." (*See id.*, at pp. 2-3). Judge Specie ordered further briefing, including that the parties attach "copies of evidentiary documents they claim prove their version of the facts" and provide "copies of all exhibits of record on which they rely." (*See id.*, at pp. 3, 18). After Judge Specie reassigned the case in February 2022, the undersigned entered a supplemental order (doc. 171) "that all of the pleading, briefing, and exhibits related to the exemption issues . . . be submitted to the court in binders so that the court has all written argument and evidence related to the exemption issues in one place."

The parties fully briefed the exemptions issues and submitted voluminous exhibits notebooks. The court issued a non-final preliminary ruling on the exemption issues. (*See* doc. 196). The parties have since settled the exemption issues related to the social security funds, Dunetop, and the life insurance policy by the debtor agreeing to pay the trustee $300,000 within the next nine months from the sale or refinancing of Dunetop. (*See* motion to approve, doc. 214, and court's order on motion to approve, doc. 228). Based on the agreement of the parties, the court overrules without prejudice as moot the objections related to the social security funds, Dunetop, and life insurance policy. That leaves the IRA.[2]

At the hearing on the motion to approve settlement, the parties agreed to submit the IRA exemption issue to this court for a final order based on the current record without an evidentiary hearing. The court has carefully reviewed the parties' submissions, the record here, and the

[2] The court also notes that Judge Specie stated in her order (doc. 116): "Debtor also claimed a vehicle as exempt. The Trustee and Creditors objected to the extent that Debtor claimed more than $1,000.00 of value in the vehicle exempt. The parties announced at the hearing that there is no dispute that Debtor's vehicle is subject to the $1,000.00 exemption, so the Court does not address the vehicle exemption." (*See id.*, at p.2 n.4).

relevant law, and now issues this final order resolving the remaining exemption issues in this case.

Background

The debtor and his then-wife Barbara Dorand established the "Rodney D. and Barbara H. Dorand Living Trust" ("the Living Trust") in 1997. (*See* trust agreement, doc. 180-10). The Living Trust is a self-settled trust which became irrevocable upon Barbara's death in 2016.[3]

In January 2015, the Circuit Court of Tallapoosa County, Alabama entered a judgment (doc. 182-1) in favor of the Alabama creditors for $1.6 million against the debtor and seven others in a suit arising out of a failed condominium development. Four years later, the state court defendants filed a motion to set aside the state court judgment, which was denied in September 2019. (*See* state court order and docket, docs. 182-3 and 182-10). The creditors domesticated the judgment in Florida in December 2020. (*See* doc. 182-9; creditors' amended claim no. 1).

A writ of garnishment was issued to Morgan Stanley, the custodian of the debtor's IRA, in the Alabama state court. The debtor filed a "Claim of Exemption" to the writ in October 2020 (docs. 67-1,[4] 182-6) and an "Amendment to Claim of Exemptions" in December 2020 (doc. 182-7). The Alabama creditors contested the exemption (doc. 67-2). The Alabama state

[3] The court discussed the assets of the Living Trust at length in its preliminary order (doc. 196) entered on June 10, 2022. The court will not repeat that discussion here, as it is not relevant to the remaining IRA issue.

[4] The creditors did not refile certain exhibits into the record but included exhibits from previous filings with their exhibit notebooks.

court held a hearing in December 2020 and denied the claim of exemption on January 4, 2021. (*See* transcript, doc. 180-5; order, docs. 67-4, 182-8). In January 2021, the state court also entered a judgment and then an amended judgment against garnishee Morgan Stanley, the custodian of the IRA and another non-retirement account, for $856,622.39. (*See* judgments, doc. 180-1). The debtor filed for chapter 7 bankruptcy in April 2021.

Legal Analysis

The Alabama creditors and the trustee have the burden of proving that the debtor's "exemptions are not properly claimed." *See* Fed. R. Bankr. P. 4003(c). The objections to the debtor's claim of exemption in the IRA are based first on claim and issue preclusion and second on the exemptability of the IRA regardless of any potential preclusion. The court discusses each argument in turn below.

Claim and issue preclusion

The debtor's claim of exemptions in this bankruptcy are based on Florida law. The Alabama creditors and trustee argue that the Full Faith and Credit Doctrine and Alabama preclusion law bar the debtor's claim of exemptions related to the IRA.

After his IRA was garnished in the Alabama state court action, the debtor claimed the following exemptions under Alabama Rule of Civil Procedure 64A (*see* doc. 67-1) with no specific mention of Florida law:

- "Head of family wages." [The court notes that this exemption is available in Florida but not Alabama.]

- "I provide more than one-half of the support for a child or other dependent, have net earnings of more than $750 per week, but have not agreed in writing to have my wages garnished."
- "Social Security benefits."
- "Retirement or profit-sharing benefits or pension money."
- "Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract."

His "Amendment to Claim of Exemptions" (doc. 182-7) contains an inventory of assets, including addresses of the properties he owns and more information about his retirement benefits (the IRA at issue) and life insurance policy but, again, no specific mention of Florida law.

The Alabama creditors filed a contest to the claim of exemption under Alabama Rule of Civil Procedure 64B, enumerating the following objections (*see* doc. 67-2), and did not mention Florida law either:

I. The claim of exemption filed by Rodney Dorand is defective. The claim of exemption does not include an inventory as required by Rule 64B of the Alabama Rules of Civil Procedure. Failure to include the inventory requires the Court to reject the claim of exemption.

II. Rodney Dorand's claimed Individual Retirement Account funds are not exempt from garnishment because Rodney Dorand has engaged in prohibited transactions as defined by the IRS tax code and those funds have lost their exempt status.

III. Any assets of the Rodney D. and Barbara H. Dorand Living Trust are not and have never been subject to any legal protection as retirement funds or subject to any other valid exemption.

IV. There is a personal judgment against the Rodney D. Dorand and Barbara A. Dorand Living Trust which makes all of the assets of the Trust subject to seizure without respect to the interests of any intended beneficiaries of the Trust.

V. Rodney Dorand cannot claim a personal exemption over any assets owned by the Rodney D. and Barbara H. Dorand Living Trust since those funds are not "personal" but are the corpus of a trust, this is true even if Rodney Dorand is the intended beneficiary of the Trust.

VI. The Plaintiffs reserve the right to argue additional grounds for the Court to find the funds are not subject to any valid exemption as the Plaintiffs are still gathering discovery related to these issues.

The state court conducted a hearing at which neither side raised or argued Florida exemption law. (*See* transcript, doc. 180-5). The only discussion of any Florida law is in the state court brief in opposition to the debtor's state court claim of exemption in which the Alabama creditors cite three Florida cases. (*See* doc. 67-2, at pp. 11-12). The creditors cited two Florida cases for the proposition that a court may take judicial notice of the contents of its own court file and related to alleged procedural defects in the debtor's claim of exemption pursuant to Alabama Rule of Civil Procedure 64B and the Alabama Code. The creditors cited a third case for what constitutes a prohibited transaction under federal law with respect to an IRA.

The Alabama state court order (docs. 67-4, 182-8) denying the exemptions states in its entirety:

> This matter is before the Court on a Claim of Exemption filed by Rodney Dorand, who is a judgment debtor herein. The claim was relative to garnishments filed by the Plaintiffs. The Plaintiffs filed a proper contest to the claim of exemption, making both procedural and substantive challenges to the same. After consideration of all pleadings, exhibits, submissions, and oral argument, the Claim of Exemption filed by Defendant is hereby DENIED.

"The Full Faith and Credit Doctrine requires a court to accord the same preclusive effect to a judgment as would the rendering court." *In re Cody*, 297 B.R. 906, 909 (Bankr. M.D. Fla. 2003). The practical effect of this doctrine is that this court applies Alabama preclusion law to

the state court's exemption order. *See In re Harris*, 2021 WL 2946295, at *2 (11th Cir. July 14, 2021); *Beem v. Ferguson*, 713 F. App'x 974, 983 (11th Cir. 2018).

Both issue and claim preclusion require identity of parties, which is met here. Claim preclusion (sometimes called res judicata) under Alabama law also requires:

(1) A prior judgment on the merits;

(2) rendered by a court of competent jurisdiction;

(3) with the same cause of action presented in both actions.

See Chapman Nursing Home, Inc. v. McDonald, 985 So. 2d 914, 919 (Ala. 2007). If these elements are met, "'then any claim that was, or that could have been, adjudicated in the prior action is barred from further litigation.'" *See Bond v. McLaughlin*, 229 So. 3d 760, 767 (Ala. 2017) (citation omitted). Claim preclusion does not apply "to bar a claim that could not have been brought in a prior action." *See id.* at 767-68.

The court finds that claim preclusion does not apply here. At the outset, the court doubts that an Alabama court would find a defendant's claim of exemptions is a "cause of action" and that a ruling on exemptions is a "judgment" for purposes of claim preclusion. The court also doubts that the Alabama Supreme Court would allow the creditors' offensive use of claim preclusion (*i.e.*, as a sword not a shield) in this context. *See Austill v. Prescott*, 293 So. 3d 333, 354-56 (Ala. 2019) (Mitchell, J., concurring).

Claim preclusion also does not apply because the "causes of action" are not the same, for two reasons. First, the time for determining the exemption is different in this bankruptcy case than it was in the Alabama state court case. A bankruptcy debtor's entitlement to an exemption is determined as of the date the debtor files for bankruptcy. *See In re Yerian*, 927 F.3d 1223,

1229 (11th Cir. 2019). A defendant's exemption claim in Alabama state court is determined "'according to the state of facts existing at the time when the lien of the execution or other process against the claimant attaches.'" *See Franklin v. Comer*, 54 So. 430, 431 (Ala. 1911) (citation omitted). The debtor's entitlement to exemptions as of the bankruptcy filing was not and could not have been presented as a defense in the earlier state court action.[5] *See generally In re States*, 237 B.R. 847 (Bankr. M.D. Fla. 1999) (applying Florida claim preclusion law, which also requires the same cause of action); *see also Bond*, 229 So. 2d at 767-68. In a non-bankruptcy context, the United States Supreme Court in *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 140 S. Ct. 1589 (2020), has questioned so-called "defense preclusion" when the defense could not have been raised below.

Second, the "causes of action" here – the exemptions claims – are not the same because they arise under the laws of two different states. The exemptions in this bankruptcy case must be determined under the law of Florida, not Alabama, since the debtor has been a Florida resident since 2013. *See* 11 U.S.C. § 522(a)(3)(A). (*See, e.g.*, Dorand dep., doc. 67-3, at 31:8-32:7, 38:10-18). Although the creditors argue that the Alabama court applied Florida exemption law, the state court record – including the order denying the debtor's claim of exemptions – does not support that assertion.[6] Florida law was not mentioned in the state court at all except for the three cases discussed above, none of which were cited for any Florida exemption. This court

[5] The trustee mentions *Rooker-Feldman* in her brief (doc. 182), but that doctrine is inapplicable for the same reason.

[6] Judicial estoppel does not prohibit the debtor from arguing that the state court did not consider Florida law, as nothing in that record shows that Florida law was specifically raised in that court. And the court has already pointed out that the state court could not have decided the issue of the applicability of Florida exemptions at the time the debtor filed for bankruptcy.

has not found or been provided any law that the Alabama state court could or should have applied another state's exemption laws. And the trustee states in her brief (doc. 182, at p.7) that "Alabama does not allow Debtors to claim extraterritorial exemptions."

The trustee and creditors also contend that issue preclusion bars the debtor from claiming the IRA as exempt. For issue preclusion (also known as collateral estoppel) to apply under Alabama law:

(1) the issue must be identical to the one involved in the previous suit;

(2) the issue must have been actually litigated in the prior action; and

(3) the resolution of the issue must have been necessary to the prior judgment.

See McCulley v. Bank of Am., N.A., 605 F. App'x 875, 878 (11th Cir. 2015); *Lee L. Saad Constr. Co. v. DPF Architects, P.C.*, 851 So. 2d 507, 520 (Ala. 2002). "'Only issues *actually decided* in a former action are subject to" issue preclusion. *See Lee L. Saad Constr. v. DPF*, 851 So. 2d at 520 (citation omitted) (emphasis in original).

The court finds that issue preclusion does not apply here either. As with claim preclusion, the timing is off. The issues are not identical because the issue of the debtor's exemption at the time of the bankruptcy filing was not and could not have been litigated in the earlier state court case. And as discussed above, the evidence does not show that Florida exemptions were actually litigated in the Alabama state court. *See, e.g.*, *In re Allen*, 203 B.R. 786, 794 (Bankr. M.D. Fla. 1996) (discussing "actually litigated" requirement). Even if they had been, there is no evidence that resolution of Florida exemptions was necessary to the state court's order. The state court order pointed out that both procedural and substantive grounds

were raised; it did not state whether it was denying the exemptions on procedural grounds, substantive grounds, or both.

The court thus rejects the creditors' and trustee's argument that the exemption related to the IRA should be disallowed based on preclusion principles.

The exemptability of the IRA

Over 20 years ago, the debtor created an IRA with Morgan Stanley. In June 2016, the Living Trust made two transfers totaling $16,500 (one for $6,500 and one for $10,000) to the IRA. The debtor has claimed the total cash value of the IRA as exempt. The chapter 7 trustee is holding about $814,000 in funds from the IRA.[7]

In general, an IRA is exempt under Florida Statutes § 222.21(2)(a). The objections raise these issues, however: (1) the debtor testified that the Living Trust owned the IRA, and thus the IRA is no longer exempt because 26 U.S.C. § 408 limits IRA ownership to an individual;[8] (2) transfers into the IRA of $6,500 and $10,000 forfeited the IRA's exempt status; and (3) the Alabama state court judgment against Morgan Stanley for $856,622.39 created a right of setoff in favor of Morgan Stanley under Bankruptcy Code § 553 and those funds never became

[7] The parties have not raised, and this court is not deciding, the issue of whether the postpetition payment of the IRA funds to the chapter 7 trustee affects the debtor's ability to exempt them. Morgan Stanley's corporate representative testified that Morgan Stanley converted the investments in the IRA to cash, which cash remained in the IRA until the debtor filed for bankruptcy. (*See, e.g.*, Corley dep., doc. 180-3, at 46:19-49:25, 110:3-111:11). Further, this order relates only to the debtor's IRA with Morgan Stanley, as the debtor had more than one account with Morgan Stanley. (*See, e.g., id.*, at 21:10-19, 24:16-25:10).

[8] The trustee contends on page 5 of her brief (doc. 182) that the IRA was never transferred into the Living Trust, "there was merely a change of address."

property of the estate. The court finds that the creditors and trustee have not met their burden under Federal Rule of Bankruptcy Procedure 4003(c) to show that the IRA exemption is improper on any of these grounds.

(1) The evidence shows that the debtor – not the Living Trust – was the owner of the IRA.

During postjudgment discovery in the state court action, the debtor submitted unsworn discovery responses that the Living Trust "owns my retirement fund." (*See* Dorand dep., doc. 67-3, at ex. 3). He then testified in his December 2020 deposition in the state court action that the information he provided in the discovery responses was "true and accurate . . . ." (*See* Dorand dep., doc. 67-3, at 19:13-24). But he clarified in that same deposition:

> Q: . . . [A]nd you also indicated that the . . . Living Trust owns your retirement fund. Is that correct?
>
> A: That's not the case as I have found out since.
>
> Q: And when did you find that out?
>
> A: About a month ago.
>
> Q: Okay. Was that about the time that I filed some pleadings in the case about whether or not that retirement fund might be exempt or not?
>
> A: No. No. No. It had nothing to do with you.
>
> Q: Okay. And how did you come to the knowledge allegedly that the trust did not own your retirement fund?
>
> A: I asked the question.
>
> Q: And you asked that of whom?
>
> A: Mr. Joseph Scirocco [sic].[9]

[9] Joseph Serrato is the debtor's financial advisor at Morgan Stanley.

Q: Okay. All right. What did Mr. Scirocco tell you?

A: That the trust was not allowed to have a retirement fund or own it.

Q: Okay. And why did he say that the trust couldn't own your retirement fund?

A: You'd have to ask him.

. . .

Q: Okay. And you believed when you answered my interrogatories initially a few months ago that the trust owned your IRA; correct?

A: But they don't. I found that out.

Q: Okay. My question was not whether they do or don't. My question is that you believed, at least of the time that you answered my interrogatories, that the trust was the owner of your retirement fund?

A: Yes.

(*Id.*, at 23:5-24:5, 53:21-54:5).

Despite the debtor's belief when he answered discovery in the state court case, the documentary evidence and deposition testimony of Morgan Stanley's corporate representative Staci Corley – which the court finds credible – establish that the IRA was always in the debtor's individual name:

Q: Can an LLC or a corporation own an individual retirement account?

A: No.

Q: So are there certain restrictions on how an individual retirement account can be owned?

A: Yes.

Q: And what are those restrictions?

A: So with the exception of an inherited IRA account, so just a regular traditional individual retirement account can only be owned by an individual.

. . .

Q: . . . Are you aware of any Morgan Stanley customers that own an IRA in a trust?

A: I am not.

Q: Was Mr. Dorand's IRA owned in his individual capacity?

A: Yes.

Q: At least consistent with your testimony, there was no other option for owning an IRA with Morgan Stanley; is that correct?

A: That is correct.

. . .

Q: . . . Ms. Corley, are you aware of Mr. Dorand transferring ownership of his individual retirement account at any time to a trust?

A: No.

Q: Is that the type of information that Morgan Stanley would typically know about?

A: Yes.

(Corley dep., doc. 180-3, at 23:7-24:5, 33:16-22). The account documents produced by Morgan Stanley also show that the IRA was always in the debtor's individual name. (*See, e.g.*, Corley dep., doc. 180-3, at exs. 2, 3, 8, 9, 10).

While it created confusion at the outset, the debtor's mistaken testimony that the Living Trust owned the IRA is not dispositive and does not warrant the application of judicial estoppel argued by the creditors. *See Slater v. U.S. Steel Corp.*, 871 F.3d 1174, 1181 (11th Cir. 2017) ("Judicial estoppel should not be applied when the inconsistent positions were the result of inadvertence or mistake because judicial estoppel looks towards cold manipulation and not an

unthinking or confused blunder.") (citation, quotation marks, and brackets omitted); *see also Belkova v. PNC Bank, N.A.*, No. 3:18-ap-0180-JAF, 2020 WL 5745969, at *2 (Bankr. M.D. Fla. Mar. 25, 2020) (judicial estoppel is "'invoked at a court's discretion'") (citation omitted).

(2) The creditor and trustee have not met their burden to show that transfers of $6,500 and $10,000 forfeited the IRA's exempt status.

Turning to the second argument, Ms. Corley's deposition testimony also confirms that the $10,000 transfer was a qualified rollover from his deceased wife's IRA and that the $6,500 transfer was an allowable "catch-up" contribution by the debtor. (*See, e.g.*, Corley dep., doc. 180-3, at 43:18-46:2, and ex. 8).

(3) The state court judgment against garnishee Morgan Stanley does not affect the IRA's exempt status.

The state court order (*see* doc. 180-1) against Morgan Stanley states in pertinent part:

> The Judgment amount represents moneys Morgan Stanley . . . has admitted holding in accounts owned by either Rodney Dorand individually or the Rodney D. and Barbara H. Dorand Living Trust including an account designated as an Individual Retirement Account by Rodney Dorand. Morgan Stanley . . . is authorized to set-off this payment from any funds in its possession and held for the benefit of either Rodney Dorand individually or the Rodney D. Dorand and Barbara H. Dorand Living Trust. This specifically includes the right of Morgan Stanley to set-off funds held in an account designated as an Individual Retirement Account. Rodney Dorand's claim of exemption as to retirements funds was denied by the Court at Document 450. Upon remittance of these funds to the Circuit Clerk of Tallapoosa County, Alabama the judgment against Morgan Stanley . . . will be satisfied.

Under the order, Morgan Stanley may set off only if and when it pays the state court judgment – which has not happened. The debtor owes no debt to Morgan Stanley and there is no mutuality under Bankruptcy Code § 553. *See In re McKay*, 420 B.R. 871, 877 (Bankr. M.D. Fla. 2009) ("The elements of setoff are not present. The parties do not owe mutual prepetition

debts to each other."). Similarly, Bankruptcy Code § 544 does not apply because the debtor owes no debt to Morgan Stanley.

Conclusion

To the extent the court has not specifically addressed any of the parties' arguments or evidence, it has considered them and determined that they would not alter the result. For the reasons discussed herein, the court overrules the objections (docs. 35, 79, 204) to the debtor's claim of exemptions related to his IRA. Because the remaining objections have been otherwise resolved, this order constitutes a final order for purposes of any appeal. The court cancels the pretrial conference scheduled for December 5, 2022, and the trial scheduled for December 20 and 21, 2022. The court also cancels all deadlines set forth in the court's scheduling order (doc. 200).

Dated: September 27, 2022

HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE

KeyCite Yellow Flag
Distinguished by In re 2408 W. Kennedy LLC, Bankr.M.D.Fla., July 31, 2024

95 F.4th 1355
United States Court of Appeals, Eleventh Circuit.

IN RE: Rodney Dixon DORAND, Debtor.
The Alabama Creditors, Plaintiffs-Appellants,
v.
Rodney Dixon Dorand, Defendant-Appellee.

No. 22-14113
|
Filed: 03/14/2024

Synopsis

Background: Following prepetition collection proceedings in which Alabama state court issued writ of garnishment to investment banking company that held debtor's out-of-state individual retirement account (IRA) and rejected debtor's claim of an exemption therein, but before company transferred funds out of account, debtor filed a Chapter 7 petition and claimed his IRA as exempt. Judgment creditors objected. The United States Bankruptcy Court for the Northern District of Florida, No. 3:21-bk-30205, Henry A. Callaway, J., granted the exemption. Joint petition for direct appeal was granted.

Holdings: The Court of Appeals, William Pryor, Chief Judge, held that:

[1] the Bankruptcy Court's ruling was not barred by the *Rooker-Feldman* doctrine;

[2] the Alabama judgment did not extinguish debtor's interest in his account before he filed his bankruptcy petition and, thus, the IRA was part of the bankruptcy estate;

[3] under Alabama law, the state-court judgment did not create a right to setoff;

[4] the full faith and credit statute did not prohibit the Bankruptcy Court's ruling; and

[5] collateral estoppel did not prohibit the Bankruptcy Court's ruling.

Affirmed.

Procedural Posture(s): On Appeal; Objection to Claimed Exemptions.

West Headnotes (37)

[1] **Bankruptcy** Conclusions of law; de novo review
Bankruptcy Clear error
Court of Appeals reviews a bankruptcy court's legal conclusions de novo but its factual findings for clear error.

[2] **Bankruptcy** Conclusions of law; de novo review
Court of Appeals reviews de novo a bankruptcy court's interpretation of the Bankruptcy Code.

[3] **Bankruptcy** Conclusions of law; de novo review
Court of Appeals reviews de novo a bankruptcy court's application of the *Rooker-Feldman* doctrine.
1 Case that cites this headnote

[4] **Bankruptcy** Conclusions of law; de novo review
Court of Appeals reviews de novo a bankruptcy court's application of collateral estoppel.

[5] **Courts** Federal-Court Review of State-Court Decisions; Rooker-Feldman Doctrine
The *Rooker-Feldman* doctrine is a narrow jurisdictional doctrine that prohibits a party who loses in state court from appealing that loss in a federal district court.

[6] **Courts** Federal-Court Review of State-Court Decisions; Rooker-Feldman Doctrine

Courts United States Supreme Court, exclusive federal jurisdiction of

Pursuant to the *Rooker-Feldman* doctrine, which follows naturally from the jurisdictional boundaries that Congress has set for the federal courts, a federal district court may not review a state-court civil judgment because only the Supreme Court of the United States may exercise appellate jurisdiction over state-court judgments in civil cases.

[7] **Courts** Federal-Court Review of State-Court Decisions; Rooker-Feldman Doctrine

Under the *Rooker-Feldman* doctrine, a claim should be dismissed only when a losing state-court litigant calls on a district court to modify or overturn an injurious state-court judgment; such dismissal is "almost never" required.

[8] **Courts** Federal-Court Review of State-Court Decisions; Rooker-Feldman Doctrine

Federal courts do not lose subject matter jurisdiction over a claim simply because a party attempts to litigate in federal court a matter previously litigated in state court.

[9] **Courts** Debtor and creditor; bankruptcy; mortgages, liens, and security interests

Bankruptcy Court's ruling granting Chapter 7 debtor's claimed exemption in his individual retirement account (IRA) was not barred by the *Rooker-Feldman* doctrine, even though Alabama state court, in prepetition collection proceedings, had rejected debtor's claim of an exemption in the account; the Bankruptcy Court's ruling did not implicate *Rooker-Feldman*, as neither debtor nor judgment creditors asked the Bankruptcy Court to "modify" or "overturn" the state-court judgment but, instead, the parties disputed the effect of the judgment, with judgment creditors arguing that the judgment extinguished debtor's interest in the retirement account, and debtor responding that the judgment did not terminate his interest.

1 Case that cites this headnote
More cases on this issue

[10] **Courts** Federal-Court Review of State-Court Decisions; Rooker-Feldman Doctrine

Arguments about the effect of a state-court judgment are not invitations to overrule it, for purposes of determining the applicability of the *Rooker-Feldman* doctrine.

[11] **Bankruptcy** Property in custody of law

Judgment entered in judgment creditors' prepetition collection proceedings by Alabama state court against garnishee, an investment banking company that held Chapter 7 debtor's individual retirement account (IRA), for full value of account, which also rejected debtor's exemption claim in the IRA, did not extinguish debtor's interest in account before he filed his bankruptcy petition, and thus the IRA was part of the bankruptcy estate; judgment, which was entered by state court based on its authority under the Alabama creditor's bill statute and was not a personal judgment against garnishee, stated that debtor still owned the account and, by "authorizing" garnishee to "remit" certain funds to the state-court clerk, gave garnishee only a limited right to transfer debtor's funds, but created no duty for it to do so, and garnishee failed to exercise that right before debtor filed for bankruptcy. 11 U.S.C.A. § 541(a); Ala. Code § 6-6-180.

1 Case that cites this headnote

[12] **Bankruptcy** Creation of estate; time

Bankruptcy Legal or equitable interests in general

Commencement of a Chapter 7 proceeding creates an estate which includes, with limited exceptions, all of the debtor's legal or equitable interests in property, wherever located and by whomever held, on the day the debtor files his bankruptcy petition. 11 U.S.C.A. § 541(a).

[13] **Bankruptcy** Property of Estate in General

In bankruptcy, "property of the estate" is defined broadly. 11 U.S.C.A. § 541(a).

[14] **Bankruptcy** Interest of debtor in general

Property in which the debtor has no property interest is not part of the bankruptcy estate, even though "property of the estate" is defined broadly. 11 U.S.C.A. § 541(a).

[15] **Bankruptcy** Effect of state law in general

Federal law determines whether a debtor's interest in property becomes property of the bankruptcy estate, and state law determines the nature and extent of that interest. 11 U.S.C.A. § 541(a).

[16] **Creditors' Remedies** Creditors' bill or suit

Under Alabama law, a "creditor's bill" is an equitable proceeding brought by a creditor to enforce the payment of a debt out of property of his debtor. Ala. Code § 6-6-180.

[17] **Judgment** Judgment as a debt of record

Under Alabama law, a judgment may alter a debtor's interest in his property.

[18] **Judgment** Judgment as a debt of record

Under Alabama law, a judgment does not necessarily extinguish all of a debtor's interests in his property.

[19] **Bankruptcy** Property held in trust or custody for debtor; deposits

Funds of a debtor in a retirement account are property of a bankruptcy estate if the funds remain in the account, notwithstanding a state-court turnover order, when the debtor files for bankruptcy. 11 U.S.C.A. § 541(a).

[20] **Creditors' Remedies** Rights, Duties, and Liabilities of Garnishee

Creditors' Remedies Judgment, order, or decree; relief awarded

Under Alabama law, where state court, in collection proceedings brought by judgment creditors, entered judgment against garnishee based on court's authority under the creditor's bill statute, the judgment was not a personal judgment against garnishee, so garnishee was not, and could not have been, obligated to pay the judgment from its own funds. Ala. Code § 6-6-180.

More cases on this issue

[21] **Bankruptcy** Protection Against Discrimination or Collection Efforts in General; "Fresh Start."

Debtor's filing for bankruptcy stops all collection efforts.

[22] **Bankruptcy** Mutuality; identity of right, person, and capacity

Creditors' Remedies Set-off or counterclaim

Under Alabama law, judgment entered in judgment creditors' prepetition collection proceedings by state court against garnishee, an investment banking company that held Chapter 7 debtor's individual retirement account (IRA), for full value of account did not create a right to setoff; right to setoff could not arise unless two parties owed mutual debts, and although it was undisputed that garnishee, as holder of account into which debtor had deposited funds, owed a debt to debtor, debtor did not owe a debt to garnishee because judgment did not create such debt but, instead, gave garnishee a limited right to transfer some of debtor's funds to the state-court clerk, and garnishee had no obligation to pay judgment from its own funds because, state court having entered judgment based on

its authority under the creditor's bill statute, judgment was not a "personal judgment." 11 U.S.C.A. § 553; Ala. Code § 6-6-180.

[23] **Set-off and Counterclaim** ⇐ Parties to and mutuality of cross-demands in general

Right to "setoff" is the right of parties to cancel out mutual debts against one another in full or in part.

[24] **Set-off and Counterclaim** ⇐ Equitable Set-off

Purpose of setoff is to avoid the absurdity of making A pay B when B owes A an equal or greater sum.

[25] **Bankruptcy** ⇐ Set-off or recoupment in general

Bankruptcy Code preserves the right to set off prepetition debts. 11 U.S.C.A. § 553.

[26] **Bankruptcy** ⇐ Set-off or recoupment in general

Although the Bankruptcy Code preserves the right to set off prepetition debts, substantive law, usually state law, determines the validity of the right. 11 U.S.C.A. § 553.

[27] **Bankruptcy** ⇐ Set-off or recoupment in general

Three elements must be present for a right to setoff to arise under the Bankruptcy Code: first, the parties must owe mutual debts; second, the debts must have arisen before the debtor filed for bankruptcy; and third, the setoff cannot fall within the exceptions listed in the enumerated subsections. 11 U.S.C.A. § 553.

[28] **Finance, Banking, and Credit** ⇐ Title to and Disposition of Deposits and Accounts

When a customer deposits funds into their bank account, the bank takes title to the money, and it owes a debt to its customer for the deposit amount.

[29] **Judgment** ⇐ Adjudications operative in other states; full faith and credit

As applied to judgments, the obligation arising from the full faith and credit statute is exacting. 28 U.S.C.A. § 1738.

[30] **Judgment** ⇐ Adjudications operative in other states; full faith and credit

Judgment ⇐ Operation and effect in general

Pursuant to the full faith and credit statute, a final judgment in one state, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land. 28 U.S.C.A. § 1738.

[31] **Judgment** ⇐ Bankruptcy

Bankruptcy Court's ruling granting Chapter 7 debtor's claimed exemption in his individual retirement account (IRA), even though an Alabama state court had rejected debtor's claim of an exemption in the account, was not barred by the full faith and credit statute; appeal from the Bankruptcy Court's ruling did not implicate the statute because debtor did not ask the Bankruptcy Court to ignore or set aside the Alabama judgment but, instead, he made arguments about the meaning of that judgment or what it accomplished, specifically, whether it terminated all of his rights to his retirement account. 28 U.S.C.A. § 1738.

[32] **Res Judicata** ⇐ Issues or Questions in General

"Collateral estoppel," or "issue preclusion," bars the relitigation of an issue of fact or law that has been litigated and decided in a prior suit.

[33] **Res Judicata** ⬅ Purpose or function of doctrines

Doctrine of collateral estoppel, or issue preclusion, is designed to promote judicial economy and protect litigants from the burden of relitigating an identical issue with the same party.

[34] **Federal Courts** ⬅ Conclusiveness; res judicata and collateral estoppel

State collateral estoppel law is applied in federal court to determine preclusive effect of prior state-court judgment.

[35] **Res Judicata** ⬅ Collateral estoppel and issue preclusion in general

Under Alabama law, collateral estoppel has four elements: (1) the issue in the present action must be identical to the issue litigated in the prior action, (2) the issue must have been actually litigated in the prior action, (3) the resolution of the issue must have been a necessary part of the prior judgment, and (4) the same parties must be involved in the two actions.

[36] **Judgment** ⬅ Bankruptcy

Under Alabama law, the Bankruptcy Court's ruling granting Chapter 7 debtor's claimed exemption in his individual retirement account (IRA), even though an Alabama state court had rejected debtor's claim of an exemption in the account, was not barred by collateral estoppel; it was not clear that resolution of issue in appeal from the Bankruptcy Court's ruling, namely, whether debtor's retirement account was exempt, was a "necessary" part of the Alabama judgment, because the Alabama court denied debtor's claim of exemption on the ground that judgment creditors "filed a proper contest to the claim of exemption, making both procedural and substantive challenges," but the court never specified whether it was denying debtor's claim of exemption on procedural grounds, substantive grounds, or both.

2 Cases that cite this headnote
More cases on this issue

[37] **Res Judicata** ⬅ Alternative determinations or holdings

Under Alabama law, when a judgment fails to distinguish as to which of two or more independently adequate grounds is the one relied upon, it is impossible to determine with certainty what issues were in fact adjudicated, and the judgment has no preclusive effect.

***1359** Appeal from the United States Bankruptcy Court for the Northern District of Florida, D.C. Docket No. 3:21-bk-30205

Attorneys and Law Firms

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Before William Pryor, Chief Judge, and Jill Pryor and Marcus, Circuit Judges.

Opinion

William Pryor, Chief Judge:

This appeal requires us to decide whether an individual retirement account is part of a debtor's bankruptcy estate. Creditors obtained a $1.6 million default judgment against Rodney Dorand. To satisfy the judgment, the creditors sought funds in Dorand's individual retirement account held by Morgan Stanley. Dorand argued that the funds were exempt from collection under state law, but an Alabama court rejected Dorand's argument and permitted Morgan Stanley to transfer the funds out of Dorand's account. Before Morgan Stanley transferred the funds, Dorand filed a ***1360** bankruptcy petition under Chapter 7 and asserted that the retirement

account was exempt property of his bankruptcy estate. The bankruptcy court agreed with Dorand. Because the Alabama judgment did not extinguish Dorand's interest in his account before he filed his bankruptcy petition, we affirm.

I. BACKGROUND

Creditors sued Rodney Dorand in the Circuit Court of Tallapoosa County, Alabama, for damages arising from a failed condominium development. When Dorand failed to appear at trial, the state court entered a default judgment in favor of the creditors for $1.6 million. The default judgment was entered against Dorand, the Rodney D. and Barbara H. Dorand Living Trust, and other entities.

The creditors began collection proceedings in state court. After they sought the funds in an individual retirement account that Dorand had established at Morgan Stanley, the state court issued a writ of garnishment to Morgan Stanley. Morgan Stanley appeared and filed an answer.

Dorand moved to quash the writ. He argued that the Alabama court lacked jurisdiction to seize the retirement account by garnishment because the account was located in Florida. Dorand also filed a claim of exemption for the retirement account under Alabama Rule of Civil Procedure 64A. He asserted that the retirement account was exempt from garnishment because it contained retirement funds. The creditors responded that the funds were not exempt because Dorand had failed to file an inventory, as required by Alabama procedural law, and had engaged in prohibited transactions, among other reasons.

The creditors later moved for alternative relief in the form of a creditor's bill. *See* ALA. CODE § 6-6-180. The motion argued that even if the state court's jurisdiction to garnish the retirement account were questionable, the state court has "indisputable power" to enter an order under section 6-6-180 to recover out-of-state property in the hands of a third party over whom the court has personal jurisdiction. Section 6-6-180 provides that when a judgment from any court has been issued against a defendant and is not satisfied, the judgment creditor may file a complaint against that defendant "to compel the discovery of any property belonging to him, or held in trust for him, and to prevent the transfer, payment[,] or delivery" of that property to him. *Id.* The statute empowers the court to bring "any other party before it and adjudge such property, or the interest of the defendant" in the property "to the satisfaction of the sum due the plaintiff." *Id.*

The state court denied Dorand's claim of exemption on the ground that the creditors "filed a proper contest to the claim of exemption, making both procedural and substantive challenges." The state court entered judgment "against Morgan Stanley" for the full value of the retirement account. The creditors moved to amend the judgment after "Morgan Stanley's legal department request[ed] 'comfort' language" specifically stating that Morgan Stanley could "set off the judgment against any funds" in Dorand's individual retirement account. In January 2021, the state court amended the judgment to include Morgan Stanley's requested language.

The amended judgment was entered "against Morgan Stanley" in the amount of $856,622.39 as follows:

> The Judgment amount represents moneys [Morgan Stanley] has admitted holding in accounts owned by either Rodney ***1361** Dorand individually or the [Dorand Living Trust] including an account designated as an Individual Retirement Account by Rodney Dorand. [Morgan Stanley] is authorized to set-off this payment from any funds in its possession and held for the benefit of either Rodney Dorand individually or the [Dorand Living Trust]. This specifically includes the right of Morgan Stanley to set-off funds held in an account designated as an Individual Retirement Account. Rodney Dorand's claim of exemption as to retirement funds was denied by the Court at Document 450. Upon remittance of these funds to the Circuit Clerk of Tallapoosa County, Alabama[,] the judgment against [Morgan Stanley] will be satisfied.

Dorand moved in the trial court and state supreme court to vacate or stay execution of the judgment and for mandamus relief. The courts denied his motions. The amended judgment

became non-appealable in February 2021. *See* ALA. R. APP. P. 4(a)(1).

Morgan Stanley liquidated the assets in Dorand's retirement account to $800,539.46 in cash and requested payment instructions. But Morgan Stanley never wired the funds to the clerk. The creditors allege that Dorand's counsel "obstructed collection" by threatening Morgan Stanley with litigation if Morgan Stanley transferred the funds.

In April 2021—with the funds still in his retirement account—Dorand filed a voluntary petition for Chapter 7 bankruptcy, *see* 11 U.S.C. §§ 701–784. He asserted that the retirement account was exempt property of his bankruptcy estate. The creditors objected. They argued that the retirement account was not part of the bankruptcy estate because the state court denied any claim of exemption for those funds and because Dorand could not relitigate that issue.

The parties agreed that the bankruptcy court could determine the exemption issue based on the evidence filed by the parties. The evidence included testimony from Morgan Stanley's corporate representative. The representative testified that Dorand still owned the retirement account when he filed for bankruptcy.

After a hearing and extensive briefing, the bankruptcy court determined that the retirement account was Dorand's exempt property and that the Alabama judgment against garnishee Morgan Stanley "does not affect the [retirement account's] exempt status." The court also determined that Morgan Stanley did not obtain the right to setoff. The order explained that "Morgan Stanley may set off only if and when it pays the state court judgment," and payment "has not happened."

We granted the parties' joint petition for direct appeal. 28 U.S.C. § 158(d)(2)(A)(iii). And we later granted Morgan Stanley leave to file a brief as *amicus curiae* and to participate in oral argument.

II. STANDARDS OF REVIEW

[1] [2] [3] [4] We review a bankruptcy court's legal conclusions *de novo* but its factual findings for clear error. *In re Bilzerian*, 100 F.3d 886, 889 (11th Cir. 1996). We review *de novo* the interpretation of the Bankruptcy Code. *In re Meehan*, 102 F.3d 1209, 1210 (11th Cir. 1997). And we review *de novo* a bankruptcy court's application of the *Rooker-Feldman* doctrine and collateral estoppel. *Lozman v. City of Riviera Beach*, 713 F.3d 1066, 1069 (11th Cir. 2013).

III. DISCUSSION

We divide our discussion in four parts. First, we explain why the bankruptcy ***1362** court had jurisdiction to decide Dorand's exemption claim. Second, we explain why the retirement account is part of Dorand's bankruptcy estate. Third, we explain why the Alabama judgment did not create a right to setoff. Last, we explain why neither the full faith and credit statute nor collateral estoppel bar the judgment of the bankruptcy court.

A. The Bankruptcy Court Had Jurisdiction to Decide Dorand's Claim of Exemption.

The creditors argue that under the *Rooker-Feldman* doctrine, the bankruptcy court lacked jurisdiction to decide Dorand's claim of exemption. Dorand responds that the bankruptcy court's ruling did not violate *Rooker-Feldman* because he did not ask the bankruptcy court to overturn a state court judgment. We agree with Dorand.

[5] [6] *Rooker-Feldman* is a "narrow jurisdictional doctrine" that prohibits a party who loses in state court from "appeal[ing] that loss in a federal district court." *Behr v. Campbell*, 8 F.4th 1206, 1208 (11th Cir. 2021). The doctrine is named after two Supreme Court decisions, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), that together hold that a federal district court may not review a state court civil judgment because only the Supreme Court of the United States may exercise appellate jurisdiction over state court judgments in civil cases. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283–84, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). The *Rooker-Feldman* doctrine "follows naturally from the jurisdictional boundaries that Congress has set for the federal courts." *Behr*, 8 F.4th at 1210.

[7] [8] The *Rooker-Feldman* doctrine "almost never" requires dismissal. *Id.* at 1212. A claim should be dismissed under *Rooker-Feldman* only when "a losing state court litigant calls on a district court to modify or 'overturn an injurious state-court judgment.' " *Id.* at 1210 (quoting *Exxon*

Mobil, 544 U.S. at 292, 125 S.Ct. 1517). Federal courts "do not lose subject matter jurisdiction over a claim 'simply because a party attempts to litigate in federal court a matter previously litigated in state court.' " *Id.* (quoting *Exxon Mobil*, 544 U.S. at 293, 125 S.Ct. 1517).

[9] **[10]** The bankruptcy court's ruling did not implicate *Rooker-Feldman*. Neither party asked the bankruptcy court to "modify" or "overturn" the Alabama judgment. Instead, the parties disputed the *effect* of the judgment. The creditors argued that the judgment extinguished Dorand's interest in the retirement account, and Dorand responded that the judgment did not terminate his interest. But those arguments about the effect of the Alabama judgment are not invitations to overrule it.

B. The Individual Retirement Account is Part of Dorand's Bankruptcy Estate.

[11] Whether the individual retirement account is part of Dorand's bankruptcy estate turns on whether the Alabama judgment terminated Dorand's interest in the account. The creditors argue that the Alabama judgment "fully and finally terminated" Dorand's rights to and interests in the retirement account. Dorand responds that he still had an interest in the account when he filed for bankruptcy. Because the Alabama judgment gave Morgan Stanley only a limited right to transfer Dorand's funds, ***1363** and Morgan Stanley failed to exercise that right before Dorand filed for bankruptcy, we agree with Dorand.

[12] **[13]** **[14]** **[15]** "The commencement of a [Chapter 7 bankruptcy proceeding] creates an estate." 11 U.S.C. § 541(a). That estate includes, with limited exceptions, all of the debtor's "legal or equitable interests" in property, "wherever located and by whomever held," on the day the debtor files his bankruptcy petition. *Id.* § 541(a)(1); *In re Bracewell*, 454 F.3d 1234, 1237 (11th Cir. 2006). " 'Property of the estate' is defined broadly." *In re Lewis*, 137 F.3d 1280, 1283 (11th Cir. 1998) (citing 11 U.S.C. § 541(a)(1)); *see also United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983) ("Congress intended a broad range of property to be included in the estate."). But property in which the debtor has no property interest is *not* part of the bankruptcy estate. *See* 11 U.S.C. § 541(a)(1). Federal law determines whether a debtor's interest in property becomes property of the bankruptcy estate, and state law determines the nature and extent of that interest. *In re Thomas*, 883 F.2d 991, 995 (11th Cir. 1989).

[16] **[17]** **[18]** The Alabama court entered judgment based on its authority under the creditor's bill statute. *See* ALA. CODE § 6-6-180. A creditor's bill is an "equitable proceeding brought by a creditor to enforce the payment of a debt out of property of his debtor." *Wyers v. Keenon*, 762 So. 2d 353, 355 (Ala. 1999) (alterations adopted) (internal quotation marks omitted) (quoting *Creditor's Bill*, BLACK'S LAW DICTIONARY 369 (6th ed. 1990)). The Alabama statute permits a court to "bring any other party before it" and "adjudge ... property, or the interest of the defendant" in the property "to the satisfaction of the sum due the plaintiff." ALA. CODE § 6-6-180. A judgment can alter a debtor's interest in his property. *See id.* (stating that a judgment can "prevent the transfer, payment[,] or delivery" of the debtor's property). But a judgment does not necessarily extinguish all of a debtor's interests in his property.

The Alabama judgment did not extinguish Dorand's interest in the funds in his retirement account. Indeed, the judgment states that Dorand still "own[s]" the account. Consistent with that understanding, Morgan Stanley's corporate representative testified that Dorand owned the account when he filed for bankruptcy.

[19] The judgment "authorized" Morgan Stanley to "remit[ ]" certain funds to the state court clerk. But that language created only a limited right for Morgan Stanley. And the judgment specified that it would not be "satisfied" until Morgan Stanley "remitt[ed]" the funds to the clerk. It is undisputed that Morgan Stanley did not remit the funds before Dorand filed for bankruptcy. As other courts have ruled, the debtor's funds in a retirement account are property of a bankruptcy estate if the funds remain in the account, notwithstanding a state court turnover order, when the debtor files for bankruptcy. *See In re Quade*, 498 B.R. 852, 855–56 (N.D. Ill. 2013) (affirming bankruptcy court's determination that a retirement account was property of a bankruptcy estate because the account manager had not transferred the funds out of the debtor's account before the debtor filed for bankruptcy); *In re Allen*, 203 B.R. 786, 793–94 (Bankr. M.D. Fla. 1996) (rejecting argument that an individual retirement account was not property of a bankruptcy estate because of a prepetition order directing the turnover of retirement funds).

***1364** **[20]** The Alabama judgment was not a personal judgment against Morgan Stanley. The Supreme Court of

Alabama has held that "when a creditor's bill is brought to reach a debtor's assets in the hands of a third person," the "general rule" is that "a personal judgment cannot be rendered against that third person." *Wyers*, 762 So. 2d at 355–56. So Morgan Stanley was not—and could not have been—obligated to pay the judgment from its own funds.

The creditors insist that the Alabama judgment "forever settled Dorand's and Morgan Stanley's rights and obligations with respect to the money held" in the account. But they do not identify any language in the judgment that achieved that result. The judgment on its face creates no *duty* for Morgan Stanley to transfer any funds.

The creditors rely on *In re Marona* to contend that the judgment terminated Dorand's interest in his account. *See* 54 B.R. 65 (Bankr. N.D. Ala. 1985). In *Marona*, a debtor was sued for damages arising from a car accident. *Id.* at 66. An Alabama statute required the debtor to deposit funds with the Department of Public Safety to satisfy any future judgments against him. *Id.* A companion statute provided that when deposited, those funds could be used only for the payment of a judgment rendered against the depositor. *Id.* at 67. After judgment was entered against him, the debtor filed for bankruptcy and attempted to recover the deposited funds as property of his bankruptcy estate. *Id.* at 66. By that point, the funds had been remitted to the state court clerk in accordance with the judgment. *Id.* The bankruptcy court held that the debtor had no legal or equitable interest in the deposit because the statute stated that the funds were available only to pay a judgment against the depositor. *Id.* at 67.

Marona is distinguishable for at least two reasons. First, the statutory deposit scheme in *Marona* is materially different from the retirement account that Dorand maintained at Morgan Stanley. Dorand did not deposit funds under a statutory mandate that earmarked the funds for a single purpose. Instead, he deposited funds into an account that he owned and voluntarily created. Second, in *Marona*, the funds had been remitted to the state court clerk before the debtor filed for bankruptcy. Here, in contrast, Morgan Stanley did not remit the funds to the state court clerk before Dorand filed for bankruptcy.

[21] The Alabama judgment might have *altered* Dorand's rights to the retirement account. But absent exceptions that do not apply here, a bankruptcy estate includes all property in which the debtor has a legal or equitable interest. *See* 11 U.S.C. § 541(a)(1). Morgan Stanley had a legal right to remit certain funds for a single purpose, but it failed to do so before Dorand filed for bankruptcy. And filing for bankruptcy "stops all collection efforts." *In re McLean*, 794 F.3d 1313, 1320 n.3 (11th Cir. 2015) (citation and internal quotation marks omitted). Dorand had an interest in the retirement account when he filed for bankruptcy, and the bankruptcy court correctly determined that the retirement account was part of Dorand's bankruptcy estate.

C. The Alabama Judgment Did Not Create a Right to Setoff.

[22] The creditors argue that the Alabama judgment created a right to setoff in favor of Morgan Stanley. But because the right to setoff cannot arise unless two parties owe mutual debts, and Dorand did not owe a debt to Morgan Stanley, the bankruptcy court correctly held that the judgment did not create a right to setoff.

***1365** **[23]** **[24]** **[25]** **[26]** The right to setoff is the right of parties "to cancel out mutual debts against one another in full or in part." *In re Patterson*, 967 F.2d 505, 508 (11th Cir. 1992). "The purpose of setoff is to avoid 'the absurdity of making A pay B when B owes A' " an equal or greater sum. *Id.* at 508–09 (quoting *Studley v. Boylston Nat'l Bank*, 229 U.S. 523, 528, 33 S.Ct. 806, 57 L.Ed. 1313 (1913)). The Bankruptcy Code preserves the right to set off prepetition debts. *See* 11 U.S.C. § 553. But "[s]ubstantive law, usually state law, determines the validity of the right." *Patterson*, 967 F.2d at 509.

[27] Three elements must be present for a right to setoff to arise under section 553. First, the parties must owe mutual debts. 11 U.S.C. § 553(a). Second, the debts must have arisen before the debtor filed for bankruptcy. *Id.* And third, the setoff cannot fall within the exceptions listed in subsections 553(a)(1), (2), or (3). *Id.*

[28] To be sure, the parties agree that Morgan Stanley owed a debt to Dorand. When a customer deposits funds into his bank account, the bank takes title to the money, and it owes a debt to its customer for the deposit amount. *See Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1302 (11th Cir. 2020) (explaining that "when an accountholder deposits money into his bank account, the bank takes title to the money").

But the parties dispute whether Dorand owed a debt to Morgan Stanley. The creditors argue that Dorand owed Morgan Stanley the value of the retirement account to

reimburse Morgan Stanley for the debt it incurred under the judgment. Dorand responds that he never owed a debt to Morgan Stanley.

The judgment did not create a debt that Dorand owed to Morgan Stanley. Instead, it gave Morgan Stanley a limited right to transfer some of Dorand's funds to the state court clerk. Morgan Stanley did not have—and could not have—any obligation to pay the judgment from its own funds because the judgment was not a "personal judgment" against Morgan Stanley. *Wyers*, 762 So. 2d at 355–56 (explaining that "when a creditor's bill is brought to reach a debtor's assets in the hands of a third person," a personal judgment ordinarily "cannot be rendered against that third person"). The judgment did not—and could not—require Morgan Stanley to pay the judgment first and have Dorand reimburse it later. Because the judgment did not create a debt that Dorand owed to Morgan Stanley, the right to setoff never arose.

D. Neither the Full Faith and Credit Statute Nor Collateral Estoppel Prohibits the Bankruptcy Court's Ruling.

The creditors argue that the full faith and credit statute and collateral estoppel barred the bankruptcy court from ruling on Dorand's claim of exemption. Dorand responds that neither doctrine barred the bankruptcy court's ruling. We agree with Dorand.

[29] **[30]** The full faith and credit statute provides that "state judicial proceedings 'shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such State ... from which they are taken.' " *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985) (quoting 28 U.S.C. § 1738). As applied to judgments, " 'the full faith and credit obligation is exacting.' " *V.L. v. E.L.*, 577 U.S. 404, 407, 136 S.Ct. 1017, 194 L.Ed.2d 92 (2016) (quoting ***1366** *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233, 118 S.Ct. 657, 139 L.Ed.2d 580 (1998)). " 'A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land.' " *Id.* (quoting *Baker*, 522 U.S. at 233, 118 S.Ct. 657).

[31] This appeal does not implicate the full faith and credit statute because Dorand did not ask the bankruptcy court to *ignore* or *set aside* the Alabama judgment. Instead, he made arguments about the meaning of that judgment—specifically, whether it terminated all of his rights to his retirement account. His arguments concern what the Alabama judgment accomplished. He never asked the bankruptcy court or this Court to *ignore* the judgment or set it aside.

[32] **[33]** **[34]** **[35]** The creditors also argue that Dorand is collaterally estopped from "claiming any exemption that he was denied by the Alabama judgment." "Collateral estoppel," or "issue preclusion," bars the "relitigation of an issue of fact or law that has been litigated and decided in a prior suit." *CSX Transp., Inc. v. Bhd. of Maint. of Way Emps.*, 327 F.3d 1309, 1317 (11th Cir. 2003) (citation and internal quotation marks omitted). The doctrine is designed to "promot[e] judicial economy" and "protect[ ] litigants from the burden of relitigating an identical issue with the same party." *Id.* (citation and internal quotation marks omitted). We apply Alabama law to determine whether collateral estoppel applies. *See In re St. Laurent*, 991 F.2d 672, 675–76 (11th Cir. 1993). In Alabama, collateral estoppel has four elements: (1) the issue in the present action must be identical to the issue litigated in the prior action; (2) the issue must have been actually litigated in the prior action; (3) the resolution of the issue must have been a necessary part of the prior judgment; and (4) the same parties must be involved in the two actions. *Lee L. Saad Const. Co. v. DPF Architects, P.C.*, 851 So. 2d 507, 520 (Ala. 2002).

[36] **[37]** Collateral estoppel does not apply because it is not clear that resolution of the issue in this appeal—whether Dorand's retirement account was exempt—was a "necessary" part of the Alabama judgment. *See id.* The Alabama court denied Dorand's claim of exemption on the ground that the creditors "filed a proper contest to the claim of exemption, making both procedural and substantive challenges." But the court never specified whether it was denying Dorand's claim of exemption on procedural grounds, substantive grounds, or both. When a "judgment fails to distinguish as to which of two or more independently adequate grounds is the one relied upon, it is impossible to determine with certainty what issues were in fact adjudicated, and the judgment has no preclusive effect." *In re St. Laurent*, 991 F.2d at 676. Accordingly, collateral estoppel does not apply.

IV. CONCLUSION

We **AFFIRM** the judgment in favor of Dorand.

All Citations

95 F.4th 1355, 73 Bankr.Ct.Dec. 93, 30 Fla. L. Weekly Fed. C 774

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