

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

JUDITH D. KRAUSE

Case No. 02-15031-MAM-7

Debtor

**ORDER SUSTAINING TRUSTEE'S OBJECTION TO DEBTOR'S EXEMPTION
OF ACCOUNTS UNLESS DEBTOR AMENDS SCHEDULE C**

Lionel C. Williams, Attorney for the Trustee
Michael B. Smith, Attorney for the Debtor
Lynn Andrews, Trustee

This case is before the Court on the trustee's objection to the debtor's exemption of checking and savings accounts at Compass Bank. This Court has jurisdiction to hear this objection pursuant to 28 U.S.C. § 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to enter a final order. For the reasons indicated below, the Court is sustaining the objection of the trustee to the debtor's exemption; however, the debtor may cure the deficiency by amending her schedules as indicated below.

FACTS

The debtor, Judith D. Krause, was injured and, as a result, was determined to be entitled to Social Security benefits commencing December 2000. The first payment did not occur until June 2002. At that time, the Social Security Administration sent a check to Ms. Krause for \$10,642 of past-due benefits and \$602.10 for her June 2002 payment. Ms. Krause deposited all of the money in the Compass Bank checking account that was held in the names of the debtor

and her husband jointly. The parties did not use the account for deposit of any money except Ms. Krause's Social Security benefits. On August 9, 2002, she transferred \$2,500 of the funds to a new savings account solely in her name. There were and are no other funds in that account. Ms. Krause spent approximately \$6,744 of the benefit proceeds before filing bankruptcy so that the checking account had a balance of only about \$2,000 on her filing. Ms. Krause filed her chapter 7 bankruptcy case on August 4, 2002.

In Schedule C of the debtor's bankruptcy petition, she listed the 2 bank accounts as follows:

Checking account	Ala. Code 6-10-6, 6-10-126	\$2,000.00
Savings account	Ala. Code 6-10-6, 6-10-126	\$2,500.00

The debtor amended Schedule C on December 27, 2002 and claimed the accounts were exempt under 11 U.S.C.522(b).

LAW

The issue is whether a debtor may exempt proceeds of Social Security benefits once the benefits are paid and placed in an account of the recipient. The issue has been decided in different ways by courts over the last twenty years.

In Alabama, debtors may only use the exemptions allowed under 11 U.S.C. § 522(b)(2) which allows a debtor to claim "any property that is exempt under Federal law, other than [the federal bankruptcy exemptions], or State or local law that is applicable on the date of filing." There is no Alabama state or local law that exempts Social Security benefits from creditor

claims. The sections of the Alabama Code cited by Ms. Krause in her original Schedule C-- sections 6-10-6 and 6-10-126-- do not provide any exemption for the benefits. Section 6-10-6 exempts personalty of all kinds in the amount of \$3,000. With her \$4,500 in these accounts together with some other personal items she exempted, Ms. Krause is well over the limit. Section 6-10-126 lists items as to which no waiver of exemption may be made. This section does not apply to the Social Security benefits.

There is a federal law that does apply to Social Security payments, 42 U.S.C. § 407. It states:

(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and not of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

Section (b) was added to the law on April 20, 1983. The law clearly exempts from creditor and trustee seizure Social Security benefits to be paid and already paid to a recipient. The law is a federal law other than title 11, the Bankruptcy Code, so it is available to Ms. Krause as an exemption source under 11 U.S.C. § 522(b)(2).

In the case of *Walker v. Treadwell (In re Treadwell)*, 699 F.2d 1050 (11th Cir. 1983), the Eleventh Circuit held that a debtor could not utilize the Section 407 exemption since he was utilizing the federal exemption scheme under 11 U.S.C. § 522(b)(1) (“[I]f a debtor chooses the Bankruptcy Code exemptions, he gives up the protection of section 407, freeing accumulated social security benefits for the satisfaction of creditors.”). *Id.* at 1052. In this case, since Ms.

Krause is claiming the property as exempt under 11. U.S.C. § 522(b)(2), the *Treadwell* case is not binding.

Even if the *Treadwell* case could be argued to govern this debtor's situation, the Court would hold that *Treadwell* is no longer good law. The cases of *Combustion Federal Credit Union v. Barron (In re Barron)*, 85 B.R. 603 (Bankr. N. D. Ala. 1988)¹ and *In re Radford*, 265 B.R. 827 (Bankr. W.D. Mo. 2000) explain why the case is no longer binding or persuasive precedent. The *Treadwell* case was decided on March 7, 1983. Section 407 of title 42 was amended effective April 20, 1983 to include subsection (b). That subsection requires express reference to section 407 in any statute that is to limit, supersede, or modify it. Since neither section 522(b)(2) of the Bankruptcy Code nor the Alabama Code have any express reference that this Court can find, section 407 is a statute that debtors in Alabama may utilize *if the debtors explicitly claim in their Schedule C forms that they are claiming the exemption*.

Ms. Krause has traced her Social Security benefits to her two Compass Bank accounts and has sustained her burden of proving that no other funds are in either account. Therefore the accounts could be exempt. What Ms. Krause has not done is properly detail in Schedule C what federal statute provides her with this exemption.


The trustee and debtor discussed several other bankruptcy cases from the Eleventh Circuit that held that accumulated benefits were only exempt to the extent necessary for "continuing basic care and maintenance" based upon dicta in the *Treadwell* case that speculated that

¹In the *Barron* case, Judge Watson held that the debtor did not even need to claim accumulated Social Security payments as exempt property under 42 U.S.C. § 407 as long as the debtor elected the state exemptions. He concluded that the benefits were not even property of the estate under 11 U.S.C. § 541. 85 B.R. at 607. Ms. Krause did put the benefits in her schedules and claimed the benefits as exempt. Therefore, this issue is not raised in this case.

accumulated benefits should only be exempt if necessary for basic needs. *Treadwell*, 699 F.2d at 1053. *Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F. 2d 1180 (11th Cir. 1991) (a nonbankruptcy case); *In re Crandall*, 200 B.R. 243 (Bankr.M.D. Fla. 1995); *In re Lazin*, 217 B.R. 332 (Bankr. M.D.Fla. 1998). The Court concludes that the reasoning in *Barron* and *Radford* is correct and there can be no limitation on the exempt amount. Section 407(b) expressly states that no statute can limit the exemption unless it makes express reference to section 407. No Alabama Code section on exemptions nor 11 U.S.C.§ 522 refers to the law. Case law cannot possibly override the statute without statutory authorization. Therefore, all funds that are traceable to Social Security benefits are exempt if properly claimed.

IT IS ORDERED that the trustee's objection to the debtor's exemptions is SUSTAINED unless, within 30 days of the date of this order, the debtor amends her Schedule C to properly exempt the assets she claims as exempt.

Dated: February 27, 2003


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE