

NOV 19 2010

ORDERED PUBLISHED

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP Nos. AZ-10-1202-JuBaPa
RONDA LIANE HUMMEL,) AZ-10-1206-JuBaPa
Debtor.) Bk. Nos. 10-02018-EWH
09-32894-EWH

TRUDY A. NOWAK, Chapter 7
Trustee,)
Appellant,)
v.)
RONDA LIANE HUMMEL,)
Appellee.)

O P I N I O N

In re:)
JOAN A. TOBER,)
Debtor.)
BETH LANG, Chapter 7 Trustee,)
Appellant,)
v.)
JOAN A. TOBER,)
Appellee.)

Argued and Submitted on October 22, 2010
at Phoenix, Arizona

Filed - November 19, 2010

Appeals from the United States Bankruptcy Court
for the District of Arizona

Honorable Eileen W. Hollowell, Bankruptcy Judge, Presiding

1 Appearances: Appellant Trudy A. Nowak, Esq., argued for herself
2 and appellant Beth Lang
3 Alan R. Solot, Esq., argued for appellees Ronda L.
4 Hummel and Joan A. Tober

4 Before: JURY, BAUER,¹ and PAPPAS, Bankruptcy Judges.

6 JURY, Bankruptcy Judge:

8 Chapter 7² trustee Trudy A. Nowak ("Nowak") appeals the
9 bankruptcy court's order overruling her objection to debtor Ronda
10 L. Hummel's ("Hummel") exemption under Ariz. Rev. Stat. § 33-1126
11 (A) (6) and § 20-1131(D) (BAP No. 10-1202).

12 Chapter 7 trustee Beth Lang ("Lang") appeals the bankruptcy
13 court's order overruling her objection to debtor Joan A. Tober's
14 ("Tober") exemption under Ariz. Rev. Stat. § 33-1126(A) (7) (BAP
15 No. 10-1206).

16 Both appeals involve the construction of the identical
17 phrases contained in Ariz. Rev. Stat. §§ 33-1126(A) (6)³ and (7),

19 ¹ Hon. Catherine E. Bauer, Bankruptcy Judge for the
20 Central District of California, sitting by designation.

21 ² Unless otherwise indicated, all chapter, section and
22 rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-
23 1532, and to the Federal Rules of Bankruptcy Procedure, Rules
24 1001-9037.

24 ³ The corresponding exemption for the cash surrender
25 value of life insurance policies in Arizona's Insurance Code at
26 Ariz. Rev. Stat. § 20-1131(D) contains the identical phrase as
27 that under Ariz. Rev. Stat. § 33-1126(A) (6). Therefore, our
28 discussion in reference to the cash surrender value of life
insurance policies under Ariz. Rev. Stat. § 33-1126(A) (6) is
equally applicable to the exemption in Ariz. Rev. Stat. § 20-

(continued...)

1 which allow a debtor to exempt the cash surrender value of life
2 insurance policies and proceeds of annuity contracts if they name
3 certain beneficiaries. At issue is whether either subsection of
4 the statute requires that a child named as a beneficiary also be
5 a dependent of the debtor in order for the debtor to obtain the
6 exemption.

7 As a matter of first impression in Arizona, we hold that the
8 statute imposes such a requirement and REVERSE the bankruptcy
9 court's order in each appeal.

10 **I. BACKGROUND**

11 **The Hummel Bankruptcy - BAP No. 10-1102**

12 On January 27, 2010, Hummel filed her chapter 7 petition.
13 Nowak was appointed the chapter 7 trustee. At the time Hummel
14 filed her petition, she owned three Prudential Whole Life
15 Insurance Policies with cash surrender values of \$27,608.02,
16 \$3,266.82, and \$10,188.01. Hummel listed the policies in her
17 Schedule B and claimed them 100% exempt in Schedule C under Ariz.
18 Rev. Stat. § 33-1126(A) (6) and § 20-1131(D). Hummel named her
19 adult, nondependent daughter as the beneficiary under each
20 policy. Hummel did not list her daughter as a dependent in her
21 Schedule I or tax returns.

22 Nowak objected to Hummel's exemption in the cash surrender
23 value of the policies on the ground that the exemption did not
24 apply if the named beneficiary was an adult, nondependent child
25

26
27 ³(...continued)
28 1131(D).

1 of the debtor. The bankruptcy court overruled her objection by
2 order entered on May 26, 2010. Nowak timely appealed.

3 **The Tober Bankruptcy - BAP No. 10-1206**

4 On December 21, 2009, Tober filed her chapter 7 petition.
5 Lang was appointed the chapter 7 trustee. When Tober filed her
6 petition she owned a Nationwide Annuity valued at \$33,316.52,
7 which she listed in her Schedule B and claimed 100% exempt in
8 Schedule C under Ariz. Rev. Stat. § 33-1126(A)(7). Tober named
9 her adult, nondependant daughter as the beneficiary in the
10 annuity contract. Tober did not list her daughter as a dependent
11 in her Schedule I or tax returns.

12 Lang objected to Tober's exemption in the annuity contract
13 on the ground that the exemption did not apply if the named
14 beneficiary was an adult, nondependent child of the debtor. The
15 bankruptcy court overruled her objection by order entered on May
16 26, 2010. Lang timely appealed.

17 **II. JURISDICTION**

18 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
19 §§ 1334 over this core proceeding under § 157(b)(2)(B). We have
20 jurisdiction under 28 U.S.C. § 158.

21 **III. ISSUE**

22 Whether Ariz. Rev. Stat. § 33-1126(A)(6) and (7) require
23 that a child of the debtor named as a beneficiary under a life
24 insurance policy or an annuity contract also be a dependent of
25 the debtor in order for the debtor to obtain the exemption.

26 **IV. STANDARDS OF REVIEW**

27 We review the bankruptcy court's conclusions of law and
28 questions of statutory interpretation de novo. Clear Channel

1 Outdoor, Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 32 (9th
2 Cir. BAP 2008).

3 **V. DISCUSSION**

4 Section 541(a)(1) of the Bankruptcy Code provides that
5 "property of the estate" includes "all legal or equitable
6 interests of the debtor in property as of the commencement of the
7 case." It is undisputed that debtors Hummel and Tober owned the
8 property they claimed exempt which became part of their
9 respective estates.

10 The Bankruptcy Code permits a debtor to exempt from property
11 of the estate certain property for which an exemption is
12 available under either state or federal law. § 522(b). Arizona
13 has opted out of the federal exemptions, leaving debtors in
14 Arizona to resort to the state law exemptions. See Ariz. Rev.
15 Stat. § 33-1133(B). Therefore, substantive issues regarding the
16 allowance or disallowance of the claimed exemptions at issue in
17 this appeal are governed by Arizona law. Turner v. Marshack (In
18 re Turner), 186 B.R. 108, 113 (9th Cir. BAP 1995).

19 For Arizona residents, the exemption of certain insurance
20 and annuity benefits or proceeds is governed by Ariz. Rev. Stat.
21 § 33-1126 which provides in relevant part:

22 A. The following property of a debtor⁴ shall be exempt
23 from execution, attachment or sale on any process
issued from any court:

24

26
27 ⁴ "'Debtor' means an individual whether married or single
28 utilizing property described in this article for personal, family
or household use." Ariz. Rev. Stat. § 33-1121.

1 6. The cash surrender value of life insurance policies
2 where for a continuous unexpired period of two years
3 such policies have been owned by a debtor and have
4 named as beneficiary the debtor's surviving spouse,
5 child, parent, brother or sister, or any other
6 dependent family member, in the proportion that the
7 policy names any such beneficiary For the
8 purposes of this paragraph "dependent" means a family
9 member who is dependent on the insured debtor for not
10 less than half support.⁵

11 7. An annuity contract where for a continuous unexpired
12 period of two years such contract has been owned by a
13 debtor and has named as beneficiary the debtor,
14 debtor's surviving spouse, child, parent, brother or
15 sister, or any other dependent family member
16 For the purposes of this paragraph, "dependent" means a
17 family member who is dependent on the debtor for not
18 less than half support. (Emphasis added).

19 The trustees contend that the listed beneficiaries in each
20 subsection (surviving spouse, child, parent, etc.) are, in
21 effect, a subset of the subsequent phrase "other dependent family
22 members." In essence, the trustees urge us to view the word
23 "other" as a connecting modifier and, thus, all beneficiaries
24 specifically listed in the statute, and "any others", must be (1)
25 family members and (2) dependent on the debtor. On the other
26

27 ⁵ The Insurance Code exemption contained in Ariz. Rev.
28 Stat. § 20-1131(D) provides in relevant part:

29 If, for a continuous, unexpired period of two years, a
30 policy of life insurance has named as beneficiary the
31 insured's surviving spouse, child, parent, brother,
32 sister or any other dependent family member, then, in
33 event of bankruptcy or in any proceeding before any
34 court in this state, the cash surrender value of the
35 insurance, in the proportion that the policy names any
36 such beneficiary, shall be exempt from claims and
37 demands of all creditors For the purposes of
38 this subsection, "dependent" means a family member who
is dependent on the insured for not less than half
support. (Emphasis added).

1 hand, debtors assert that the phrase "any other dependent family
2 member" constitutes a separate class of beneficiaries from those
3 previously listed. Under this view, the word "other" would seem
4 to be one of differentiation. See Jama v. Immigration & Customs
5 Enforcement, 543 U.S. 335, 343 n.3 (2005) (noting that "both
6 'other' and 'another' are just as likely to be words of
7 differentiation as they are to be words of connection").

8 No Arizona court has addressed the question before us. In
9 the absence of a controlling decision we interpret the statute as
10 we believe the highest state court would. Hal Roach Studios,
11 Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1548 (9th Cir.
12 1990). When interpreting a statute, Arizona courts look to its
13 plain language as the best indicator of the legislature's intent.
14 Ariz. Tile, L.L.C. v. Berger, 224 P.3d 988, 992 (Ariz. Ct. App.
15 2010). If the meaning of the statutory language is clear and
16 unambiguous, the court does not employ any other methods of
17 construction. Id. We conclude the statutory language at issue
18 in this appeal is ambiguous because it is susceptible to
19 plausible, although contradictory, interpretations. Accordingly,
20 we employ other methods of statutory construction to ascertain
21 the legislature's intent. See Hayes v. Cont'l Ins. Co., 872 P.2d
22 668, 672 (Ariz. 1994).

23 When a statute contains a list, as here, we are mindful that
24 the legislature in drafting the statute could not possibly
25 specify all the family members who may be named as beneficiaries.
26 Thus, in reading the statute, we use the rule of statutory
27 construction that "[w]hen several words are followed by a clause
28 which is applicable as much to the first and other words as to

1 the last, the natural construction of the language demands that
2 the clause be read as applicable to all." Porto Rico Ry., Light
3 & Power Co. v. Mor, 253 U.S. 345, 348 (1920). While not
4 dispositive, application of this rule lends support to the
5 trustees' position. Under a "natural construction," the phrase
6 "dependent family member" applies as much to the previously
7 enumerated family members (surviving spouse, parent, child, etc.)
8 as it does to "any other" family member. Moreover, this
9 construction gives meaning both to the specific words listing
10 family members and the general words that extend the provisions
11 of the statute to everyone embraced in that class – "any other
12 dependent family member."

13 We also examined the legislative history for each of the
14 subsections at issue.⁶ Ariz. Rev. Stat. § 33-1126(A)(7) was
15 added to Ariz. Rev. Stat. § 33-1126 in 2005. The legislative
16 history we reviewed reveals no useful information pertaining to
17 the interpretation of the phrase at issue or the purpose behind
18 the annuity contract exemption. However, our review of the
19 legislative history for the 1992 amendment of subsection (A)(6)
20 (formerly (A)(5)) regarding the exemption for the cash surrender
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24 ⁶ Neither party submitted any legislative history to
25 explain the meaning or purpose behind the life insurance or
26 annuity contract exemptions at issue nor were these records
27 introduced in the bankruptcy court. Nonetheless, we can take
28 judicial notice of the records under Fed. R. Evid. 201(b). See
also, Hayes, 872 P.2d at 673 n.5. We obtained the records
directly from the Arizona State Senate Resource Center.

1 value of life insurance policies provides us with some meaningful
2 guidance.⁷

3 Prior to 1992, Ariz. Rev. Stat. § 33-1126(A)(6) provided in
4 relevant part:

5 A. The following property of a debtor shall be exempt
6 from execution, attachment or sale on any process
7 issued from any court:

8

9 (5) The cash surrender value of Life insurance
10 policies where for a continued unexpired period of one
11 year such policies have been owned by a debtor and have
12 named as beneficiary the debtor's surviving spouse,
13 child, parent, brother, or sister, or any dependent . .
14 . . . A "dependent" means a person who is dependent upon
15 the insured for not less than one-half of his support.
16 (Emphasis added).

17 The proposed amendments to subsection (A)(6) were contained in
18 Senate Bill 1060 and served to eliminate per dependent limits on
19 life insurance proceeds as well as adjusting the dollar amount of
20 the exemption upward to \$100,000. Moreover, the beneficiary
21 phrase was changed from "debtor's surviving spouse, child,
22 parent, brother, or sister, or any dependent" to "debtor's
23 surviving spouse, child, parent, brother or sister, or any other
24 dependent family member." In addition, the meaning of dependent
25 was changed from "dependent means a person" to "dependent means a
26 family member."

27 ⁷ Ariz. Rev. Stat. § 20-1131(D) contained in the Arizona
28 Insurance Code was added in 1963. It too was amended in 1992 at
the same time as Ariz. Rev. Stat. § 33-1126(A)(6). The amendment
for Ariz. Rev. Stat. § 20-1131(D) eliminated the \$5,000 minimum
and \$10,000 maximum limits for all dependents combined and
brought the definition of a dependent in line with that under
Ariz. Rev. Stat. § 33-1126(A)(6).

1 The revised Senate Fact Sheet for Senate Bill 1060, prepared
2 by Senate staff almost a month after the legislature had passed
3 the 1992 bill, provides more convincing evidence that the family
4 member or members named as beneficiaries must also be dependents.

5 The Fact Sheet stated the bill's purpose:

6 Exempts up to \$100,000 of the proceeds from life
7 insurance policies from the claims of creditors in the
8 case of bankruptcy or other court proceedings when a
dependent family member has been named beneficiary of
those proceeds.

9 The Fact Sheet also furnished the following background on the
10 bill:

11 Currently, under the Arizona insurance statutes, if a
12 dependent family member has been named the beneficiary
13 of a life insurance policy for a continuous two-year
14 period, up to \$2000 of the proceeds from the policy are
15 exempted from the claims of creditors' in the event of
bankruptcy or other court proceeding, with a minimum of
\$5,000 and a maximum of \$10,000 for all dependents
combined.

16 Amended Fact Sheet for S.B. 1060, 40th Leg., 2d Sess., at 1
17 (Ariz. March 2, 1992).⁸

18 Senate Committee Minutes reflecting consideration of the
19 amendments to Senate Bill 1060 included this summary of the bill:

20 [U]nder current State law when a creditor makes an
21 attempt to recover debt in a court proceeding, such as
22 bankruptcy, the cash surrender value of a life
23 insurance policy is subject to the claim of a creditor.
24 However, certain portions are exempt when a dependent
family member had been named beneficiary. This bill
25 eliminates the requirement that the dependent family
member must be named beneficiary for a continuous two
year period and eliminates the \$2,000 per dependent
limit which is protected from a claim by a creditors.

26 ⁸ In Arizona, Senate fact sheets are viewed as "relevant
27 legislative history and as reflective, though not dispositive, of
28 legislative intent." State v. Payne, 225 P.3d 1131, 1139 n.5
(Ariz. Ct. App. 2009).

1 All money named for a dependent beneficiary would be
2 exempt.

3 Senate Minutes of Comm. on Commerce and Labor, 40th Leg., 2d
4 Sess. (Ariz. Feb. 5, 1992).

5 In short, the only inference permissible from the excerpts
6 we cite support the trustees' position; namely, that the cash
7 surrender value of life insurance policies and proceeds from
8 annuity contracts were intended to protect those family members
9 who were dependent on the debtor. We appropriately make this
10 inference from the explicit purpose of the statute which was set
11 forth in the amended Senate Fact Sheet and also from the changes
12 to the statutory language – the addition of the words “family
13 member” after “any dependent” as well as the change in wording
14 from “a dependent means a person” to “a dependent means a family
15 member.” Accordingly, we conclude that the legislative history
16 is determinative of the legislative intent behind Ariz. Rev.
17 Stat. § 33-1126(A)(6).⁹

18 When Ariz. Rev. Stat. § 33-1126 was amended in 2005 to
19 include the exemption for annuity contracts under (A)(7), the
20 legislature adopted almost identical language as that in (A)(6)
21 with respect to named beneficiaries. Therefore, in the absence
22 of a contrary intent – which we could not find – we construe the
23 language contained in both subsections and that of the Insurance
24 Code (Ariz. Rev. Stat. 20-1131(D)) in the same manner.

26
27 ⁹ For this reason, we are unpersuaded by the out-of-state
28 case law cited by the parties that construed similar exemption
statutes.

1 We are mindful of the rule that exemption statutes are to be
2 construed liberally in the debtor's favor. In re Hoffpauir, 125
3 B.R. 269, 271 (Bankr. D. Ariz. 1990). Our construction of the
4 statute, however, does not run afoul of the liberal construction
5 rule because debtors who qualify for the exemption are entitled
6 to exempt an unlimited dollar amount under both subsection (A) (6)
7 and (A) (7). Moreover, this result is consistent with the purpose
8 behind the exemption laws in Arizona which "were not created
9 merely for the purpose of conferring a privilege on a debtor, but
10 to shelter the family and thereby benefit the state." In re
11 Foreacre, 358 B.R. 384, 390 (Bankr. D. Ariz. 2006) (referring to
12 homestead exemption). In any event, our role on review is
13 restricted to an interpretation of the exemption statute as
14 written. Hoffpauir, 125 B.R. at 271 (court is not authorized to
15 reduce or enlarge exemptions).

16 Accordingly, we hold that Ariz. Rev. Stat. § 20-1131(D) and
17 § 33-1126(A) (6) and (7) require that the child of a debtor named
18 as a beneficiary must be a dependent in order for the debtor to
19 obtain an exemption under those sections.

20 VI. CONCLUSION

21 For the reasons stated above, we REVERSE the bankruptcy
22 court's order in each appeal.
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