

APR 24 2017

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

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In re:)	BAP No.	EC-16-1140-BJuTa
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RONALD J. SMITH and SUSAN M. SMITH,)	Bk. No.	1:10-bk-11054
)		
Debtors.)		
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RANDELL PARKER, Chapter 7 Trustee,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM¹	
)		
RONALD J. SMITH; SUSAN M. SMITH,)		
)		
Appellees.)		
)		

Argued and Submitted on March 23, 2017,
at Sacramento, California

Filed - April 24, 2017

Appeal from the United States Bankruptcy Court
for the Eastern District of California

Honorable Fredrick E. Clement, Bankruptcy Judge, Presiding

Appearances: Phillip W. Gillet, Jr. argued for appellant Randell Parker, Chapter 7 Trustee; David Max Gardner argued for appellees Ronald and Susan Smith.

Before: BRAND, JURY and TAYLOR, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Chapter 7² trustee Randell Parker ("Trustee") appeals an
2 order overruling his objection to debtors' claimed exemption
3 under Cal. Civ. Code Proc. ("CCP") § 704.140. for settlement
4 proceeds arising from a personal injury lawsuit. We AFFIRM.

5 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

6 **A. Events prior to the claimed exemption**

7 Debtors Ronald and Susan Smith ("Debtors") filed their
8 chapter 7 bankruptcy case on February 2, 2010. Mr. Smith is a
9 100% disabled Vietnam veteran and is in his late 70s. Debtors
10 neither listed any litigation claims in their original filing nor
11 disclosed any such claims to Trustee. After Trustee issued a
12 no-asset report, Debtors received their discharge on June 7, 2010,
13 and the case was closed on June 11, 2010.

14 In October 2011, Mr. Smith signed a contingency fee agreement
15 with attorneys ("PI Counsel") to represent him against the Roman
16 Catholic Diocese of Helena for claims arising from childhood
17 sexual abuse that occurred in the late 1940s.

18 After learning of the abuse claim in March 2013, the
19 U.S. Trustee moved to reopen Debtors' case for the asset to be
20 administered by the estate. The bankruptcy court reopened the
21 case, and Trustee was appointed.

22 In September 2013, Trustee retained general counsel to assist
23 him with settlement of the abuse claim and retained PI Counsel as
24 special counsel to prosecute the abuse claim for the chapter 7
25 estate in accordance with the contingency fee agreement. The

26
27 ² Unless specified otherwise, all chapter, code and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 bankruptcy court approved employment of both counsel on the agreed
2 terms.

3 In January 2015, PI Counsel contacted general counsel and
4 advised of a proposed settlement with the Diocese, which had since
5 filed a chapter 11 bankruptcy case in Montana. PI Counsel
6 recommended that Trustee vote in favor of the Diocese's proposed
7 plan of reorganization, which incorporated the \$15 million
8 settlement agreement negotiated between the Diocese and
9 360 childhood sexual abuse claimants.

10 On February 4, 2015, general counsel filed a motion to
11 compromise and approve the settlement. Trustee estimated that,
12 based on a claim filed in Debtors' case for \$5,782.90 and the
13 estimated settlement range for the abuse claim of \$20,000 to
14 \$40,000, the settlement would be sufficient to pay administrative
15 expenses and all claims against the estate and to return a surplus
16 to Debtors. However, Trustee acknowledged that intervening
17 factors could change the calculation. For example, Debtors could
18 file an allowed claim of exemption in the settlement proceeds.
19 The bankruptcy court approved the settlement motion. General
20 counsel then prepared and submitted a ballot accepting the
21 Diocese's proposed chapter 11 plan.

22 In March 2015, Mr. Smith received a letter advising him that
23 he would receive \$39,752.98 (net) in settlement funds for his
24 "physical injuries and the emotional injuries flowing from the
25 physical injuries related to the abuse [he] suffered." PI Counsel
26 then sent Trustee a letter with a copy to Mr. Smith regarding the
27 settlement funds. The letter indicated that Mr. Smith was awarded
28 \$69,399.17 but would receive \$39,752.98 after deducting

1 PI Counsel's fees and other costs.

2 In April 2015, PI Counsel filed its first and final
3 application for compensation in Debtors' case, seeking \$29,396.68.
4 Debtors were served with the motion. The bankruptcy court
5 approved the unopposed motion.³

6 In June 2015, general counsel received two settlement checks
7 totaling \$39,857.06. Various written communication followed among
8 general counsel, PI Counsel and Trustee concerning the settlement,
9 tax consequences and the residue amount owed to Mr. Smith.
10 PI Counsel confirmed that Mr. Smith's claims were "personal injury
11 claims and the amounts received by the claimants are for pain,
12 suffering, anxiety, and general non-economic damages suffered by
13 the claimants as a result of the abuse."

14 In August 2015, general counsel filed an application for
15 compensation in Debtors' case, seeking \$12,362.19 in fees and
16 costs. Debtors objected, arguing that they should not have to pay
17 the fees from their estate.

18 The bankruptcy court held a hearing on general counsel's fee
19 application on October 7, 2015. Debtors appeared pro se. General
20 counsel stated that after all expenses, Debtors would receive
21 about \$15,000. Mr. Smith stated that although Mrs. Smith is 60%
22 disabled, she takes care of him and that they could use the
23 settlement funds for their medical expenses. Mr. Smith then

24
25 ³ The contingency fee agreement contains an attorney's lien,
26 which automatically perfected PI Counsel's lien against the
27 settlement funds recovered for Mr. Smith under California law.
28 Carroll v. Interstate Brands Corp., 99 Cal. App. 4th 1168, 1172-73
(2002). It appears then that Debtors must pay PI Counsel the
amount agreed upon under their contract out of the recovered
funds.

1 inquired about whether Debtors could receive the settlement funds
2 if they proved they were needed to support their family. The
3 court replied that exemptions were available which might allow
4 Debtors to keep a portion of the funds and agreed to continue the
5 hearing for two weeks to give Debtors an opportunity to discuss
6 their exemption rights with an attorney. General counsel
7 ultimately withdrew the fee application without prejudice.

8 **B. Debtors' attempts to exempt the settlement funds**

9 Debtors, with the help of counsel, promptly filed amended
10 Schedules B and C, listing the abuse claim and claiming the full
11 amount of the settlement funds exempt under CCP §
12 703.140(b)(11)(A). Debtors contended they were entitled to the
13 settlement funds because "[Mr. Smith] suffers from medical
14 conditions and estimates a potential funeral for him will cost in
15 excess of \$12,000, not to mention what his wife will need to live
16 without his financial contribution to the household after his
17 death." Mr. Smith's unsigned declaration in support made no
18 mention of any medical condition or financial need for the
19 settlement funds. The bankruptcy court sustained Trustee's
20 objection, ruling that the settlement funds arose from a tort
21 claim rather than under a crime victim's reparation statute as
22 required for an exemption under CCP § 703.140(b)(11)(A).

23 Debtors again amended their Schedule C, this time claiming
24 the full amount of the settlement funds exempt for a personal
25 injury under CCP § 704.140 (no subsection).⁴ Debtors claimed the

26
27 ⁴ CCP § 704.140 provides, in relevant part:

28 (continued...)

1 funds were necessary "for constant medical needs and care."
2 Trustee objected on two grounds: (1) Debtors had no financial
3 need for the settlement funds; and (2) equitable estoppel and
4 laches prevented them from amending their schedules. Trustee
5 contended that for the settlement funds to be exempt under either
6 CCP § 704.140(a) or (b), Debtors had to show they were "necessary
7 for their support."

8 First, Trustee argued that the evidence showed the settlement
9 funds were not necessary for Debtors' support, because Debtors'
10 income was adequate to meet their expenses. While Debtors'
11 Schedules I and J showed a net deficit of \$383.50 per month,
12 Trustee asserted that these numbers did not accurately reflect
13 Debtors' financial circumstances. Trustee asserted that Debtors'
14 monthly income was \$4,300 rather than the \$3,411 stated in the
15 schedules based on Mr. Smith's testimony at his deposition in the
16 abuse litigation and that tax expenses on Schedule J were
17 overstated. Trustee argued that corrected Schedules I and J would
18 have shown negative monthly income of only \$20. Finally, Trustee
19 challenged Debtors' contention that the funds were needed for
20 medical expenses, noting that Debtors did not schedule any medical
21 debts and that Mr. Smith had testified at his deposition that
22 Debtors' own "stupidity" is what led to their bankruptcy filing.

23 _____
24 ⁴(...continued)

25 (a) Except as provided in Article 5 . . . a cause of action
for personal injury is exempt without making a claim.

26 (b) Except as provided in subdivisions (c) and (d), an award
27 of damages or a settlement arising out of personal injury is
exempt **to the extent necessary for the support of the**
28 **judgment debtor and the spouse and dependents of the judgment**
debtor (emphasis added).

1 In addition, he asserted that Debtors received free or low-cost
2 medical care from the VA as a 100% disabled veteran; the VA's
3 website stated that veterans with a disability rating of 50% or
4 more receive free care. Moreover, he pointed out that because
5 Debtors were over 65, they were eligible for Medicare. Lastly,
6 Trustee argued that because Mr. Smith was receiving VA benefits,
7 he and Mrs. Smith were entitled to VA burial benefits.

8 Secondly, Trustee argued that Debtors should be equitably
9 estopped from claiming the settlement funds exempt because they
10 were aware of Trustee's efforts to liquidate the abuse claim yet
11 did not amend their exemptions until he and his attorneys had
12 taken significant time, effort and expense to liquidate the claim.
13 Trustee further argued that laches and waiver applied because of
14 Debtors' unreasonable delay in claiming the exemption until all
15 the work in the case was complete.

16 In response, Debtors disputed Trustee's equitable estoppel
17 argument, contending that Trustee and his attorneys knew of the
18 exemption and that Debtors (who were pro se until now) had the
19 right to fully exempt the settlement proceeds. Had they
20 encouraged Debtors to seek counsel earlier, Trustee and his
21 counsel could have avoided undertaking further work. Debtors
22 further claimed that since their bankruptcy case they had
23 undergone many medical issues. Mr. Smith suffered from severe
24 anxiety, diabetes, and a loss of hearing and eyesight. Thus, the
25 settlement funds were necessary for his ongoing medical care.
26 Although Mr. Smith admitted to testifying previously that he did
27 not need the funds, things had taken a turn for the worse since
28 then.

1 In his declaration in support, Mr. Smith stated that he and
2 Mrs. Smith had foregone major dental work for the past seven years
3 due to lack of funds to pay for it. Debtors also needed funds to
4 replace their gas wall heaters that were removed due to a gas
5 leak. Their current electric bill was \$400/month because of
6 running necessary electric heaters due to their medical
7 conditions.

8 At the hearing, the bankruptcy court stated its preference
9 for an evidentiary hearing given the arguments being raised.
10 However, it was willing to allow the parties to waive their right
11 and have the matter decided on the papers. The parties agreed to
12 waive an evidentiary hearing and submit on the papers.

13 **C. The bankruptcy court's ruling**

14 The court announced on the record its detailed findings of
15 fact and conclusions of law, overruling Trustee's objection. It
16 allowed Debtors' amendment to exempt the full amount of the
17 settlement funds, \$69,399.17, determining they had met their
18 burden of proving the funds were necessary for their support under
19 CCP § 704.140. After the court entered an order consistent with
20 its oral ruling, Trustee timely appealed.

21 **II. JURISDICTION**

22 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
23 and 157(b)(2)(B). We have jurisdiction under 28 U.S.C. § 158.

24 **III. ISSUES**

25 1. Did the bankruptcy court err in determining that Debtors were
26 not estopped from amending Schedule C to claim the settlement
27 funds exempt?

28 2. Did the bankruptcy court err in determining that the

1 settlement funds were necessary for Debtors' support?

2 **IV. STANDARDS OF REVIEW**

3 A debtor's right to claim an exemption is a question of law
4 we review de novo. Elliott v. Weil (In re Elliott), 523 B.R. 188,
5 191 (9th Cir. BAP 2014). The bankruptcy court's interpretation of
6 state exemption laws is reviewed de novo. Diaz v. Kosmala
7 (In re Diaz), 547 B.R. 329, 333 (9th Cir. BAP 2016) (citing
8 Calderon v. Lang (In re Calderon), 507 B.R. 724, 728 (9th Cir. BAP
9 2014)). The bankruptcy court's findings of fact with respect to a
10 claimed exemption are reviewed for clear error. In re Elliott,
11 523 B.R. at 191. Factual findings are clearly erroneous if
12 illogical, implausible or without support in the record. Id. at
13 191-92 (citing Retz v. Samson (In re Retz), 606 F.3d 1189, 1196
14 (9th Cir. 2010)).

15 The court's decision whether to apply equitable estoppel is
16 reviewed for an abuse of discretion. Leong v. Potter, 347 F.3d
17 1117, 1121 (9th Cir. 2003). A bankruptcy court abuses its
18 discretion if it applies the wrong legal standard or its findings
19 are illogical, implausible or without support in the record.
20 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th
21 Cir. 2011).

22 **V. DISCUSSION**

23 **A. Law governing exemptions generally**

24 When a debtor files a chapter 7 petition, all of the debtor's
25 legal or equitable interests in property become property of the
26 estate, subject to the debtor's right to reclaim certain property
27 as exempt. Schwab v. Reilly, 560 U.S. 770, 774 (2010).
28 Section 522 provides a default list of exemptions, but allows

1 states to opt out of the federal scheme and define their own
2 exemptions. § 522(b)(2), (b)(3)(A), (d). California has opted
3 out of the federal exemption scheme and permits its debtors only
4 the exemptions allowable under state law. CCP § 703.130. The
5 bankruptcy court decides the merits of state exemptions, but the
6 validity of the exemption is controlled by California law.
7 In re Diaz, 547 B.R. at 334 (citing LaFortune v. Naval Weapons
8 Ctr. Fed. Credit Union (In re LaFortune), 652 F.2d 842, 846
9 (9th Cir. 1981)). California exemptions are to be broadly and
10 liberally construed in favor of the debtor. In re Elliott,
11 523 B.R. at 192.

12 A debtor's exemption rights are determined as of the petition
13 date. Wolfe v. Jacobson (In re Jacobson), 676 F.3d 1193, 1199
14 (9th Cir. 2012); Gose v. McGranahan (In re Gose), 308 B.R. 41, 45
15 n.7 (9th Cir. BAP 2004).

16 Generally, a debtor's claimed exemption is presumptively
17 valid, and the objecting party has the burden of proving that the
18 exemption is improper. In re Diaz, 547 B.R. at 336 (citing Carter
19 v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir.
20 1999); Rule 4003(c)). However, where a state law exemption
21 statute specifically allocates the burden of proof to the debtor,
22 as California has done here, Rule 4003(c) does not change that
23 allocation. Id. at 337; CCP § 703.580(b). Thus, as the
24 bankruptcy court properly determined, Debtors had the burden to
25 prove they were entitled to the personal injury exemption under
26 CCP § 704.140.

27

28

1 **B. Analysis**

2 **1. The bankruptcy court did not err in determining that**
3 **Debtors were not estopped from amending to claim the**
4 **settlement funds exempt.**

5 Under Rule 1009(a), a debtor may amend his or her list of
6 exemptions as a matter of course before a case is closed. See
7 Martinson v. Michael (In re Michael), 163 F.3d 526, 529 (9th Cir.
8 1998); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 393
9 (9th Cir. BAP 2003) ("[F]or the purposes of filing amendments,
10 there is no difference between an open case and a reopened case,
11 and [a debtor in a reopened case does] not need the court's
12 permission to amend.") (citation omitted).

13 Although Law v. Siegel, 134 S.Ct. 1188 (2014), mandates that
14 the bankruptcy court lacks federal authority to disallow an
15 amended exemption or to deny leave to amend an exemption based on
16 a debtor's bad faith or prejudice to creditors, it does recognize
17 that, when a debtor claims an exemption created under state law,
18 the scope of the exemption is determined under state law which
19 "may provide that certain types of debtor misconduct warrant
20 denial of the exemption." Id. at 1196-97. Here, this could
21 include any equitable doctrines under California law to disallow
22 an amended exemption, including equitable estoppel and laches.
23 Gray v. Warfield (In re Gray), 523 B.R. 170, 175 (9th Cir. BAP
24 2014); In re Lua, 529 B.R. 766, 775 (Bankr. C.D. Cal. 2015).

25 Trustee had the burden to prove that equitable estoppel
26 applied with respect to Debtors amending their exemptions.
27 Domarad v. Fisher & Burke, Inc., 270 Cal. App. 2d 543, 556 (1969).
28 To invoke equitable estoppel under California law, a party must
show: "(a) a representation or concealment of material facts;

1 (b) made with knowledge, actual or virtual, of the facts; (c) to a
2 party ignorant, actually and permissibly, of the truth; (d) with
3 the intention, actual or virtual, that the ignorant party act on
4 it; and (e) that party was induced to act on it." Simmons v.
5 Ghaderi, 44 Cal. 4th 570, 584 (2008). The existence of an
6 estoppel is generally a question of fact for the trier of fact,
7 and ordinarily the trial court's determination is binding on
8 appeal unless the contrary conclusion is the only one to be
9 reasonably drawn from the facts. J.P. v. Carlsbad Unified Sch.
10 Dist., 232 Cal. App. 4th 323, 333 (2014).

11 Trustee contends the bankruptcy court erred in finding that
12 Debtors were not equitably estopped from amending to claim the
13 settlement funds exempt. The court found that Debtors were not
14 equitably estopped from amending because they were acting pro se
15 and did not know of their right to exempt the funds until the
16 court apprised them of it at the October 7, 2015 hearing. Thus,
17 the "knowledge of the facts" element of equitable estoppel was not
18 met. The question is whether or not this finding is supported.

19 Trustee contends that because Debtors knew they had a right
20 to exempt certain property on the petition date, which they did in
21 their initial Schedule C, they knew that they could exempt the
22 settlement funds as well. The record does not support Trustee's
23 contention, but it does support the bankruptcy court's finding.
24 The record reflects that Debtors did not learn of their right to
25 exempt the settlement funds until sometime just before or at the
26 October 7, 2015 hearing, where they first asked the court about
27 it. Because Trustee's contention is not the only conclusion that
28 can be reasonably drawn from the facts, the court's finding that

1 Debtors lacked knowledge of the facts is binding. Carlsbad
2 Unified Sch. Dist., 232 Cal. App. 4th at 333.

3 In addition, Trustee's argument fails because he was not
4 "ignorant of the truth." This element requires that the party
5 asserting equitable estoppel not only lacked actual knowledge of
6 the true facts, but also did not have notice of the facts
7 sufficient to put a reasonably prudent person on inquiry notice.
8 Life v. Cnty. of L.A., 227 Cal. App. 3d 894, 902 (1991). Trustee
9 asserts that he did not know Debtors would seek to exempt the
10 settlement funds at the 11th hour. However, Trustee conceded in
11 his settlement motion in February 2015, after a significant amount
12 of work had already been done respecting the settlement, that
13 Debtors could possibly claim the funds exempt. Thus, he was more
14 than on "inquiry notice" that Debtors could still at some point
15 after February 2015 seek to exempt the funds; he actually foresaw
16 that they might. Accordingly, the bankruptcy court did not abuse
17 its discretion in not applying equitable estoppel to Debtors'
18 amended exemption for the settlement funds.

19 The bankruptcy court also rejected Trustee's laches argument,
20 finding that Debtors did not engage in unreasonable delay; they
21 first learned about their exemption right in the settlement funds
22 on October 7, 2015, and filed their amended Schedule C claiming
23 the funds exempt on October 26, 2015, some nineteen days later.
24 Because application of laches is discretionary, the standard of
25 review on appeal is whether the trial court properly found (1) a
26 lack of diligence by the party against whom the defense is
27 asserted, and (2) prejudice to the party asserting the defense.
28 Pres. Coal., Inc. v. Pierce, 667 F.2d 851, 854 (9th Cir. 1982).

1 Although raised in his brief, Trustee fails to articulate how
2 the bankruptcy court erred in finding that laches did not apply.
3 He contends only that it was unreasonable for Debtors to sleep on
4 their rights for two-and-a-half years while he labored to
5 liquidate and settle the abuse claim. However, as already noted,
6 Trustee acknowledged in his settlement motion in February 2015
7 that Debtors could still amend to exempt the funds, which would
8 change the distribution scheme. Thus, at most, Debtors waited
9 eight months to amend. In any event, the record supports the
10 bankruptcy court's finding; it did not abuse its discretion in
11 determining that laches did not bar Debtors from amending to claim
12 the settlement funds exempt.

13 **2. The bankruptcy court did not err in determining that the**
14 **settlement funds were necessary for Debtors' support.**

15 Debtors claimed the settlement funds were exempt proceeds of
16 a personal injury claim under CCP § 704.140 but failed to list
17 whether their claim was made under subsection (a) or (b). The
18 bankruptcy court recognized that regardless of the subsection
19 claimed, Debtors had to demonstrate that the settlement funds were
20 "necessary for their support." In re Gose, 308 B.R. at 48.

21 Noting that the case was a "difficult" and "close one," with
22 "thin" evidence from Debtors, the bankruptcy court found that
23 Debtors had met their burden of proving that the entire amount of
24 the settlement funds was necessary for their support. The court
25 acknowledged that while exemption rights are determined as of the
26 petition date, it believed that the word "necessity" in the
27 statute requires a "forward-looking" consideration of the debtor's
28 needs. Trustee does not dispute the court's interpretation.

1 The bankruptcy court stated four reasons why the settlement
2 funds were necessary for Debtors' support. First, although
3 Mr. Smith's declaration was conclusory and amounted to one
4 sentence, the court accepted his statement that Debtors needed the
5 funds for their support. Second, Debtors' income and expenses
6 indicated financial need. The court noted the negative projected
7 disposable income in Debtors' Schedules I and J of -\$383.50. The
8 court gave no weight to Mr. Smith's deposition testimony that his
9 monthly income was \$4,300; Debtors' stated monthly income in their
10 Schedule I of \$3,411 was more persuasive. The court found that
11 Debtors had also understated their monthly expenses. Mr. Smith
12 stated that Debtors paid \$400 monthly for electric, but their
13 Schedule J showed electric and heating fuel of only \$160 per
14 month. Debtors' stated monthly home maintenance expense of \$45
15 was "very very low" for a \$200,000 home, and it failed to account
16 for the cost to replace the needed wall heaters. Debtors had also
17 not accounted for any necessary personal hygiene or pet expenses.
18 Finally, Debtors had understated their monthly medical and dental
19 expenses at \$150, when both of them needed major dental work and
20 Mr. Smith has diabetes.

21 As for Trustee's argument that Debtors had overstated their
22 property taxes, the court found Trustee's \$502/year figure
23 inaccurate because of an incorrect date, and it disregarded as
24 hearsay his \$450/year figure. The court also disregarded as
25 hearsay Trustee's exhibits of the VA website printouts indicating
26 that Mr. Smith may receive free healthcare and that website's
27 information as to Debtors' entitlement to a free burial.
28 Moreover, Trustee had not shown that Mr. Smith actually met the

1 conditions for a free burial from the VA.

2 Thirdly, the bankruptcy court found that Debtors were below
3 median debtors, at 63% of the median income for a household of
4 two, which also supported necessity. And fourth, Debtors had
5 modest assets, including little equity in their home and few
6 personal property assets consisting of older vehicles and \$2 in
7 their bank account on the petition date.

8 Trustee assigns several errors with the bankruptcy court's
9 findings on necessity. Each of his arguments lack merit.

10 First, Trustee argues that in order to claim the settlement
11 funds exempt, Mr. Smith had to show that he suffered a "physical
12 injury." Trustee never raised this argument before the bankruptcy
13 court, and he cites no authority for his position. In any event,
14 the record reflects that Mr. Smith received the settlement funds
15 on account of "physical injuries and the emotional injuries
16 flowing from the physical injuries related to the abuse [he]
17 suffered." Even if the funds were only to compensate Mr. Smith
18 for his emotional distress, which no one disputed he suffered
19 from, emotional distress damages fall within the "personal injury"
20 requirement under CCP § 740.140. Sylvester v. Hafif
21 (In re Sylvester), 220 B.R. 89, 92-93 (9th Cir. BAP 1998).

22 Trustee next contends the bankruptcy court erred in finding
23 that Debtors were not aware of their exemption right in the
24 settlement funds until October 2015. The evidence contradicts
25 Trustee's argument. While Debtors were aware of the abuse claim
26 before that time, the record shows they did not learn about their
27 exemption rights in the settlement funds until just before or at
28 the October 7, 2015 hearing.

1 Next, Trustee argues that the bankruptcy court erred by
2 considering Mr. Smith's "unsworn" declaration with his conclusory
3 statements, by assuming statistical evidence and by speculating
4 about expenses not before the court. Trustee also faults the
5 court for ignoring Mr. Smith's deposition testimony that Debtors'
6 income had increased since the petition date. Although Trustee
7 repeatedly states that Mr. Smith's declaration was unsworn, that
8 is untrue. The operative declaration in support of Debtors'
9 second attempt to exempt the settlement funds was sworn. And as
10 for Mr. Smith's conclusory statements, the court acknowledged that
11 Debtors' evidence was "thin" and that it was a close case. We
12 cannot say it was clearly erroneous for the court to choose
13 Mr. Smith's conclusory testimony over Trustee's evidence. See
14 Anderson v. Bessemer City, N.C., 470 U.S. 564, 573-75 (1985);
15 Ng v. Farmer (In re Ng), 477 B.R. 118, 132 (9th Cir. BAP 2012) (if
16 two views of the evidence are possible the trial judge's choice
17 between them cannot be clearly erroneous).

18 To the extent Trustee contends the court erred by reviewing
19 Debtors' Schedules I and J, Trustee specifically asked the court
20 to take judicial notice of those documents, which it did. In
21 reviewing them, the court determined that Debtors had understated
22 their expenses. Trustee cites no authority for why the court
23 could not consider this fact in its determination of whether the
24 settlement funds were necessary for Debtors' support. As for the
25 "statistical evidence" the court considered, we assume Trustee
26 means Debtors' median income on the petition date. We fail to see
27 how the court's consideration of this fact was clearly erroneous.
28 On the petition date, Debtors were significantly below the median

1 income for a household of two in California, which at the time was
2 \$64,080.78/year. Finally, the court did not "ignore" Mr. Smith's
3 testimony about Debtors' increased income; it merely did not find
4 it persuasive. Notably, even if the court accepted Mr. Smith's
5 testimony that Debtors' income was now \$4,300 per month, that
6 equates to \$51,600/year, which is still below the median.

7 Trustee next argues that the court erred by not considering
8 the website printout evidence he presented regarding Debtors'
9 property taxes and their qualification for free healthcare and
10 death benefits. As for a portion of the property tax evidence
11 from the county's website and the evidence from the VA's website
12 indicating that veterans with a 50% or greater disability receive
13 free healthcare, the court sua sponte rejected the website
14 printouts based on hearsay. FRE Rule 801(c). We review a
15 bankruptcy court's evidentiary rulings for abuse of discretion,
16 and then only reverse if any error would have been prejudicial to
17 the appellant. Mbunda v. Van Zandt (In re Mbunda), 484 B.R. 344,
18 351 (9th Cir. BAP 2012).

19 Trustee does not dispute that the website printouts here meet
20 the definition of hearsay; they consisted of statements made
21 outside of court and were offered to prove the truth of the matter
22 asserted. While some courts have found that information posted on
23 the website of a government entity may qualify as a public record
24 or report under FRE 803(8),⁵ Trustee neither made such argument
25

26 ⁵ See EEOC v. E.I. DuPont DeMours & Co., 2004 WL 2347559, at
27 *1 (E.D. La. Oct. 18, 2004), aff'd, 480 F.3d 724 (5th Cir. 2007)
(holding that data from U.S. Census Bureau website qualifies as a
28 public record); Chapman v. S.F. Newspaper Agency, 2002 WL

(continued...)

1 nor laid any foundation for this hearsay exception. He also cites
2 no controlling authority providing that the court was precluded
3 from excluding the website printouts on the basis of hearsay, sua
4 sponte or otherwise. Moreover, had the court considered Trustee's
5 property tax evidence, at best it would have shown that Debtors
6 had a **smaller** negative balance for their monthly disposable
7 income. As for the VA death benefit printouts, the court found
8 that in addition to the hearsay problem, Trustee had failed to
9 show whether Mr. Smith was even eligible for a free burial.
10 Trustee does not contest this finding, which is supported by the
11 record.

12 Finally, Trustee argues that the court erred by limiting the
13 relief in this case to an "all or nothing" result because of
14 Trustee's implied argument that Debtors' claimed exemption for the
15 settlement funds should be disallowed entirely. Trustee contends
16 that despite his prayer for relief, the court was required to find
17 the funds were exempt (1) in full, (2) in part or (3) not at all.
18 Trustee's argument that Debtors' exemption should be disallowed
19 was far from implied. He argued that none of the settlement funds
20 were necessary for their support or that they should be forfeited
21 on some equitable basis. For these reasons, the court found that
22 Trustee's all or nothing prayer for relief was a "false
23 dichotomy," in that CCP § 704.140 restricts the exemption "to the

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26 ⁵(...continued)
27 31119944, at *3 (N.D. Cal. Sept. 20, 2002) (holding that printout
28 from U.S. Postal Service website is admissible as a public
record); Johnson-Wooldridge v. Wooldridge, 2001 WL 838986, at *4
(Ohio App. July 26, 2001) (holding that printouts from the state
board of education website were admissible as public records).

1 amount necessary" for the support of the debtor, spouse and
2 dependents. Nonetheless, since the parties had limited the relief
3 in this manner, the court opted to rule on the issue that way and
4 not attempt to decide whether some part of the funds were
5 necessary for Debtors' support.

6 Trustee complains the court cited no authority to support its
7 position that a court should limit its relief in a way that is
8 inconsistent with the statute because of some perceived wrong
9 manner of asking for relief. However, Trustee fails to cite any
10 California authority requiring the court to go outside the
11 requested relief in this case. Trustee set forth no evidence or
12 even argument as to what amount of the settlement funds Debtors
13 could exempt, if anything less than the full amount was
14 appropriate. Thus, in order to apportion the funds as Trustee
15 contends, the court would have had to choose a number out of thin
16 air, which it declined to do.

17 Absent any contrary evidence from Trustee, the bankruptcy
18 court did not err by construing the personal injury exemption in
19 favor of Debtors and allowing the full amount of the settlement
20 funds exempt.

21 **VI. CONCLUSION**

22 For the foregoing reasons, we AFFIRM.

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