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

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:
WILLIAM V. THOMAS,
Debtor.

BAP No. CC-25-1184-NLC

Bk. No. 2:24-bk-10571-WB

WILLIAM V. THOMAS,
Appellant,

MEMORANDUM*

v.
ROSENDO GONZALEZ, Chapter 7
Trustee,
Appellee.

Appeal from the United States Bankruptcy Court
for the Central District of California
Julia Wagner Brand, Chief Bankruptcy Judge, Presiding

Before: NIEMANN, LAFFERTY, and CORBIT, Bankruptcy Judges.

INTRODUCTION

Debtor William V. Thomas (“Debtor”) appeals an order sustaining an objection by chapter 7¹ trustee Rosendo Gonzalez (“Trustee”) to certain

* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, *see* Fed. R. App. P. 32.1, it has no precedential value, *see* 9th Cir. BAP Rule 8024-1.

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, all “Rule” references are to the Federal Rules

exemptions claimed by Debtor. The assets at issue, totaling \$93,533.92 in scheduled value, are (1) two Southland credit union deposit accounts, (2) two Nordstrom credit union deposit accounts, and (3) an annuity (collectively, the “Disputed Assets”). Debtor asserts the Disputed Assets are exempt under CCP § 704.225, as necessary for the support of Debtor.²

The bankruptcy court found Debtor did not satisfy his burden of proof under CCP § 704.225 and none of the Disputed Assets qualified as exempt property. Debtor challenges these findings and also asserts the bankruptcy court improperly considered his other assets in sustaining Trustee’s objection. Finding no error in the bankruptcy court’s findings or conclusions, we AFFIRM.

FACTS³

Debtor filed the petition commencing his chapter 7 bankruptcy case on January 25, 2024 (the “Petition Date”). As of the Petition Date, Debtor

of Bankruptcy Procedure, and all “CCP” references are to the California Code of Civil Procedure.

² The appealed order also sustained Trustee’s objection to the exemption of two credit union certificates of deposit totaling \$20,149.00 (the “CODs”). Unlike the Disputed Assets, Debtor asserted the CODs were exempt under “CCP § 704.115(a)(1) & (2), (b).” The bankruptcy court found that the CODs did not qualify for exemption under CCP § 704.115, which applies to private retirement or profit-sharing plans. Debtor has not challenged this holding on appeal and, therefore, has waived any potential challenge to the disallowance of the exemption of the CODs. *Law Offices of Neil Vincent Wake v. Sedona Inst. (In re Sedona Inst.)*, 220 B.R. 74, 76 (9th Cir. BAP 1998) (noting an issue not briefed by a party is deemed waived), *aff’d*, 21 F. App’x 723 (9th Cir. 2001) (9th Cir. 2001).

³ We exercise our discretion, when appropriate, to take judicial notice of

was a 67-year-old single male with no dependents. Prior to filing, Debtor operated an outdoor furniture store for roughly 15 years. That business ceased operating and filed its own chapter 7 bankruptcy around the same time as the Petition Date. Debtor asserts he is now unemployable due to ongoing health problems.

A. Relevant Prepetition Transfers

About six months prior to the Petition Date, Debtor sold a condominium he jointly owned with James E. Carter (the “Condo”) for \$314,696.87. The proceeds from the sale of the Condo were divided equally between Debtor and Mr. Carter. Debtor’s interest, totaling \$157,348.43, was transferred to a Chase checking account.⁴ Four days later, \$170,000 was transferred from the Chase checking account to a checking account with Nordstrom Federal Credit Union in Debtor’s name. About three weeks later, \$110,000 was transferred from the Nordstrom account to Nationwide Insurance for the purchase of an annuity (the “Annuity”).

B. Debtor’s Scheduled Assets and Liabilities

In his bankruptcy case, Debtor scheduled \$920,899.92 in assets and \$790,866.61 in liabilities. Debtor’s assets included his residence, which he also jointly owns with Mr. Carter (the “Residence”). The Residence was

documents electronically filed in the underlying bankruptcy case and related proceedings. See *Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

⁴ The Chase account had a scheduled balance of \$342.00 as of the Petition Date.

valued at \$973,000, with Debtor's share valued at \$486,500. Debts secured by the Residence, for which Mr. Carter is also a co-debtor, totaled \$235,489.87. Per a declaration later submitted by Debtor, Mr. Carter does not reside at the Residence but pays Debtor \$1,700 per month to be applied to the monthly amounts due on the mortgage, HELOC, and property taxes for the Residence.

The balance of Debtor's scheduled assets were comprised primarily of the following accounts: (1) Southland Credit Union checking account with a balance of \$4,000; (2) Southland Credit Union savings account with a balance of \$23,651.11; (3) Nordstrom Federal Credit Union checking account with a balance of \$2,641.90; (4) Nordstrom Federal Credit Union savings account with a balance of \$3,344.17; (5) the Annuity valued at \$59,846.74; (6) the CODs (*see* n.2 *supra*) with a collective balance of \$20,149; and (7) an IRA with Commonwealth Financial Network with a balance of \$299,500 ("IRA"). These accounts, excluding the IRA and CODs, are the Disputed Assets subject to this appeal.

Debtor claimed his full one-half interest in the Residence as well as the entire balance of the accounts noted above, which total \$413,132.92, as exempt property. Trustee did not object to Debtor's asserted exemptions in the Residence or IRA.

Debtor's monthly income was scheduled as \$3,493, comprised entirely of Social Security benefits and payments from the Annuity.⁵ Debtor's amended Schedule I also includes the \$1,700 received monthly from Mr. Carter, for a total combined monthly income of \$5,193. Debtor's scheduled monthly expenses totaled \$5,670.14, of which \$2,232.14 was attributed to servicing the debt secured by the Residence.⁶ Taken together, Debtor's amended Schedule J reflected a negative monthly balance of \$477.14. Debtor later asserted, in response to Trustee's objection, that the monthly deficit increased to roughly \$750 due to increased HELOC and insurance costs.

On May 28, 2024, an order of discharge was entered in Debtor's chapter 7 bankruptcy case, discharging approximately \$522,385.56 in scheduled unsecured debt.

⁵ Debtor amended his Schedule I and J on June 11, 2024. Although Debtor did not include the amended schedules in his excerpts of record on appeal, we have separately reviewed them from the bankruptcy court's electronic docket, as they are referenced in an opposition that was included in the excerpts. The income and expense amount reflected in those amended schedules are reflected here.

⁶ Debtor's amended Schedule J contains two separate entries attributable to real property taxes—\$263.00 listed on line 4a and \$500.00 listed on line 16. It is unclear whether this is a double-counting error or meant to reflect some other distinction between the two amounts. The only differences between the original and the amended Schedules I and J are (1) the inclusion of the \$1,700 per month from Mr. Carter on Schedule I, and (2) the inclusion of the additional \$263 on line 4a for real property taxes.

C. Objection to Exemptions and Initial Hearing

Debtor scheduled the Disputed Assets as exempt under CCP § 704.225, which exempts funds in deposit accounts not otherwise subject to an exemption “to the extent necessary for the support of the judgment debtor[.]” On March 4, 2025, Trustee filed an objection to the Disputed Assets (the “Objection”). The Objection asserted that Debtor failed to meet his burden of proving the Disputed Assets were “necessary” for Debtor’s support under CCP § 704.225. Trustee questioned why Debtor appeared to be shouldering more of the expenses related to the Residence than Mr. Carter. Trustee also noted Debtor retained both his IRA with a scheduled balance of \$299,500⁷ and the Residence with equity of about \$738,000.⁸

Debtor, emphasizing his age and numerous health concerns, responded that the Disputed Assets were necessary to cover the monthly net shortfall reflected in Schedules I and J.

⁷ In preparation for the meeting of creditors, Debtor provided Trustee with an account statement for the IRA indicating a balance of \$367,070.22 as of January 19, 2024—roughly \$67,000 more than reflected in Debtor’s schedules. Trustee submitted the statement as an exhibit in his declaration in support of the Objection.

⁸ In the Objection, Trustee also objected to the exemption of the CODs. In response to the Objection, Debtor amended his Schedule C of claimed exemptions. As applicable here, Debtor changed the asserted exemption for the CODs to CCP § 704.115. Debtor originally scheduled the CODs as exempt under CCP §§ 704.070 (exempting traceable earnings paid to an employee within 30 days of a levy) and 704.225.

At the initial hearing on the Objection, Trustee's counsel noted that while Debtor had referenced recurring medical conditions and expenses, no significant ongoing expenses were reflected in the records provided to Trustee. Trustee's counsel also argued Debtor had not accounted for a significant portion of the proceeds from the sale of the Condo, which further called into question any problems raised by the alleged monthly shortfall and necessity to exempt the Disputed Assets.

The bankruptcy court agreed with Trustee that Debtor had not presented sufficient information to establish the necessity of the Disputed Assets for Debtor's support. The bankruptcy court continued the hearing on the Objection to allow further briefing on two issues: (1) the necessity of the Disputed Assets for Debtor's support under CCP § 704.225; and (2) the accounting of the proceeds from the sale of the Condo.

D. Second Round of Briefing and Final Hearing

Debtor filed a supplemental brief and supporting declaration. Debtor attached the closing statement from the sale of the Condo and portions of the various bank account records showing the transfers of funds ending in the purchase of the Annuity. Regarding the necessity of the Disputed Assets, Debtor's declaration provided a summary of unplanned pre- and postpetition expenses incurred between 2022 and 2025. Those unplanned costs included: medical expenses (totaling \$5,574); home maintenance expenses (totaling \$4,755); appliance replacement expenses (totaling \$2,614); tax preparation fees (totaling \$1,860); and travel expenses (totaling

\$1,756).⁹ Debtor asserted these past expenses would likely repeat “in some form or another” going forward and supported (in addition to the net monthly deficit shown in Schedules I and J) exempting the Disputed Assets.¹⁰

Trustee’s responsive brief argued Debtor still had not met his burden of proof under CCP § 704.225. Trustee clarified he did not dispute Debtor’s medical conditions, but rather noted there was no evidence of ongoing medical expenses (not covered by insurance or Medicare) that would support exempting the Disputed Assets. As to the proceeds from the sale of the Condo, Trustee argued neither the documents provided nor Debtor’s supporting declaration explained what happened to the \$60,000 differential between the \$170,000 transferred to the Nordstrom checking account and the \$110,000 transferred for the purchase of the Annuity three weeks later. Trustee questioned what happened to the \$60,000 differential in the roughly six months between the Condo sale and the Petition Date. Trustee also noted that during those same six months, Debtor received

⁹ Debtor’s accounting also included withdrawals for certain mortgage and property tax payments (totaling \$5,344.93), which are already accounted for in Debtor’s Schedules I and J. Since these are not “unplanned expenses”, we have not included them above.

¹⁰ Only one of the payments noted in Debtor’s supplemental accounting of expenses—the \$1,756 in travel expenses to visit family—was made around the time of the transfers related to the Condo proceeds. Therefore, these unplanned expenses do not explain the \$60,000 shortfall discrepancy from the Condo proceeds.

approximately \$36,000 in regular monthly income (applying the amounts noted in Schedule I).

In reply, Debtor argued that eliminating the exemption as to the Annuity would eliminate the \$679 per month in income Debtor receives from the Annuity, thereby increasing the monthly deficit.

The bankruptcy court heard additional oral argument at the continued hearing on the Objection. The court expressed concern that Debtor had supplied no evidence of the specific amount necessary to support Debtor, but merely expressed the desire for an additional cushion. The court noted that the \$60,000 that appeared to be missing from the Condo sale was a piece of the analysis but not the “meat” of the evidentiary problem presented. Debtor’s counsel asked for the opportunity to further address the court’s concerns. Trustee opposed allowing any further argument. The bankruptcy court allowed a final round of briefing.

E. Third Round of Briefing and Order

In the final round of briefing, Debtor argued the monthly deficit had grown to \$750 (as a result of increases in HELOC and insurance costs), which would deplete the non-Annuity Disputed Assets (which, together with the CODs, total approximately \$54,000) over six years.¹¹ If the Annuity was not exempted, then the monthly deficit would grow by another \$679, expediting the depletion. As a further unexpected expense, Debtor

¹¹ No evidence of these alleged increased expenses was provided.

reported that he expended \$7,535 in legal fees responding to the Objection. Finally, Debtor asserted the \$60,000 in Condo proceeds and interim \$36,000 in income tracing were extraneous issues that unnecessarily confused Debtor's asserted exemptions.

Trustee responded that Debtor had failed to provide any additional support for his claims of necessity, notwithstanding the now third round of briefing permitted by the bankruptcy court.

On September 19, 2025, the bankruptcy court entered its order sustaining the Objection (the "Order") and finding Debtor had not met his burden of proof for exempting the assets. The CODs were neither self-employed retirement plans nor IRAs and, therefore, did not satisfy the requirements of CCP § 704.115(a) or (b). As to the application of CCP § 704.225 to the Disputed Assets, Debtor had not established the funds were necessary for his support. Debtor provided no evidence of any extraordinary out-of-pocket expenses or other basis to allow the court to predict future liabilities, despite being given two opportunities to supplement the record. The Order then noted, "In addition, Debtor has an IRA account with exempt funds of \$299,500 [and an] approximately \$368,755 interest" in his Residence.

Finally, the Order found Debtor's "opaque responses" regarding the accounting of the sale proceeds from the Condo further supported the bankruptcy court's finding that Debtor had not met his burden of proof under CCP § 704.225. Rather than identifying how the \$60,000 balance

missing from the respective accounts was used during the six months between the sale of the Condo and the Petition Date, Debtor identified only roughly \$17,000 in expenses incurred largely postpetition.

Debtor timely appealed the Order.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(B). A bankruptcy court's order denying a claim of exemption is a final, appealable order. *See Preblich v. Battley*, 181 F.3d 1048, 1056 (9th Cir. 1999). We have jurisdiction under 28 U.S.C. § 158.

ISSUE

Did the bankruptcy court err in sustaining Trustee's Objection to Debtor's claims of exemption under CCP § 704.225?

STANDARDS OF REVIEW

Whether a debtor has the right to claim an exemption is a question of law we review de novo. *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 16 (9th Cir. BAP 2003). De novo review requires that we consider a matter anew, as if no decision had been rendered previously. *Calderon v. Lang (In re Calderon)*, 507 B.R. 724, 728 (9th Cir. BAP 2014).

The bankruptcy court's underlying findings of fact are reviewed for clear error. *Kelley*, 300 B.R. at 16. Factual findings are clearly erroneous if they are illogical, implausible or without support in the record. *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1196 (9th Cir. 2010).

DISCUSSION

“When a debtor files a Chapter 7 petition, all of the debtor’s assets become property of the estate, *see* § 541, subject to the debtor’s right to reclaim certain property as ‘exempt,’ § 522(l).” *Schwab v. Reilly*, 560 U.S. 770, 774 (2010) (citation modified). Section 522 provides a default list of exemptions, but allows states to opt out of the federal scheme and define their own exemptions. *See* § 522(b)(2), (b)(3)(A), (d). California has opted out of the federal exemption scheme. *See* CCP § 703.130. Therefore, we must interpret and apply California law to determine whether Debtor was entitled to exempt the Disputed Assets under CCP § 704.225. *LaFortune v. Naval Weapons Ctr. Fed. Credit Union (In re LaFortune)*, 652 F.2d 842, 846 (9th Cir. 1981).

A. Burden of Proof

Generally, a debtor’s claimed exemption is presumptively valid, and the objecting party has the burden of proving that the exemption is improper. *See* Rule 4003(c); *Carter v. Anderson (In re Carter)*, 182 F.3d 1027, 1029 n.3 (9th Cir. 1999). However, where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 337 (9th Cir. BAP 2016). Under California law, the party claiming an exemption has the burden of proof. *See* CCP § 703.580(b). Accordingly, Debtor bears the burden of proof requiring him to establish by a preponderance of the evidence that the Disputed Assets claimed as exempt in his amended

Schedule C are exempt under CCP § 704.225, and the extent to which the exemption applies. See *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); *In re Nolan*, No. 5:20-cv-01496-MCS, 2021 WL 528679, at *3 (C.D. Cal. Feb. 12, 2021), *aff'd sub nom. Matter of Nolan*, No. 21-55204, 2022 WL 327927, at *2 (9th Cir. Feb. 3, 2022)).

B. Application of CCP § 704.225

CCP § 704.225 was added in 2020 and provides as follows: “Money in a judgment debtor’s deposit account that is not otherwise exempt under this chapter is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.” Given its recent addition, there are very few cases applying CCP § 704.225. However, as noted by the bankruptcy court in the Order, there is guidance for applying the term “necessary for support” under older California exemption law. *Moffat v. Habberbush (In re Moffat)*, 119 B.R. 201, 206 (9th Cir. BAP 1990) (noting, as to an annuity, a list of factors courts have considered in determining whether an asset is reasonably necessary for the debtor’s support)¹²; *Sanker v. Humborg*, 48 Cal. App. 2d 205, 207 (1941) (“The word ‘necessaries’ . . . is not confined in its application merely to what is essential

¹² The specific factors noted in *Moffat* are: “the debtor’s present and anticipated living expenses and income; the age and health of the debtor and his or her dependents; the debtor’s ability to work and earn a living; the debtor’s training, job skills and education; the debtor’s other assets and their liquidity; the debtor’s ability to save for retirement; and any special needs of the debtor and his or her dependents.” *Moffat*, 119 B.R. at 206.

barely to support life, but includes many of the conveniences of a refined society.”). Further, the decisions that have addressed CCP § 704.225 have applied, and cited, these same “necessities” principles to reject judgment debtors’ attempts to use CCP § 704.225 to broadly exempt assets. *See, e.g., Zhu v. Li*, No. 19-cv-02534-JSW, 2024 WL 1122422, at *3 (N.D. Cal.

March 14, 2024) (noting that § 704.225 exempts money that is “necessary” for the support of the judgment debtor but judgment debtors “don’t get to stiff their judgment creditor just because they spend lavishly”).

1. Necessity of the Disputed Assets

Debtor argues the Disputed Assets are clearly necessary for Debtor’s support in light of the following factors: (1) Debtor’s monthly operating deficit; (2) Debtor’s wide-ranging health issues, age, and lack of gainful employment; and (3) extraordinary surprise expenses related to the Residence, his retained vehicle, or otherwise.

Debtor’s brief calculates the annual deficit at \$17,000 if the Order is affirmed (comprised of \$700 alleged monthly deficit¹³ plus \$679 lost monthly from payments under the Annuity). The limited items included in Debtor’s declaration in support of the Opposition are the only quantification of Debtor’s asserted extraordinary expenses, which the

¹³ However, Debtor’s amended Schedule J reports a \$477.14 deficit. Further, as noted by Trustee, the bankruptcy court questioned even this amount in light of the apparent double-counting of the property taxes in amended Schedule J. At oral argument, Debtor argued, without support in the record, that the monthly deficit as of the Petition Date was \$2,000.

bankruptcy court found inadequate to allow the court to predict future liabilities.

Expressly acknowledging that Debtor's income and expenses indicate some financial need, the bankruptcy court found, after considering all of the evidence, that Debtor had failed to establish that the Disputed Assets were necessary for Debtor's support. Other than summarily disagreeing with the bankruptcy court's conclusion, Debtor has provided no basis upon which this factual finding was clearly erroneous, implausible, or without support in the record. Indication of "some financial need" does not mean that a debtor gets a blanket exemption of all monetary assets under CCP § 704.225. *See CDS Bus. Servs., Inc. v. Haley*, No. 23-mc-80095-JCS, 2023 WL 5836808, at *4 (N.D. Cal. Sept. 8, 2023) (vague statements about decreased liquid resources insufficient to support exemption under CCP § 704.225); *U.S. v. Pratt*, No. CV 16-08117-VAP (JEMx), 2020 WL 4456662, at *1 (C. D. Cal. July 6, 2020) (same). Because Debtor failed to meet his burden of proof on the issue of necessity, the bankruptcy court did not err in finding Debtor could not exempt the Disputed Assets under CCP § 704.225.

2. Consideration of Other Assets

Debtor argues it was reversible error for the bankruptcy court to have considered his other assets in determining the necessity of the Disputed Assets for his support. Specifically, Debtor alleges it was improper for the court to consider his unchallenged homestead exemption. Debtor similarly argues it was reversible error for the bankruptcy court to "penalize" Debtor

for his failure adequately to account for the Condo proceeds. These arguments fail as a matter of law.

California state law imposes additional evidentiary requirements when a debtor asserts a “necessities” exemption. See *Wintrust Specialty Fin. v. Valley Upholstery, LLC*, No. 30-2024-01396590-CU-BC-CJC, 2025 Cal. Super. LEXIS 18907, at *4-5 (April 22, 2025). “If property is claimed as exempt pursuant to a provision exempting property to the extent necessary for the support of the judgment debtor . . . the claim of exemption shall include a financial statement.” CCP § 703.530(a). The financial statement shall be executed under oath by the judgment debtor and shall include, as relevant here, the following information: (1) all sources and the amounts of earnings and other income of the judgment debtor; (2) a list of the assets of the judgment debtor and the value of such assets; and (3) all outstanding obligations of the judgment debtor. CCP § 703.530 (b)-(c). Further, CCP § 703.115 requires a court to take into account all property of the judgment debtor, whether or not such property is subject to enforcement of the money judgment, in determining an exemption based upon the needs of the judgment debtor.

It is clear from these statutory requirements that the bankruptcy court correctly considered all of Debtor’s assets—including the exempt equity in the Residence, the value of the IRA meant to fund Debtor’s expenses in retirement, and the unaccounted for \$60,000 differential in Debtor’s accounts related to the Condo sale—in determining whether the

Disputed Assets were necessary for Debtor's support as required by CCP § 704.225. *Accord Moffat*, 119 B.R. at 206 (noting one of the factors a court is to consider when determining under California exemption law whether a given asset is reasonably necessary for the debtor's support is the debtor's other assets).

CONCLUSION

For each of the above stated reasons, we AFFIRM.