UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

Case No. 9:12-bk-14323-FMD
Chapter 7

Patricia Shaw,

Debtor.
_____/

ORDER OVERRULING TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF EXEMPTION

THIS CASE came on for hearing on December 20, 2012, of the *Trustee's Objection to Debtor's Claim of Exemption* (Doc. No. 9) (the "Objection") and the *Debtor's Response to Trustee's Objection to Claim of Exemption* (Doc. No. 13).

The facts are not in dispute. Before filing for bankruptcy, the Debtor retained counsel to defend a foreclosure case in state court (the "State Court Attorney"). The Debtor, pre-petition, paid a retainer to the State Court Attorney, and the State Court Attorney now holds $1,296.25 in his trust account that is due to be refunded to the Debtor (the "Funds").[1] The Debtor claimed the Funds as exempt under Fla. Stat. § 222.11(2)(c). At the December 20, 2012 hearing, the Debtor's bankruptcy counsel clarified the Debtor's position and stated that the Debtor also relies on Fla. Stat. § 222.11(3) as the basis for the exemption.

Fla. Stat. § 222.11(2)(c) provides that the disposable earnings of a person other than a head of family may not be attached or garnished in excess of the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673. Fla. Stat. § 222.11(3) further provides that exempt earnings:

> that are . . . credited or deposited in any financial institution are exempt from attachment or garnishment for 6 months after the earnings are received by the financial institution if the funds can be traced and properly identified as earnings. Commingling of earnings with other funds does not by itself defeat the ability of a head of family to trace earnings.

The Debtor contends that the Funds are on deposit in a financial institution (the State Court Attorney's trust account) and are traceable to her earnings, thus satisfying the requirements of Fla. Stat. § 222.11(3). The Debtor argues that the statute does not expressly require that the earnings be deposited in an account owned or maintained by the Debtor.

The Debtor did not cite, and the Court was unable to locate, any authority supporting her statutory interpretation. However, rules of statutory construction require that the Court look first to the language of the statute itself, and if the text of the statute is clear, the Court need look no further. The Court looks beyond the plain language to evidence of legislative intent only if the statute's language is ambiguous, if applying the plain meaning would lead to an absurd result, or if there is clear evidence of contrary legislative intent.[2]

Section 222.11(3) clearly states that the exemption applies to earnings "that are . . . credited or deposited in any financial institution," without any requirement that the account be owned, maintained or controlled by the debtor. There is no ambiguity. But, should an argument be made that this language is ambiguous, the issue may be resolved by looking at the prior version of the statute.

Prior to October 1, 1993, the exemption applied to "wages deposited in any bank account maintained by the debtor when said funds can be traced and properly identified as wages." [3] (emphasis supplied). After the 1993 amendment, § 222.11(3) encompasses "[e]arnings that are . . . deposited in any financial institution . . . if the funds can be traced and properly identified as earnings" (emphasis supplied), eliminating the language "maintained by the debtor." This modification is evidence of a legislative intent to permit debtors to claim the wage exemption for funds on deposit in accounts that they themselves do not "maintain," subject only to the requirement that the funds be traced and properly identified as earnings. After the effective date of the 1993 amendment, there is no restriction upon a debtor's ability to deposit funds in an account maintained at a financial institution by a third person, and still claim the § 222.11(3) exemption.

If the Funds held by the State Court Attorney are held in a trust account at a financial institution, and the Debtor is the owner of and entitled to those funds, and the funds are traceable and properly identified as

[1] In her Schedule B – Personal Property, the Debtor listed the $1,296.25 as "Funds in attorney trust account . . . remaining from foreclosure defense." (Doc. No. 1, p. 12). The Chapter 7 Trustee does not dispute that the funds were maintained in the State Court Attorney's trust account.

[2] *Iberiabank v. Beneva 41-I, LLC*, 701 F.3d 916 (11th Cir. 2012).

[3] Fla. Stat. § 222.11 (1992). The statute was amended in 1993, became law on May 15, 1993, and was effective on October 1, 1993. *See* FL LEGIS 93-256, 1993 Fla. Sess. Law Serv. Ch. 93-256 (C.S.H.B. 1293) (WEST).

earnings, then the Debtor is entitled to claim the exemption. Accordingly, it is

ORDERED that the Objection (Doc. No. 9) is OVERRULED.

DONE and **ORDERED** in Chambers at Tampa, Florida, on March 29, 2013.

/s/
Caryl E. Delano
United States Bankruptcy Judge