

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

Case No. 9:12-bk-04984-FMD
Chapter 7

Margaret Rhodes,

Debtor.

**ORDER SUSTAINING
TRUSTEE'S OBJECTION TO
DEBTOR'S CLAIM OF EXEMPTION**

THIS CASE came on for hearing on April 25, 2013, of the *Trustee's Objection to Debtor's Claim of Exemption* (the "Objection") (Doc. No. 70) and the *Debtor's Response to Trustee's Objection to Claim of Exemption* (Doc. No. 73). For the reasons set forth below, the Court sustains the Objection.

The record in this case reflects that on March 31, 2012, the Debtor filed her voluntary petition under Chapter 7 of the Bankruptcy Code. On Schedule B – Personal Property, the Debtor listed a pending personal injury suit with the current value stated as "unkwn" [unknown].¹ On Debtor's Schedule C – Property Claimed as Exempt, the Debtor claimed exemptions allowed under 11 U.S.C. § 522(b)(2).² She claimed the pending personal injury suit as exempt in the amount of \$21,650.00 [sic] pursuant to § 522(d)(11)(D)³ and in the amount of "0.00" pursuant to § 522(d)(5).⁴

Section 522(d)(5) permits a debtor to claim as exempt the debtor's "aggregate interest in any property, not to exceed in value \$1,150 plus up to \$10,825 of any unused amount of the exemption provided under paragraph (1) of this subsection." Section 522(d)(1) allows the debtor to claim as exempt the debtor's interest, not to exceed \$21,625 in value in real or personal property that the debtor or a dependent of the debtor uses as a residence or a burial plot. The Debtor had not claimed any real property or burial plot as exempt; therefore, to the extent that the payment on account of the personal injury lawsuit exceeded the \$21,625 allowed as exempt under § 522(d)(11)(D) or

the value of her other personal property exceeded the amount of allowed exemptions, she was entitled to claim those excess amounts as exempt in an amount not to exceed \$1,150 plus \$10,825.

On April 27, 2012, the Debtor filed an Amended Schedule B – Personal Property and an Amended Schedule C – Property Claimed as Exempt. In her Amended Schedule C, the Debtor again claimed the pending personal injury suit as exempt, in the same amounts and pursuant to the same provisions of § 522 as claimed in her original Schedule C.⁵

On May 10, 2012, the Chapter 7 Trustee filed *Trustee's Objection to Claim of Exemption*.⁶ The Trustee objected to the amount of the Debtor's claimed exemption on an automobile and to the Debtor's claim of exemption of the personal injury claim "to the extent that the Debtors [sic] are attempting to claim any excess over \$21,650 [sic] under 11 U.S.C. § 522(d)(11)(D)." On May 31, 2012, the Debtor again filed amended Schedules B and C. On Schedule C, the Debtor claimed the same exemptions for the personal injury suit as she had claimed on her first two Schedules C.⁸

In early June 2012, the Trustee filed an application to employ special counsel, an Ohio attorney, to handle the personal injury claim.⁹ The Court entered an order approving the application.¹⁰ On June 14, 2012, the Trustee filed a *Motion for Approval of Stipulation Re: Trustee's Objection to Claim of Exemption and Amendments Thereto (If Any)* (the "Motion for Approval").¹¹ The stipulation attached to the Motion for Approval (the "Stipulation") stated that the Debtor had agreed to surrender her personal injury claim and would receive the first \$21,650 of any proceeds pursuant to her claimed exemption.¹² On July 11, 2012, the Court granted the Motion for Approval.¹³

On February 5, 2013, the Debtor filed her fourth amended Schedule C, for the first time claiming the personal injury lawsuit as exempt in the amount of

¹ Doc. No. 1, p. 12.

² Unless otherwise stated, all statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

³ § 522(d)(11)(D) permits the exemption on account of personal bodily injury not to exceed \$21,625.

⁴ Doc. No. 1, p. 14.

⁵ Doc. No. 9, p. 8.

⁶ Doc. No. 16.

⁷ *Id.*

⁸ Doc. No. 23, p. 8.

⁹ Doc. No. 25.

¹⁰ Doc. No. 26.

¹¹ Doc. No. 27.

¹² Although the Stipulation included language stating "[t]o the extent this Stipulation includes repurchase of any vehicles . . .," the Stipulation did not include an agreement regarding vehicles.

¹³ Doc. No. 40.

\$5,206.28, pursuant to 11 U.S.C. § 522(d)(5).¹⁴ (Recall that the previous versions of Schedule C had each stated the value of the § 522(d)(5) exemption as “0.00.”) The Trustee objected to this newly-claimed exemption on the grounds that creditors would be prejudiced and that the Trustee’s original objection to the Debtor’s claimed exemption had been resolved and reduced to a final non-appealable order.¹⁵ The Debtor filed a response, contending that absent bad faith, her amended claim of exemption should be allowed, and stating that her efforts and those of her counsel to find a replacement for the Ohio attorney who could not now be located had resulted in the Trustee’s being able to resolve the personal injury suit without obligation to pay attorney’s fees, thus increasing the amount of the Trustee’s recovery.¹⁶ At the hearing on the Objection, the Trustee represented that she had negotiated a settlement of the personal injury claim that had taken into consideration the Debtor’s entitlement to the first \$21,625 in proceeds.¹⁷

In *In re Doan*, the Eleventh Circuit held that, absent bad faith or prejudice to creditors, a debtor has a right to amend schedules at any time during the case.¹⁸ But the facts of this case are very similar to those in *In re Wilson*.¹⁹ In *Wilson*, the debtor did not amend his Schedule C to claim a personal property exemption to which he would otherwise have been entitled until after the court had sustained the trustee’s objection to his exemptions, had entered an order granting the trustee’s motion to compel turnover of personal property, and while the trustee’s motion to compel compliance with the turnover order was pending. The court concluded that an unlimited number of amendments to schedules right up until a Chapter 7 bankruptcy case is closed cannot be allowed, as an “endless cycle of amendments and litigation thereon would certainly frustrate the bankruptcy system’s goal to swiftly and efficiently resolve disputed claims.”²⁰ The court held that the additional administrative expenses incurred by the trustee constituted some prejudice to creditors. Finally, the court held that “once a dispute concerning a debtor’s claim of exemption has been resolved and reduced to a final and non-appealable order, the principle of *res judicata* would bar its relitigation.”²¹

Consistent with the court’s analysis in *Wilson*, this Court finds that the Debtor’s newly-asserted claim of exemption – a claim that could have been asserted in her original Schedule C or her first two amendments and is only asserted now that the Debtor has some information regarding the proposed settlement of her personal injury suit – is a prejudice to creditors: the Trustee made a business decision to settle the personal injury suit based upon the resolution of the amount of the exemption to which the Debtor was entitled. Further, as set forth in *Wilson*, the principle of *res judicata* applies. This Court’s *Order Granting Motion for Approval of Stipulation Re: Trustee’s Objection to Claim of Exemption and Amendments Thereto (If Any)*,²² entered on July 11, 2012, is a final, non-appealable order and is binding upon the Debtor.

Accordingly, it is

ORDERED that Trustee’s Objection to Debtor’s Claim of Exemption is hereby SUSTAINED.

DONE and **ORDERED** in Chambers at Tampa, Florida, on May 30, 2013.

/s/
Caryl E. Delano
United States Bankruptcy Judge

Trustee, Diane L. Jensen, is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

¹⁴ Doc. No. 67, p. 8.

¹⁵ Doc. No. 70.

¹⁶ Doc. No. 73

¹⁷ The Trustee has not yet filed a motion to compromise the personal injury claim.

¹⁸ *In re Doan*, 672 F.2d 831, 833 (11th Cir. 1982).

¹⁹ *In re Wilson*, 446 B.R. 555 (Bankr. M.D. Fla. 2011).

²⁰ *Id.* at 562.

²¹ *Id.*

²² Doc. No. 40.