

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:14-bk-13900-FMD
Chapter 7

Andrew S. Baker
and Peggysue Baker,

Debtors.

**ORDER GRANTING
IN PART AND DENYING
IN PART TRUSTEE'S MOTION
FOR TURNOVER OF
PROPERTY OF THE ESTATE**

THIS CASE came on for hearing on June 18, 2015, on the Chapter 7 Trustee's *Motion for Turnover* (the "Motion") (Doc. No. 35) and Debtors' responses in opposition (Doc. Nos. 37 and 38). The Trustee seeks an order of the Court requiring Debtors to turn over, among other assets: (i) excess monies in their checking account of \$8,107.64; (ii) the estate's portion of Debtors' 2014 tax refund (the "Tax Refund") calculated by the Trustee as being \$2,435.67; and (iii) payments received by Debtors on account of an inherited pension (the "Pension") from December of 2014 through March of 2015, totaling \$624.08, and all future payments received on account of the Pension.

Debtors object to the Motion arguing that the above described assets are exempt. Debtors contend that: (i) the \$8,107.64 in their checking account was money received from their health insurance carrier that was earmarked for payment to a third-party, out-of-plan medical provider; (ii) the Tax Refund was a result of Child Tax Credits; and (iii) the Pension and payments received on account of the Pension are exempt under 11 U.S.C. § 522(d)(10). For the following reasons, the Court finds that although the earmarked funds in Debtors' bank account are not property of the estate, the Tax Refund and the payments received on account of the Pension are not exempt assets and must be turned over to the Trustee.

Under 11 U.S.C. § 541, all legal or equitable interests of the debtor as of the commencement of the case are property of the bankruptcy estate and are subject to turnover to the trustee under § 542. Although generally monies on deposit in a debtor's bank account as of the petition date are property of the estate,¹ there is an exception for funds in the debtor's possession that are held for a third-party. The Eleventh Circuit Court of Appeals in *T&B Scottsdale Contractors, Inc., v. United States of America*² held that the legislative history of 11 U.S.C. § 541 makes it clear that funds in the debtor's possession held for a third-party do not become part of the bankruptcy estate.

Situations occasionally arise where property ostensibly belonging to the debtor will actually not be property of the debtor, but will be held in trust for another. For example, if the debtor has incurred medical bills that were covered by insurance, and the insurance company had sent the payment of the bills to the debtor before the debtor had paid the bill for which the payment was reimbursement, the payment would actually be held in a constructive trust for the person to whom the bill was owed.

H.R.Rep. No. 595, 95th Cong., 1st Sess. 368 (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 82 (1977), *reprinted in* 1978 U.S.Code Cong. & Admin.News 5787, 5868, 6324. *See also* Collier, ¶ 541.01 at 541-7; *cf. Georgia-Pacific*, 712 F.2d at 967, 971-72 (checks in debtor's possession made payable jointly to claimant and debtor held part of debtor's estate because no clear bilateral agreement stated that checks belonged to claimant).³

A Child Tax Credit to which the debtor is entitled prior to the petition date is property of the estate.⁴ Therefore, the Tax Refund, even if

¹ *In re Brubaker*, 443 B.R. 176, 180 (M.D. Fla. 2011).

² 866 F.2d 1372 (11th Cir. 1989).

³ *Id.* at 1376.

⁴ *In re Matthews*, 380 B.R. 602, 606 (Bankr. M.D. Fla. 2007).

attributable to the Child Tax Credit, is property of the estate.

The Court's ruling on Debtors' claim of exemption for the Pension Plan is dictated by the Supreme Court's recent ruling in *Clark v. Rameker*.⁵ In *Clark*, the Supreme Court held that an inherited Individual Retirement Account is not considered a "retirement fund" for purposes of 11 U.S.C. § 522(b)(3) and 11 U.S.C. § 522 (d)(10). The Court stated

[T]o determine whether funds in an account qualify as a "retirement funds," . . . we look to the legal characteristics of the account in which the funds are held, asking whether, as an objective matter, the account is one set aside for the day when an individual stops working.⁶

Although the issue in the *Clark* case was an inherited IRA, the same rationale applies to the determination of whether an inherited pension is exempt. Debtors' Schedule I reflects that Mrs. Baker, who is currently employed and earning a salary, also receives \$156 per month from her father's pension. Therefore, the Court concludes that the Pension is not one that has been set aside for the day when Mrs. Baker stops working and is not exempt.

Accordingly, for the foregoing reasons, it is

ORDERED that the Motion is GRANTED in part and DENIED in part as follows:

1. To the extent that Debtors can demonstrate to the Trustee that the funds in their bank account were earmarked for payment to medical providers and used to pay those medical providers, the Motion is DENIED.

2. The Motion is GRANTED with respect to the Tax Refund and the Pension. Debtors shall, within 30 days, enter into an agreement with the Trustee for the turnover of the Tax Refund, the Pension, and any payments received by Mrs. Baker.

DATED: July 28, 2015.

/s/ Caryl E. Delano

Caryl E. Delano
United States Bankruptcy Judge

Chapter 7 Trustee, Diane 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.

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⁵ 134 S.Ct. 2242, 2250 (2014).

⁶ *Id.* at 2246.