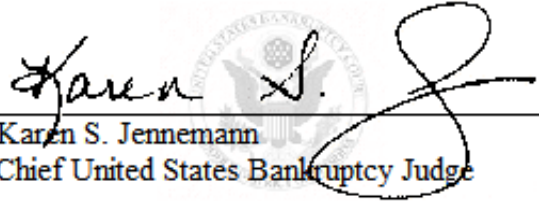


ORDERED.

Dated: August 13, 2015



Karen S. Jennemann
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
ALAN LEE OELSCHLAGER and)	Case No. 6:15-bk-00003-KSJ
LISA KAREN OELSCHLAGER,)	Chapter 7
)	
Debtors.)	
)	

**MEMORANDUM OPINION SUSTAINING
TRUSTEE’S OBJECTION TO EXEMPTION**

The Chapter 7 Trustee, Emerson C. Noble, objects to the exemption¹ claimed by the Debtors, Alan and Karen Oelschlager, to a 2013 Hyundai Santa Fe (the “Santa Fe”). Debtors claimed the Santa Fe as exempt under § 222.25(2) of the Florida Statutes as a “professionally prescribed health aid.”² The Trustee argues the Santa Fe, an unmodified car, simply does not qualify for the exemption. With great sympathy for the Debtors’ situation, the Court agrees and sustains the Trustee’s objection.

One of the Debtors, Mr. Oelschlager, suffers from numerous severe cardiovascular and neurological ailments. Mr. Oelschlager has numerous physicians scattered throughout Central

¹ Doc. No. 16.

² Schedule C, Doc. No. 1.

Florida. He regularly visits his doctors, sometimes requiring substantial travel from his home in Deltona, Florida. Over the first half of 2015, Mr. Oelschlager had 21 doctor appointments.

Debtors use the Santa Fe to travel to these doctor visits. In July 2013, Mr. Oelschlager's mother purchased the Santa Fe for the Debtors because it allows Mr. Oelschlager to easily and comfortably get in and out of the car. The Santa Fe however has no aftermarket modification or any special accommodation for Mr. Oelschlager's medical needs. The car is unencumbered by any liens, and its current value likely falls somewhere between \$15,000 and \$20,000. Debtors claim the Santa Fe as an exempt "professionally prescribed health aid" because Mr. Oelschlager requires a form of transportation to see his doctors. The Trustee objects.

Debtors in bankruptcy are permitted to claim property as exempt from claims of creditors in order to facilitate their "fresh start."³ A debtor's claim of exemptions is presumptively valid unless and until a party-in-interest, such as the Trustee, objects.⁴ The objecting party must establish by a preponderance of evidence that the debtor's exemptions are not properly claimed.⁵ Section 522 contains its own exemption scheme, but the Code permits states to opt out of the federal exemptions and require debtors in their states to use the state exemptions.⁶ Florida elected to opt out of the federal exemptions and has established its own set of exemptions applicable to debtors, like the Debtors here, domiciled in Florida.⁷

Section 222.25(2) of the Florida Statutes provides an exemption for a "debtor's interest in any professionally prescribed health aids."⁸ In 2011, Bankruptcy Judge Michael Williamson engaged in a thorough analysis of case law interpreting the term "professionally prescribed

³ *In re Dowell*, 456 B.R. 578, 580 (Bankr. M.D. Fla. 2011) (citing *United States v. Sec. Indus. Bank*, 459 U.S. 70, 83, 103 S. Ct. 407, 415, 74 L. Ed. 2d 235 (1982) (Blackmun, J., concurring)).

⁴ See 11 U.S.C. § 522(l).

⁵ Fed. R. Bankr. P. 4003(c); *In re Pettit*, 224 B.R. 834, 840 (Bankr. M.D. Fla. 1998).

⁶ 11 U.S.C. § 522(b)(2), (3). The domicile test laid out in § 522(c)(3)(A) dictates which state's exemptions apply. Here, Florida exemptions apply.

⁷ Fla. Stat. § 222.20(2) (2014).

⁸ Fla. Stat. § 222.25(2) (2014).

health aid,”⁹ a term not defined in the statute. Judge Williamson largely adopted the test established by the seminal case *In re Driscoll*,¹⁰ which considers an asset exempt as a “professionally prescribed health aid” if:

- (1) a health care professional directs, designates, or orders its use as a particular remedy, therapy, medicine, or drug, and
- (2) the asset is uniquely suited and principally used for either
 - (a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body, or
 - (b) transportation primarily for and essential to medical care.¹¹

One of the cases Judge Williamson analyzed is *In re Kirby*.¹² In *Kirby*, the debtors sought to exempt a motor home they used to travel across the country to obtain medical treatment at different hospitals outside of Florida. Judge Briskman in *Kirby* also looked at the *Driscoll* definition, finding that under the second prong, the debtors’ motor coach was not “uniquely suited and principally used for the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body.”¹³

Years later, Judge Briskman clarified his holding in *Kirby* in *In re Allard*.¹⁴ In *Allard*, the Debtor sought to exempt a van that was “specifically designed for the Debtor based on her physical disabilities” which she required to “maintain employment, attend weekly medical

⁹ *In re Dowell*, 456 B.R. 578 (Bankr. M.D. Fla. 2011).

¹⁰ 179 B.R. 664 (Bankr. Or. 1995).

¹¹ *Dowell*, 456 B.R. at 583 (citing *Driscoll*).

¹² 223 B.R. 825 (Bankr. M.D. Fla. 1998).

¹³ *Kirby*, 223 B.R. at 830 (citing *Driscoll*).

¹⁴ 342 B.R. 102 (Bankr. M.D. Fla. 2005).

appointments, and participate in everyday activities.”¹⁵ In distinguishing the motor coach in *Kirby* from the van in *Allard*, Judge Briskman explained:

The motor coach was not specifically designed to suit the physical disabilities of the debtor. Debtor used the motor coach to get to the doctor, but did not specifically require the motor coach. Debtor may have used alternative means. The Van, in this case, was uniquely designed based on the Debtor’s physical disability.¹⁶

In applying this analysis to the present case, the Court adopts the definition for a “professionally prescribed health aid” articulated in *Driscoll* and starts with the first *Driscoll* prong—whether the Santa Fe was professionally prescribed. The Court can find no such prescription. Debtors produced a letter from one of Mr. Oelschlager’s doctors (the “Letter”), which states: “Please ensure that his only form of reliable transportation, his 2013 Hyundai Santa Fe, is made available, as this is a medical necessity due to his conditions.”¹⁷ This Letter, dated October 16, 2014, was written long after the Debtors obtained the Santa Fe in July 2013, and likely requested in anticipation of this bankruptcy filing on January 2, 2015. Aside from this temporal discrepancy—indeed, some court have found “the timing of the prescription is not disqualifying”¹⁸—the Letter merely states that *some* reliable form of transportation is a medical necessity, not specifically the Santa Fe.¹⁹ Thus, Mr. Oelschlager’s doctor did not prescribe the Santa Fe’s use as a “*particular* remedy.”²⁰ Debtors fail to satisfy the first prong of the *Driscoll* test.

This observation ties into the second *Driscoll* prong as identified by *Dowell*: whether “the asset is uniquely suited and principally used for . . . transportation primarily for and essential to

¹⁵ *Allard*, 342 B.R. at 103.

¹⁶ *Id.* at 104.

¹⁷ Debtor’s Exhibit 1.

¹⁸ *In re Dowell*, 456 B.R. 578, 590 (Bankr. M.D. Fla. 2011); *In re Hellen*, 329 B.R. 678, 683–84 (Bankr. N.D. Ill. 2005).

¹⁹ See Debtor’s Exhibit 1.

²⁰ See *Dowell*, 456 B.R. at 583.

medical care.”²¹ Is the Santa Fe “uniquely suited” to transport Mr. Oelschlager to his numerous doctors’ appointments? The answer, sadly, is no.

The Santa Fe has no aftermarket modifications to set it apart from thousands of other similar vehicles. Moreover, Mrs. Oelschlager testified that other similar vehicles would satisfy their needs. Unlike the van in *Allard*, the Santa Fe is not “uniquely designed based on the Debtor’s physical disability.”²² The Santa Fe is not “uniquely suited” to transport Mr. Oelschlager for medical care and thus does not fall within the definition of “professionally prescribed health aid.” The Santa Fe is one of many cars that could transport Mr. Oelschlager to his many doctor visits. Debtors also fail to meet the second prong of the *Driscoll* test, and they cannot exempt the car under Section 222.25(2).

The Trustee’s objection is sustained. The Trustee is entitled to turnover of the Debtors’ Santa Fe subject to any other allowable exemptions claimed by the Debtors.

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Attorney John Meininger is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of this order.

²¹ *Dowell*, 456 B.R. at 583 (citing *Driscoll*). Debtors clearly proceed under the transportation sub-prong rather than the “diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body” sub-prong. *See id.*

²² *In re Allard*, 342 B.R. 102, 103 (Bankr. M.D. Fla. 2005).