

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:13-bk-5440-PMG

Valerie Ann French,

Debtor.

Chapter 7

**ORDER ON TRUSTEE'S (1) OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS,
AND (2) MOTION TO COMPEL DEBTOR TO TURNOVER PROPERTY**

THIS CASE came before the Court for a final evidentiary hearing on the Trustee's (1) Objection to Debtor's Claim of Exemptions, and (2) Motion to Compel Debtor to Turnover Property. (Docs. 9, 10).

In the Objection and Motion, the Trustee seeks the turnover of two vehicles and a savings account in which the Debtor asserts an interest as a tenant by the entirety.

Section 319.22 of the Florida Statutes provides that a vehicle registered in the names of one co-owner "or" another co-owner is held by the co-owners in a joint tenancy. Fla. Stat. §319.22(2)(a)(1). In this case, the vehicles are titled in the names of the Debtor or her husband, and are therefore owned as joint tenants and not as tenants by the entirety. Accordingly, the vehicles may not be claimed as exempt entireties property under §522(b)(3)(B) of the Bankruptcy Code.

Additionally, §522(l) of the Bankruptcy Code provides that a “debtor shall file a list of property that the debtor claims as exempt” under §522(b). 11 U.S.C. §522(l). In this case, the Debtor did not list the savings account as an asset on her schedule of personal property, or claim the account as exempt on her schedule of exemptions. Accordingly, the account is not exempt from property of the Debtor’s bankruptcy estate, and the Trustee is entitled to turnover of the asset.

I. Background

The Debtor, Valerie Ann French, filed a petition under Chapter 7 of the Bankruptcy Code on September 9, 2013. According to her schedules, she was unemployed on the date that the petition was filed. (Doc. 1, Schedule I).

On the schedule of personal property filed in her bankruptcy case, the Debtor listed a 2007 Chrysler vehicle with a scheduled value of \$2,939.00, and a 2003 Dodge vehicle with a scheduled value of \$1,200.00. (Doc. 7). On her “Schedule C – Property Claimed as Exempt,” the Debtor claimed that the vehicles are exempt as property in which she has an interest as a tenant by the entirety. (Doc. 7).

The Trustee filed a written Objection to the exemption claimed for the vehicles. In the Objection, the Trustee asserts that the Debtor “is not entitled to claim the property exempt as entireties property because the jointly owned property is titled as debtor ‘OR’ her spouse.” (Doc. 9).

The Trustee also filed a Motion for turnover of property to the bankruptcy estate. In the Motion, the Trustee seeks the turnover of the vehicles, and also seeks the turnover of a savings account (“Capital City Bank savings account ending in 0720”) that was neither disclosed nor claimed as exempt on the Debtor’s schedules. (Doc. 10).

II. The vehicles

Section 522(b)(3)(B) of the Bankruptcy Code “exempts from the bankruptcy estate any interest in property held as a tenancy by the entirety under applicable state law, when only one spouse has filed a bankruptcy petition.” In re Mathews, 307 Fed.Appx. 266, 2009 WL 19339, at 2 (11th Cir.); 11 U.S.C. §522(b)(3)(B).

“Under Florida law, property held as a tenancy by the entirety bears six characteristics: ‘(1) unity of possession (joint ownership and control); (2) unity of interest (the interests in the [property] must be identical); (3) unity of title (the interests must have originated in the same instrument); (4) unity of time (the interests must have commenced simultaneously); (5) survivorship; and (6) unity of marriage (the parties must be married at the time the property became titled in their joint names.’” Roberts-Dude v. JP Morgan Chase Bank, N.A., 498 B.R. 348, 356 (S.D. Fla. 2013)(quoting Beal Bank SSB v. Almand & Associates., 780 So.2d 45, 52 (Fla. 2001)).

In Beal Bank SSB v. Almand & Associates, 780 So.2d 45, 57 (Fla. 2001), the Supreme Court of Florida recognized that strong policy considerations favor allowing a presumption in favor of a tenancy by the entirety when a married couple jointly owns personal property. See In re Mathews, 2009 WL 19339, at 2. Consequently, “[w]hen a married couple jointly owns personal property in Florida, a presumption arises under Florida law that the property is owned as tenants by the entirety.” In re Pyatte, 440 B.R. 893, 897 (Bankr. M.D. Fla. 2010)(citing Beal Bank, 780 So.2d at 57).

The presumption does not apply, however, if the property interests at issue are governed by a statute that specifically prescribes the ownership form. The presumption applies “only in the *absence* of any controlling statute, express agreement, account statement, or other governing indicia that

expressly establishes a form of ownership other than tenancy by the entireties.” In re Daniels, 309 B.R. 54, 59 (Bankr. M.D. Fla. 2004)(quoted in In re Mathews, 2009 WL 19339, at 3)(Emphasis in original).

Section 319.22 of the Florida Statutes, for example, “controls the titling of vehicles.” In re Gorny, 2008 B.R. 5606583, at 10 (Bankr. M.D. Fla.). Section 319.22 appears in the chapter of the Florida Statutes that governs motor vehicle title certificates, and provides:

319.22. Transfer of title

...

a. When a motor vehicle or mobile home is registered in the names of two or more persons as coowners in the alternative by the use of the word “or,” such vehicle shall be held in joint tenancy.

Fla. Stat. §319.22(2)(a)(1). Under this section, the use of the disjunctive term “or” in a vehicle title creates a joint tenancy. In re Gorny, 2008 B.R. 5606583, at 10.

Where a vehicle is titled in the name of a husband “or” wife, therefore, the vehicle is owned by the spouses as joint tenants, and not as tenants by the entireties, even if the other requirements for entireties ownership are satisfied.

[I]n applying the tenancy by the entireties presumption broadly to all marital personal property, the presumption must yield to any statute specifically delineating how to create an ownership interest in any particular type of personal property, such as Section 319.22 of the Florida Statutes. . . . For example, if the [vehicle] were titled as “Husband or Wife”, Section 319.22(2)(a)(1) would control and establish that . . . the car is owned by the debtor and his wife as joint tenants regardless of the parties’ intentions or the *Beal Bank* presumption.

In re Daniels, 309 B.R. at 59-60. If the names of both spouses are separated on a vehicle title using the term “or,” the statute prevails and the presumption of a tenancy by the entireties does not arise. Id. at 60. See also In re Caliri, 347 B.R. 788, 799 (Bankr. M.D. Fla. 2006).

In this case, the Debtor listed a 2007 Chrysler vehicle and a 2003 Dodge vehicle on her schedule of personal property, and claimed the vehicles as exempt entireties property. (Doc. 7). The titles to the vehicles, however, reflect that ownership is held in the names of Valerie Ann French “or” her spouse. (Trustee’s Exhibits 5, 6).

Accordingly, the vehicles are owned as joint tenants pursuant to §319.22 of the Florida Statutes, and not as tenants by the entireties. The Debtor may not claim the vehicles as exempt pursuant to §522(b)(3)(B) of the Bankruptcy Code, and the Trustee’s Objection to the Debtor’s claim of exemptions should be sustained..

III. The savings account

The Trustee also seeks the turnover from the Debtor of a savings account maintained at Capital City Bank.

“When a debtor files a Chapter 7 bankruptcy petition, all of the debtor’s assets become property of the bankruptcy estate, see 11 U.S.C. §541, subject to the debtor’s right to reclaim certain property as ‘exempt,’ §522(l). The Bankruptcy Code specifies the types of property debtors may exempt, §522(b), as well as the maximum value of the exemptions a debtor may claim in certain assets, §522(d).” Schwab v. Reilly, 560 U.S. 770, 774, 130 S.Ct. 2652 (2010).

“To claim an exemption, a debtor must file a list of the property claimed as exempt under section 522(b).” In re Rolland, 317 B.R. 402, 413 (Bankr. C.D. Cal. 2004).

Section 522(l), for example, provides that a debtor “shall file a list of property that the debtor claims as exempt under subsection (b) of this section.” 11 U.S.C. §522(l). Further, Rule 4003 of the Federal Rules of Bankruptcy Procedure provides that a debtor “shall list the property claimed as exempt

under §522 of the Code on the schedule of assets required to be filed by Rule 1007.” Fed.R.Bankr.P. 4003(a).

Exemptions in bankruptcy are not automatic. They exist only as a result of the affirmative declaration of the debtor. See, 11 U.S.C. §522(l); Fed.R.Bankr.P. Rule 4003(a). . . . The debtor makes this declaration only through Schedule C – Property Claimed as Exempt. Unless it does so, there is no exemption.

In re Kiproff, 2006 WL 2381717, at 1 (Bankr. N.D. Ind.)(quoted in In re Schneider, 2013 WL 5979756, at 5 (Bankr. E.D.N.Y.)).

If a debtor elects to claim an exemption, “the plain language of §522(l) mandates that ‘[t]he debtor *shall* file a list of property that the debtor claims as exempt.’ 11 U.S.C. §522(l). Thus, while the decision whether to claim an exemption is left to the debtor, if he or she chooses to claim an exemption, he or she must file Schedule C.” In re Schneider, 2013 WL 5979756, at 5(Emphasis in original).

One purpose of §522(l) is to assist interested parties, such as a Chapter 7 trustee, in identifying assets that may have value for the estate. See Schwab v. Reilly, 560 U.S. at 785, 130 S.Ct. at 2663. “By filing Schedule C, the debtor gives notice to all parties in interest of which property, or property interests, the debtor claims as exempt, thereby providing parties in interest with an opportunity to object.” In re Schneider, 2013 WL 5979756, at 5.

In this case, it appears that the Debtor held an interest in a savings account maintained at Capital City Bank on the date that her bankruptcy petition was filed. (Trustee’s Exhibit 4). The account was not disclosed on the Debtor’s original schedules filed on September 9, 2013, or on her amended schedules filed on October 10, 2013. (Docs. 1, 7). Additionally, the account was not claimed as exempt on the Debtor’s original Schedule C filed with the petition, or on her Amended Schedule C filed one month later.

The Trustee discovered the account, and filed a motion to compel the Debtor to turnover the asset for administration in the estate. (Doc. 10; Transcript, p. 8). In response to the Motion for Turnover, the Debtor asserted that the omission of the asset from her schedules was inadvertent, and that the account is owned with her husband as tenants by the entireties. Consequently, the Debtor asserts that the savings account should be exempt from her bankruptcy estate pursuant to §522(b)(3)(B) of the Bankruptcy Code. (Doc. 19; Transcript, pp. 6, 10, 12).

Despite the Debtor's assertion that the account is entireties property, the savings account has never been listed as an asset in this bankruptcy case, or claimed as exempt on the Debtor's schedules. No amended schedule of personal property or Schedule C were filed in this case to identify the account and claim it as exempt.

"It is elementary that assets not scheduled and not claimed as exempt cannot be allowed as exempt." In re Pomar, 234 B.R. 135, 136 (Bankr. M.D. Fla. 1993). The Capital City Bank savings account is not exempt from property of the Debtor's estate, and the Trustee is entitled to turnover of the asset for administration in the Chapter 7 case.

Accordingly:

IT IS ORDERED that:

1. The Trustee's Objection to Debtor's Claim of Exemptions is sustained, and the exemption claimed by the Debtor under §522(b)(3)(B) for the 2007 Chrysler Town & Country and the 2003 Dodge Intrepid is disallowed.

2. The Trustee's Motion to Compel Debtor to Turnover Property to the Trustee is granted, and the Debtor is directed to turnover her interest in the following property to the Trustee: (1) 2007 Chrysler

Town & Country; (2) 2003 Dodge Intrepid; and (3) the savings account at Capital City Bank, account ending in 7020.

DATED this 8 day of April, 2014.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN

United States Bankruptcy Judge