

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

In re:)
)
SUSAN F. BUTLER,) Case No. 01-31293-JWV
)
Debtor.)

ORDER

This matter comes before the Court on the Trustee’s Objection to Debtor’s Claim of Exemptions (Document #6) filed by Richard V. Fink, the Chapter 13 Trustee (“Trustee”) on January 14, 2002. Specifically, the Trustee objects to the Debtor’s claim of exemption of 90 percent of approximately \$7,000.00 in accounts receivable from her law practice. The Debtor claims that the accounts receivable represent earnings and therefore are exempt pursuant to Mo. REV. STAT. § 525.030.¹

The Court held a hearing on this matter at the Federal Courthouse in Kansas City, Missouri, on February 5, 2002. The Debtor’s counsel , Norman E. Rouse, appeared by telephone and the Trustee was present in the courtroom. At the close of the hearing the Court took the matter under advisement. The Court has considered the arguments presented by the parties and the relevant law and is now ready to rule.²

¹The statute provides, in relevant part:

2. The maximum part of the aggregate earning of any individual for any workweek, after the deduction from those earnings of any amounts required by law to be withheld, which is subject to garnishment may not exceed ... (c) if the employee is the head of a family and a resident of his state, ten percentum

For pay periods longer than one week, the provisions of subsection 2(c) ... shall apply to the maximum earnings subjected to garnishment for all workweeks compensated

The term “earnings” as used herein means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise

MO. REV. STAT. § 525.030.2.

²The Court has jurisdiction over this matter pursuant to 28 U.S.C. § § 157 and 1334(b). This is a core proceeding under 28 U.S.C. § 157(b)(2)(B). This Memorandum Opinion and Order constitutes the Court’s Findings of Fact and Conclusions of Law as required by Federal Rule of Bankruptcy Procedure 7052.

The parties did not adduce evidence, but have stipulated that the Debtor is an attorney operating a solo practice and that the accounts receivable claimed as exempt represent earnings from personal services provided by her prior to filing her bankruptcy petition under Chapter 13. The Debtor claims that the exemption is allowable pursuant to the statute and *Parsons v. Union Planters Bank (In re Parsons)*, 262 B.R. 475 (B.A.P. 8th Cir. 2001) (herein “*Parsons*”). The Trustee contends that *Parsons* is not applicable in a Chapter 13 bankruptcy case.

In *Parsons*, the Bankruptcy Appellate Panel for the Eighth Circuit (“BAP”) affirmed the bankruptcy court’s determination that the debtor, a self-employed real estate agent, was entitled to claim an exemption under the state garnishment statute for a percentage of commissions earned pre-petition on real estate contracts but not paid before the filing of the bankruptcy. The court in *Parsons* based its decision, in part, on *Pruss v. Butler (In re Pruss)*, 235 B.R. 430 (B.A.P. 8th Cir. 1999), *vacated as moot*, 229 F.3d 1197 (8th Cir. 2000) (per curiam). Although *Pruss* had been vacated, the BAP in *Parsons* stated that it agreed with the *Parsons* majority’s rationale and would adopt that reasoning. *See Parsons* at 481, n8.

The facts of *Pruss* are almost identical to the case at bar. Ms. Pruss was engaged in the practice of law as a sole practitioner. At the time of filing her Chapter 13 bankruptcy petition, she owned accounts receivable for legal services that had been provided and billed to her clients pre-petition. The *Pruss* court held that the accounts receivable constituted “earnings” pursuant to Nebraska’s garnishment statute and were therefore properly claimed as exempt. Further, the BAP found that this result was consistent with the policy that exemption laws are enacted for the relief of the Debtor and are to be liberally construed in favor of the debtor. *Wallerstedt v. Sosne (In re Wallerstedt)*, 930 F.2d 630, 631 (8th Cir. 1991); *see also In re Galvin*, 158 B.R. 806, 807 (Bankr. W.D. Mo.1993).

In reviewing the Nebraska garnishment statute in the *Parsons* case, the BAP found that it contained similar language to the Missouri statute, both stating in relevant part that “compensation paid or payable for personal services” may be exempted. *Parsons* at 481. Therefore, the BAP held that the debtor-real estate agent had properly claimed a portion of her unpaid, pre-petition commissions as exempt, pursuant to MO. REV. STAT. § 525.030.

Turning to the case at bar, the Debtor has filed a Chapter 13 case in which the issue is

whether her pre-petition accounts receivable are exempt pursuant to the state garnishment statute. The Court finds persuasive the rationale set out by the BAP in *Pruss* and adopted in *Parsons*. This Court agrees that when an attorney performs legal services, the fees generated constitute earnings from the attorney's personal services and are subject to exemption on that basis. Accordingly, the Court will overrule the Trustee's Objection to the Debtor's claim of exemption of 90 percent of her accounts receivable pursuant to MO. REV. STAT. § 525.030 and allow the exemption.

Therefore, it is

ORDERED that the Trustee's Objection to the Debtor's Claim of Exemption (Document #6) be and is hereby **OVERRULED**.

SO ORDERED this 12th day of February, 2002.

/s/ Jerry W. Venters
United States Bankruptcy Judge

A copy of the foregoing mailed electronically or conventionally to:
Norman E. Rouse
Richard Fink