

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

In re:)	
)	
ROBERT D. COLLETT and)	Case No. 00-30464
BARBARA H. COLLETT,)	
)	
Debtors.)	

MEMORANDUM OPINION AND ORDER

This case comes before the Court at this point on the Trustee’s Objections to Exemptions filed on August 29, 2000. Specifically, the Trustee objects to the Debtors’ claim of exemption in a single premium annuity owned by Robert Collett. The Debtors seek to exempt the monthly payments of \$257.42 from the annuity under MO. REV. STAT. § 513.430(10)(e), but the Trustee contends that the annuity is not exempt under § 513.430(10)(e) because the annuity was granted as a form of inheritance (which would not be exempt) and not “on account of illness, disability, death, age or length of service” as is required by the statute.

The Court held a hearing on this matter at the Federal Courthouse in Joplin, Missouri, on September 21, 2000. At the conclusion of the hearing, the Court took the matter under advisement. After a review of the evidence and consideration of the relevant law, the Court is now ready to rule.

The Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. § § 157 and 1334(b) and 11 U.S.C. § 523(a)(15). 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 factual background will be developed in the Discussion section as necessary for our consideration of the issues presented.

DISCUSSION

The Debtors, Robert Collett (“Robert”) and Barbara Collett (“Barbara”) claim an exemption in the annuity pursuant to MO. REV. STAT. § 513.430(10)(e). Section 513.430(10)(2) provides, in pertinent part:

Property exempt from attachment – ...Any payment under a stock bonus plan,

pension plan, disability or death benefit plan, profit-sharing plan, nonpublic retirement plan or any similar plan described, defined, or established pursuant to 456.072, RSMo, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of such person and any dependent of such person...

MO. REV. STAT. § 513.430(10)(e) (West 2000). At the hearing, the Debtors produced evidence sufficient to persuade the Court that the annuity is reasonably necessary for the support of Robert and Barbara.¹ Consequently, the only issue left for the Court to determine is whether the annuity owned by Robert qualifies as the type of annuity contemplated by § 513.430(10)(e), *i.e.*, that it is on account of illness, disability, death, age or length of service. We limit our discussion accordingly.

Section 513.430(10)(e) of the Missouri exemption provisions is “virtually identical” to that found in federal exemption scheme. *Checkett v. Vickers (In re Vickers)*, 954 F.2d 1426, 1429 (8th Cir. 1992).² Congress described that federal exemption as “exempting certain benefits that are akin to future earnings of the debtor.” *Eilbert v. Pelican (In re Eilbert)*, 162 F.3d 523, 525 (8th Cir. 1998)(quoting H.R. Rep. 95-595 at 362 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6318). The purpose of the exemption is to replace lost wages, such as wages lost on account of the recipient’s age, *Eilbert, supra*, or disability, *In re Wiley*, 184 B.R. 759, 765 (N.D. Iowa 1995), or for the support of surviving dependents (*i.e.*, on account of the guardian’s death). The annuity at issue here does not fall into any of these categories.

Robert’s annuity can be traced directly back to a gift to Robert from Tille F. McConnell. Tille was Robert’s aunt from California. Apparently, Tille set up a trust for estate planning purposes, and when she died (sometime in 1996) certain provisions of her trust went into effect, specifically, paragraph 13 of the trust which provided for a gift to Robert. It read:

“BOB COLLETT (Nephew) FIFTEEN THOUSAND and NO 00/100 Dollars (\$15,000.00). In the event the amount of this gift exceeds FIFTEEN THOUSAND DOLLARS and is going to BOB COLLETT, the Trustee is either to establish an

¹ See *In re Guentert*, 206 B.R. 958, 964 (Bankr. W.D. Mo. 1997)(listing factors court considers in determining whether something is reasonably necessary for the support of the debtor and / or his dependents.)

² See 11 U.S.C. 522(d)(10)(E).

annuity account paying out over a period of ten(10) years, or to pay out the amount in such increments as the Trustee deems proper in his or her sole and absolute discretion.

As it turned out (for reasons that are not entirely clear), the gift to Robert amounted to \$50,102.40. Consequently, under the terms of the trust, the trustee had the option to establish an annuity, which would automatically make payments to Robert, or make discretionary, incremental disbursements to Robert. The trustee, Leon G. Perrigo, chose the annuity option, and, on February 22, 1999, he purchased a single premium annuity for \$50,102.40, which would provide for monthly payments of \$257.42 to Robert for Robert's lifetime.

Based on these facts it is clear that the annuity Robert received was nothing more than an inheritance received in the form of an annuity, and as such, cannot be exempted. Exemption statutes are to be liberally construed, *Murray v. Zuke*, 408 F.2d 483 (8th Cir. 1969), but a court must be careful not to depart substantially from the express language of the exemption statute or to extend the legislative grant. *In re Goertz*, 202 B.R. 614, 618 (Bankr. W.D. Mo. 1996)(citing *In re Davis*, 136 B.R. 203, 207 (Bankr. S.D. Iowa 1991)). And although the Court is sympathetic to the hardships the Debtors currently face, to apply § 523.430(10)(e) to Robert's annuity would be both a drastic departure from the express language of the exemption statute and an unwarranted extension of the legislative grant. The express language of the statute says "on account of death," but the annuity (although made possible by the death of Tille) was actually just the result of the trustee's choice of form of payment; if the trustee had chosen to make discretionary disbursements, there would be no question that the gift from Tille was an inheritance and nothing more. The mere fact that the gift took the form of an annuity, does not make it exempt. Moreover, because Robert was not a dependent of Tille before she died, the annuity cannot be construed as a replacement for lost wages (Tille's), as Congress intended the statute to be applied.

Therefore, for all of these reasons, it is

ORDERED that the Trustee's Objection to Exemption be and is hereby SUSTAINED.
SO ORDERED.

JERRY W. VENTERS
United States Bankruptcy Judge

Copies by mail to:
United States Trustee
Norman E. Rouse
Walter E. Williams