

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In Re: NANCY A. NESSA

Debtor.

BKY 09-60081
Chapter 7

**ORDER OVERRULING
OBJECTION TO
EXEMPTION**

This matter was submitted on briefs without oral argument on November 18, 2009, on the trustee's objection to the debtor's claim of exemption of an inherited IRA under 11 U.S.C. § 522(d)(12). Trustee Gene W. Doeling appeared on the trustee's behalf, and Jean P. Hannig appeared on behalf of the debtor. The Court, having received and reviewed the briefs filed by the parties and being fully advised in the matter, now makes this **ORDER** pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I

At filing of her Bankruptcy petition on January 28, 2009, Nancy Nessa was the beneficiary of a IRA owned by her deceased father, Robert Borrett. The funds in the IRA account were qualified contributions under Section 408 of the Internal Revenue Code made by Mr. Borrett, who died August 18, 2008. Ms. Nessa claimed the inherited IRA exempt under 11 U.S.C. § 522(d)(12). The trustee objects to the exemption, arguing that inherited IRAs do not qualify for exemption under the statute. The Court disagrees; the funds are exempt; and the objection is overruled.

II

11 U.S.C. §§ 522(d)(12) provides an exemption for:

(12) Retirement funds to the extent that those funds are in a fund or account that is

exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

The trustee argues that an inherited IRA section 408 account does not qualify for exemption under the statute. But, the plain language of the statute compels the contrary conclusion.¹ The issue is whether inherited section 408 IRAs transferred to another trustee remain retirement funds prior to distribution. They do, and can be claimed exempt under 11 U.S.C. §§ 522(d)(12) by debtor beneficiaries who are their equitable owners.

The parties stipulated that:

At the time the debtor filed bankruptcy, she was in possession of roll over beneficiary account no. xxx9505 (hereinafter "Beneficiary IRA Account") which was funded with money she inherited from her father Robert Borrett.

Stipulation of Facts, par. 2. But, that is an incorrect characterization. The account was not rolled over. The total amount in the account was transferred after Mr. Borrett's death to a different trustee, but the recipient account remained in the name of the decedent and it was not legally owned by the debtor.²

Inherited from someone other than spouse. If you inherit a traditional IRA from anyone other than your deceased spouse, you cannot treat the inherited IRA as your own. This means that you cannot make any contributions to the IRA. It also means you cannot roll over any amounts into or out of the inherited IRA. However, you can make a trustee-to-trustee transfer as long as the IRA into which amounts are being moved is set up and maintained in name of the deceased IRA owner for the benefit of you as beneficiary.

¹ None of the cases that the trustee cites deals with 11 U.S.C. § 522(d)(12). For the most part, they interpret state exemption statutes. See: Robertson v. Deeb, 16 So.3d 936, 939 (Fl Dist.Ct. Appeal 2009); In re Taylor, No. 05-93559, 2006 WL 1275400; In re Greenfield, 289 BR. 146, 150 (Bankr.S.D.Cal.2003); In re Sims, 241 BR. 467, 470 (Bankr.N.D.Okla.1999); In Re Navarre, 332 BR.24, 30-31 (Bankr.M.D.Ala.2004); and, In re Anderson, 269 BR. 27 (B.A.P. 8thCir. 2001).

² The funds were transferred in November 2008 into a Beneficiary Retirement Account, Wells Fargo Bank IRA C/F Nancy Nessa, As Bene of Robert Borrett.

Individual Retirement Arrangements, (IRAs), Department of the Treasury, Internal Revenue Service, Publication 590, p20.

The transferred amounts did not lose their character as retirement funds. Proper transfer of funds to another trustee upon the death of the original owner of the IRA results in continued exemption from taxation under section 408. The trustee does not claim that the transfer here was not in compliance with section 408 of the Internal Revenue Code, or that the funds in the transferred retirement account are not exempt from taxation under section 408 until distribution. Therefore, under the plain language of 11 U.S.C. § 522(d)(12), the funds qualify for exemption under that provision and have been properly claimed exempt.

III

Accordingly, IT IS HEREBY ORDERED:

The trustee's objection to the debtor's claim of exemption of the funds in Beneficiary Retirement Account, Wells Fargo Bank IRA C/F Nancy Nessa As Bene of Robert Borrett, under 11 U.S.C. § 522(d)(12), is overruled, and the funds are exempt from the debtor's bankruptcy estate.

Dated: January 11, 2010

BY THE COURT:

/e/ Dennis D. O'Brien

US Bankruptcy Judge

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