

1 UNITED STATES BANKRUPTCY COURT
2 IN AND FOR THE DISTRICT OF ARIZONA

FILED

OCT 16 2004

UNITED STATES
BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

3
4
5 **In Re:**) **Chapter 7 Proceedings**
6 **ARDRIA LOUISE LACEFIELD,**) **Case No. 2:03-bk-22470-CGC**
7 **Debtor.**)
8) **UNDER ADVISEMENT DECISION**
9) **RE: TRUSTEE'S MOTION TO**
) **ALTER OR AMEND ORDER**

10 Before the Court is Trustee Movitz's Motion to Alter or Amend this Court's July 20,
11 2004, Order to specify that the bankruptcy estate "is entitled to receive the monthly payments
12 once the \$20,000 exemption has been satisfied either by the monthly payments or by a
13 combination of monthly payments along with any other money that the debtor has received as a
14 result of her mother's death."

15 This Court's prior Under Advisement Decision of July 20, 2004, found that the \$483.62
16 a month Debtor received from her deceased mother's retirement plan is only exempt up to the
17 \$20,000 limit allowed by Arizona Revised Statute section 33-1126(A)(1). The Court further
18 ordered Debtor to provide the Trustee with an accounting of all payments received to date and
19 continuing accounting of all future payments up to the \$20,000 cap. In response to the motion
20 to alter or amend, Debtor asks that the Court reconsider its ruling and to clarify the Order to
21 apply only to those funds Debtor received after she filed bankruptcy, contending that those
22 received prior to her bankruptcy had no exemption claimed and, therefore, were available for all
23 creditors (and in fact, according to Debtor, were used to pay her creditors). Debtor further argues
24 that she has no present right to the funds, only a right to the particular \$483.62 payment actually
25 disbursed.

26 A hearing was held on September 10, 2004, at which time the Court ordered additional
27 briefing on whether the amounts that Debtor was paid prepetition as a result of her mother's death
28

31/33

1 can be counted toward the Debtor's allowable exemption under A.R.S. section 33-1126(A)(1).
2 That has now been completed and the matter is ripe for determination.

3 First, the Court rejects Debtor's request to reconsider its prior Order and find the funds
4 excluded from property of the estate pursuant to *In re Nelson*, 274 B.R. 789 (8th Cir. BAP 2002).
5 As with her original pleading, Debtor does little to provide this Court with any evidence to show
6 that this retirement plan, once passed to her from her mother upon her mother's death, retains any
7 type of ERISA protection. The monies are at core an inheritance and not a protected retirement
8 benefit to Debtor.

9 To except these funds from the estate, this Court must find that the monthly payments
10 Debtor receives are subject to a restriction on transfer enforceable under "applicable
11 nonbankruptcy law." 11 U.S.C. section 541(c)(2). However, case law establishes that the
12 protection afforded the actual retirement plan participant does not automatically flow to the party
13 who inherits the remainder of the asset upon the plan participant's death. *In re Greenfield*, 289
14 B.R. 146 (Bankr. C.D. Cal. 2003); *In re Sims*, 241 B.R. 467 (Bankr. N.D. Okla. 1999). Debtor
15 is not the holder of these assets as a participant in the retirement plan. She is a holder of these
16 assets by virtue of the fact that she inherited them upon her mother's death.

17 Debtor relies on a new case her counsel found, *In re Nelson*, 274 B.R. 789 (8th Cir. BAP
18 2002), in which the 8th Circuit Bankruptcy Appellate Panel concluded that debtor's interest in his
19 former spouse's ERISA-qualified retirement plan pursuant to a divorce decree and domestic
20 relations order was nonstate property upon his filing chapter 7. Under the divorce decree, debtor
21 was made an actual alternate payee and was therefore conferred beneficiary status under the
22 qualified domestic relations order mechanism in 29 U.S. C. section 1056(d)(3). That provision
23 has no application here. The case does not stand for the proposition that any recipient of
24 retirement monies from an ERISA plan by virtue of the plan participant's death automatically
25 receives renders the monies nonstate property.

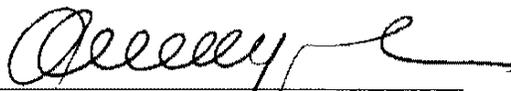
26 Therefore, the question remaining before this Court is whether the amounts Debtor
27 received prepetition are counted toward Debtor's allowable exemption under A.R.S. section 33-

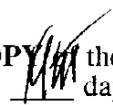
1 1126(a)(1). Section 33-1126(a)(1) states that Debtor may claim an exemption in “[a]ll money
2 received by or payable to a surviving spouse or child upon the life of a deceased spouse, parent
3 or legal guardian, not exceeding twenty thousand dollars.” There is no language suggesting that
4 those funds received prepetition are not to be considered when determining the extent of the
5 exemption. In fact, the opposite is true, as the statute refers to both monies “received” and
6 “payable” to the surviving child. Debtor provides no argument otherwise. Debtor is entitled to
7 exempt \$20,000 worth of the funds received from her mother’s retirement account since her
8 mother’s death in September, 2002.

9 Therefore, the Trustee’s motion is granted.

10 So ordered.

11
12 DATED: Oct 16, 2004

13
14 
15 HONORABLE CHARLES G. CASE II
United States Bankruptcy Judge

16
17 **COPY**  the foregoing mailed and/or via facsimile
this 16 day of October, 2004, to:

18 EDWARD DONEY
19 Doney & Associates
20 1907 E. Broadway, Suite 1
Tempe, AZ 85282-1768
Attorney for Debtor

21 TERRY A. DAKE
22 11811 N. Tatum Blvd.
Suite 3031
23 Phoenix, AZ 85028-1621
Trustee

24
25 
26