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CLERK U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re
RICHARDINE IMRIE,

Debtor.

Case No. 05-03243-A7

MEMORANDUM DECISION

**I.
INTRODUCTION**

Trustee objected to \$120,000 of the \$285,599.52 IRA account exemption claimed by Richardine Imrie ("Debtor") as not being reasonably necessary for her retirement. Debtor opposed the objection on the grounds she will need the entire balance in her IRA account for her retirement needs. The Court conducted an evidentiary hearing on the issue. For the reasons more fully set forth below, the Court overrules the Trustee's objection.

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1 II.

2 **FACTUAL BACKGROUND**

3 Debtor filed a voluntary chapter 7 petition on April 18, 2005. Debtor
4 scheduled her IRA account as exempt pursuant to California Civil Code
5 § 703.140(b)(10)(E) in the full amount of \$285,599.52. [Ex. 2] Trustee
6 objected to \$120,000.00 of the exemption as not being reasonably necessary
7 for Debtor's retirement. If successful, this would leave Debtor with
8 \$165,599.52 in her IRA account to supplement her retirement income.¹

9 **A. Income and Expenses.**

10 Debtor scheduled total monthly income of \$3,296.00 comprised of:
11 (i) \$532.00 representing her share of her former husband's Social Security
12 benefits; (ii) \$1,264.00 representing a portion of her former husband's
13 SDG&E pension benefits; and (iii) \$1,500 monthly representing the amount
14 she withdraws from her IRA account to supplement her income. [Ex. 3]

15 Debtor scheduled total monthly expenses of \$3,194.00. This figure
16 includes \$2,260.00 in monthly expenses for "housing, utilities and
17 transportation" comprised of: (i) \$1,400.00 to rent a four bedroom house;
18 (ii) \$250.00 for electricity and heating; (iii) \$75.00 for water and sewer;
19 (iv) \$40.00 for telephone; (v) \$120.00 for cell, internet and satellite television;
20 (vi) \$250.00 for transportation excluding car payments; (vii) \$65.00 for
21 insurance; and (viii) \$60.00 for auto insurance. [Ex. 4]

22 Debtor's remaining scheduled expenses include \$400.00 monthly for
23 groceries, \$50.00 for clothing, \$20.00 for laundry and dry cleaning, \$220.00
24 for medical and dental, \$50.00 for recreation and entertainment and \$194.00
25 for health insurance. [Ex. 4] Further, Debtor indicates her schedules did not

26
27 ¹ The most recent IRA account statement indicates the balance has decreased to
28 \$272,000.00. However, the pertinent date is the petition date. *In re Goswami*, 304 B.R.
386 (9th Cir. BAP 2003).

1 include her annual tax liability totaling approximately \$5,323.00 based upon
2 her 2004 federal tax return, or any increased tax liability resulting from her
3 recent change in status from Head of House to Single. [Ex. E]

4 **B. Personal Information.**

5 Debtor is 69 years old. She is not married and has no legal
6 dependents. Since filing the petition, Debtor has taken in her 91-year old
7 Uncle who suffers from various infirmities including Parkinson's disease and
8 prostate cancer because he had nowhere else to go. Debtor testified that her
9 Uncle pays for some "extras" such as groceries, but his prescriptions and
10 medical expenses exhaust most of his modest Social Security income.
11 Debtor believes her rent is reasonable even though it is a four bedroom
12 house. She believes she could not find anything less expensive that could
13 accommodate her Uncle's wheelchair. Debtor's testimony was
14 uncontroverted.

15 Debtor is in good health with no life-threatening illnesses. She has
16 Medicare for her primary health insurance, and a supplemental health policy
17 for which she currently pays \$129.00 monthly. The premiums for her
18 supplemental policy will increase starting at age 70 until they reach \$224.00
19 monthly at age 80. With the exception of her premiums, neither party
20 introduced evidence of the Debtor's other current medical expenses, or her
21 projected medical expenses during her retirement years.

22 Debtor drives a twenty-three year old car with 178,000 miles. It lacks
23 air conditioning and needs in excess of \$2,500 in mechanical repairs. Debtor
24 says it will cost more to repair her car than it is worth. She testified she needs
25 to spend \$20,000 to purchase a car. She has no assets with which to
26 purchase a new car other than money in her IRA. Debtor's testimony was
27 uncontroverted.

28 ///

1 **C. Pension Benefits.**

2 Debtor testified the SDG&E pension has no survivorship benefits.
3 Thus, when Debtor's former husband dies, her pension income ends.
4 Thereafter, her sole income will be \$532.00 in monthly Social Security
5 benefits and her IRA account.²

6 Debtor's former spouse is 69 years old with no life-threatening illnesses.
7 Based upon actuarial tables, which both parties agree are probative of the
8 issue of life expectancy, Debtor's life expectancy is 18.6 more years. Her
9 former husband's life expectancy is four to six years less than Debtor.

10 Both parties agree the actuarial tables represent an "average" life
11 expectancy, and one should factor in other personal information. Marc C.
12 Seward ("Mr. Seward") is a Financial Planning Specialist who testified as
13 Trustee's expert on the issue of Debtor's retirement needs. Mr. Seward
14 testified he did not factor in any additional personal information because he
15 had none.

16 James P. Pierik ("Mr. Pierik") is a Certified Financial Planner who
17 testified as Debtor's expert on the issue of Debtor's retirement needs. He
18 testified the actuarial tables are, in his opinion, overly aggressive because
19 people are living longer than they have lived historically . Thus, he does not
20 rely exclusively upon these tables because his clients would risk running out
21 of money prior to their death. His financial scenarios assume Debtor will
22 outlive her average life expectancy, but her former husband might not. [Ex. B]

23
24 ² Trustee argued the SDG&E pension had partial survivorship benefits, but she
25 submitted no evidence of this fact. Further, Trustee suggested Debtor will receive
26 increased Social Security benefits upon her former husband's death based upon their
27 length of marriage, but she submitted no evidence of this fact. Debtor testified she was
28 unaware whether she would receive increased Social Security benefits upon his death.
Debtor volunteered that she is a beneficiary of her former husband's term life insurance,
but said it expires when he reaches age 78. Debtor did not know the amount of the
insurance policy; nor did the Trustee introduce any evidence of the amount.

1 **D. Retirement Projections.**

2 Trustee contends Debtor's reasonable monthly retirement expenses
3 are \$2,500.00, or \$30,000.00 per year. Trustee bases this contention upon
4 the IRS standards effective January 1, 2005, which provide the allowable
5 expenses for "housing, utilities and transportation" for a household of two or
6 less in San Diego is \$1,951.00. [Ex. 9] Additionally, Trustee allows \$549.00
7 per month above the IRS standard expenses to pay for Debtor's health
8 insurance and medical costs. [Ex. 9]

9 Trustee's projections do not include an inflation component.
10 Mr. Seward explained that he did not include inflation because Social Security
11 benefits have an inflation hedge. Additionally, he testified that as inflation
12 increases, the rate of return on Debtor's IRA investments will, likewise,
13 increase. Thus, Trustee's expert believes inflation is a non-issue.

14 Mr. Seward projects Debtor will need to withdraw \$700.00 per month
15 from her IRA account to have \$2,500.00 in monthly income. He concludes
16 that, assuming a 6.5% rate of return on Debtor's investment portfolio, the
17 Debtor will need only \$90,300 in her IRA account to be able to withdraw the
18 \$700 per month for the next 18.6 years. His calculations would leave \$73,700
19 in the IRA account for Debtor to use as an "equity" cushion. [Ex. 14 at ¶ 6]

20 In contrast, Debtor contends she will need the entire balance of her IRA
21 account for her retirement. Her expert, Mr. Pierik, assumes Debtor's
22 scheduled monthly expenses are reasonable, and she will need to withdraw
23 \$1,500 monthly from her IRA account to cover her monthly income shortfalls
24 while her husband is alive. [Ex. B] Upon his death, she will need to withdraw
25 \$3,000 monthly from her account to make up for her lost pension income
26 because she has no survivorship benefits. Assuming Debtor's former
27 husband lives another five years, and assuming a rate of return of 6.5%,
28

1 Mr. Pierik concludes the account will run out of principal by age 85.³ In
2 contrast, if Debtor's former spouse lives eleven more years, and the other
3 factors remain constant, he projects Debtor will run out of money by age 92.

4 [Ex. B]

5 However, Debtor indicated her expert's scenarios do not consider
6 several factors which will drain her IRA account earlier. First, Debtor
7 indicated the scenarios did not consider inflation which historically has
8 doubled every twenty years.⁴ Second, Debtor testified her actual expenses
9 are higher than the expenses she scheduled, and she advocates use of the
10 California Median Income Tables ("CMI Tables") to determine the
11 reasonableness of her expenses instead of the IRS standard expenses that
12 the Trustee used. [Ex. E; Ex. I]

13 Specifically, the CMI Tables reflect the current median annual income
14 for a single person living in San Diego is \$43,436.00. Since Debtor lives on
15 less than the median income, she believes her expenses are presumptively
16 reasonable. Relying upon the historical inflation rates reflected in the CMI
17 Tables, Debtor calculated she will need roughly \$6,000 per month in twenty
18 years, or \$72,000 annually to cover her expenses. [Transcript at 67-68]
19 Debtor indicated she will have to withdraw more out of her IRA account to
20 cover these expenses.

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23
24 ³ The Court is unclear whether Mr. Pierik assumed an IRA account balance of
25 \$165,000 (the Trustee's amount), \$285,000 (the balance on the petition date), or \$272,000
26 (the balance on the last account statement). The account balance was not specified, and
the mathematical calculations were not attached.

27 ⁴ Trustee's expert did not dispute that inflation has historically doubled every twenty
28 years. Further, Trustee did not object to Debtor's introduction of Exs. H and I which formed
the basis for Debtor's inflation testimony.

1 Finally, Debtor doubts whether the rate of return on her IRA investments
2 will actually keep up with inflation. Although both experts assumed a rate of
3 return of 6.5% for purposes of their projections, Mr. Pierik's expert report
4 cautioned that this return is "not guaranteed." He indicated Debtor is
5 presently invested in a "balanced portfolio." Notwithstanding, he indicated
6 that as inflation increases, the portion of Debtor's portfolio already invested
7 in fixed income assets, *i.e.*, bonds, will lose money relative to inflation.
8 [Transcript at 44:2-4] Thus, Mr. Pierik rejected Mr. Seward's assumption that
9 Debtor's rate of return will keep up with inflation.

10 The Court finds Mr. Pierik's testimony more credible on this point, but
11 it has no information concerning the percentage of Debtor's IRA that is
12 presently invested in fixed income assets. Further, the Court has no
13 information concerning the percentage that should be shifted into
14 fixed-income investments as the Debtor ages.

15
16 **III.**
17 **ISSUE**

18 Whether Debtor properly claimed her entire IRA account balance
19 exempt as being reasonably necessary for her retirement needs.

20
21 **IV.**
22 **LEGAL ANALYSIS**

23 Federal Rule of Bankruptcy Procedure 4003(c) provides that the
24 objecting party bears the burden of proof on an objection to a claimed
25 exemption. Thus, once an exemption has been claimed, it is presumptively
26 valid. The objecting party has the burden of production and persuasion, and
27 therefore must produce evidence to rebut the presumptively valid exemption.
28

1 *In re Kelley*, 300 B.R. 11, 16 (9th Cir. BAP 2003)(citing *In re Carter*, 182 F.3d
2 1027, 1029 (9th Cir. 1999)).

3 If the objecting party can produce evidence to rebut the presumption,
4 then the burden of production shifts to the debtor to come forward with
5 “sufficient evidence” to demonstrate the exemption is properly claimed.
6 *Carter*, 182 F.3d at 1029. The debtor’s burden is minimal, and the ultimate
7 burden of proof always remains with the objecting party to prove by a
8 preponderance of the evidence that the debtor is not entitled to the
9 exemption. *In re Harrington*, 306 B.R. 172, 182 (Bankr. E.D. Tex. 2003).

10 Proof by preponderance of evidence means it is sufficient to persuade
11 the finder of fact that the proposition is more likely true than not. *Kelley*, 300
12 B.R. at 17. If the evidence leaves the issue of the debtor’s entitlement in
13 doubt and the court is required to speculate, the party upon whom the burden
14 of proof ultimately rests must lose. *Harrington*, 306 at 182.

15 Accordingly, the Trustee bears the burden of proving by a
16 preponderance of the evidence that Debtor’s exemption of the entire IRA
17 account was not properly claimed. Trustee has to present evidence showing
18 it is more likely than not Debtor will reasonably need only \$165,599.52 to
19 supplement her retirement income over her remaining projected retirement
20 years. If the Trustee’s evidence leaves the issue in doubt and requires the
21 Court to speculate, the Trustee must lose.

22 In considering the IRA account exemption, the Court must apply the
23 “reasonably necessary” standard. *In re Dalaimo*, 88 B.R. 268, 271 (Bankr.
24 S.D. Cal. 1988). The Trustee urges (and the Court agrees) that this standard
25 is not one which permits consideration of a debtor’s pre-bankruptcy lifestyle
26 or status. Rather, it is one designed to provide a debtor with the basic
27 necessities and to prevent debtor from being a public charge. *In re Clark*, 711
28 F.2d 21, 23 (3rd Cir. 1983).

1 Courts have applied a number of factors to determine if a retirement
2 asset (such as an IRA account) is reasonably necessary for support,
3 including: the debtor's present and anticipated living expenses; age and
4 health of the debtor and his or her dependents; debtor's ability to work and
5 earn a living; debtor's training, job skills and education; debtor's other assets
6 and their liquidity; and debtor's ability to save for retirement and any special
7 needs of debtor and his or her dependents. *In re Moffat*, 119 B.R. 201, 206
8 (9th Cir. BAP 1990).

9 In the present case, Debtor is 69 years old with no claimed
10 dependents. Debtor has aged well and appears healthy. Her doctor confirms
11 she has no life-threatening illnesses. Accordingly, Debtor's belief that she will
12 likely live for at least another 18.6 more years is reasonable.

13 Debtor is already retired. Trustee does not contend Debtor is capable
14 of earning a living or that she should return to the work force. As such,
15 Debtor will have no ability to replace the funds. Debtor's current and future
16 sources of income are limited to: (i) \$532.00 in Social Security benefits; and
17 (ii) \$1,264.00 from her former husband's pension benefits. The parties agree
18 this income is inadequate to pay Debtor's reasonable monthly expenses, and
19 Debtor must withdraw from her IRA account to make up the shortfall. They
20 disagree on Debtor's reasonable expenses and the amount of the shortfall.⁵

21 Specifically, Trustee relies upon the IRS standards to argue Debtor's
22 reasonable monthly expenses are \$2,500.00. She limits Debtor's monthly
23 "housing, utilities and transportation" expenses to the \$1,951.00 figure set
24 forth in the IRS standards in effect as of the petition date. Plus, she allots
25 Debtor \$549.00 monthly for health insurance and medical expenses to arrive
26

27 ⁵ Trustee contends the monthly shortfall is \$700.00; Debtor contends it is at least
28 \$1,500.00.

1 at her \$2,500.00 monthly figure. Trustee's expert concludes that, assuming
2 a 6.5% annual rate of return on Debtor's IRA account, Debtor will need only
3 \$90,700.00 in her IRA account cover this \$700.00 monthly shortfall for the
4 next 18.6 years. The Trustee argues that this still leaves the Debtor with an
5 additional \$73,700.00 as an "equity" cushion. [Ex. 14 at ¶ 6]

6 The Court finds the Trustee's projections flawed and overly optimistic
7 for several reasons. First, the Court rejects reliance solely on the IRS
8 standards to determine a debtor's reasonable retirement needs. *See In re*
9 *Howe*, 319 B.R. 886, 892-93 (9th Cir. BAP 2005); *In re Albee*, 338 B.R. 407,
10 412 (Bankr. W.D. Mo. 2006)(both rejecting IRS standards as sole guide in the
11 context of student loan debt discharge). Here, Trustee's calculations blindly
12 limit the Debtor to the then-effective IRS standards for "housing, utilities and
13 transportation" without considering her actual needs. Trustee's own expert
14 testified he does not use the IRS standards in his financial planning practice
15 to project retirement needs, and Debtor's expert concurred. The Court
16 declines to limit the Debtor to the IRS standards to project her future
17 retirement needs where there is no evidence this methodology is generally
18 used in the industry.⁶

19 Trustee implicitly recognizes the flaw in her projections because she
20 added an additional \$549.00 per month for health insurance and medical
21 expenses, and she proposes to leave Debtor with a \$73,700 "equity" cushion.
22 The Court has no information as to how Trustee determined these additional
23 sums would correct the flaw. She provided no analysis of the Debtor's other
24 necessary expenses for the remainder of her projected life.

25
26 ⁶ Likewise, the Court declines to use the CMI Tables since there is no evidence
27 these tables are used in the industry to project retirement needs. Moreover, the CMI
28 Tables are not reflective of the amount of income necessary to provide Debtor with her
basic needs. Debtor testified she needs *less* than the median income to meet her basic
needs.

1 The Court is also persuaded that it must factor inflation into Debtor's
2 retirement needs. Trustee argues inflation is a non-issue because Social
3 Security benefits have an inflation hedge. However, Trustee provided no
4 evidence to show that a financial planner would consider this inflation hedge
5 adequate to protect a client in her retirement; nor did the Trustee's expert
6 testify that Social Security benefits have, in fact, risen at the same rate as
7 inflation. Further, the Court is not persuaded that the rate of return on
8 Debtor's IRA account will rise at the same rate as inflation. Debtor's expert
9 rejected this assumption, and explained how the inverse is true when a
10 person (like Debtor) is invested in fixed-income investments. Debtor's expert
11 testimony is more persuasive on this issue.

12 Moreover, Trustee ignored some obvious expenses. The unrebutted
13 testimony is that Debtor will need to spend at least \$20,000 on a new car.
14 The Court finds this expense reasonable given that Debtor will likely live at
15 least 18.6 more years. Additionally, Debtor testified her tax liability for 2004
16 was \$5,323.00, and she will likely have similar or greater tax liabilities in the
17 future due to her change in tax filing status. The Trustee did not refute this
18 testimony except to indicate that if Debtor were withdrawing less from her
19 IRA account, her tax liability would go down.⁷

20 Finally, and most importantly, Trustee incorrectly assumed Debtor's
21 pension has survivorship benefits. Debtor repeatedly and unequivocally
22 testified she has no survivorship benefits. Trustee offered argument, but no
23 evidence, to refute Debtor's testimony. This fact is disconcerting since the
24 statistics reflect Debtor will outlive her former spouse by at least four to six
25

26 ⁷ Trustee offered the declaration of R. Dean Johnson ("Mr. Johnson") to refute
27 Debtor's contention that she will incur a significant tax liability from the Trustee's withdrawal
28 of the \$120,000. Mr. Johnson testified the estate would incur this tax liability and not the
Debtor. However, the tax liability for Debtor's *future* IRA account withdrawals will be
Debtor's responsibility. [Ex. 15]

1 years. Thus, there is a realistic possibility Debtor will have only \$532.00 per
2 month in Social Security income for many years. Such a possibility throws
3 the Trustee's financial projections into chaos.

4 It is possible Debtor may have other assets. Debtor volunteered she
5 may receive some proceeds from a term life insurance policy on her
6 ex-husband but did not have any information about its duration or benefits.
7 Similarly, it is possible Debtor may receive increased Social Security benefits.
8 The Trustee has introduced no evidence of either potential source of assets.

9 The Court finds the Trustee has not carried her burden of persuasion.
10 As such, the Court need not delve into flaws of Debtor's competing evidence.
11 Debtor's claim of exemption was presumptively valid, and Debtor came
12 forward with sufficient evidence to demonstrate she needs the entire IRA
13 account for her retirement. It was Trustee who ultimately bore the burden of
14 persuasion. Her assumptions were flawed and her financial projections too
15 simplistic to persuade the Court that \$165,599.52 will likely be enough to
16 provide for Debtor's reasonable retirement needs.

17
18 **V.**

19 **CONCLUSION**

20 The Court overrules Trustee's objection to Debtor's claim of exemption
21 of her IRA account. Debtor's exemption of the entire account balance is
22 presumptively valid. Trustee did not produce evidence to prove by a
23 preponderance of the evidence that it is more likely than not Debtor will need
24 only \$165,599.52 of her IRA account to provide for her reasonable retirement
25 needs. Trustee relied upon flawed assumptions and simplistic financial
26 projections. Most notably, Trustee assumed Debtor's pension had no
27 survivorship benefits but had no evidence of this fact. This incorrect
28 assumption throws the Trustee's financial projections into chaos.

1 This Memorandum Decision is in lieu of Findings of Fact and
2 Conclusions of Law. Debtor is directed to prepare and lodge an order in
3 accordance with the Memorandum Decision within ten days of the date of its
4 entry.

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Dated: 7 Nov 06

Louise De Carl Adler
LOUISE DE CARL ADLER, Judge