UNITED STATED BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Chapter 7
Kim Richardson,	Case Number: 20-30790-jda
	Hon. Joel D. Applebaum
Debtor.	
_____/	

OPINION DENYING TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF EXEMPTION

Introduction

Debtor, Kim Richardson, seeks to exempt $2,214.71 consisting of cash on hand and in bank accounts under Mich. Comp. Laws §600.5451(1)(b) which provides "a debtor in bankruptcy under the bankruptcy code . . . may exempt from property of the estate . . . (b) provisions and fuel for comfortable subsistence of each householder and his or her family for 6 months." The chapter 7 trustee ("Trustee") objects to the claim of exemption, asserting that Debtor's cash, whether on hand or in bank accounts, does not fall within the meaning of this exemption and must be turned over to the her. For the reasons set forth below, the Trustee's objection is DENIED.

Jurisdiction

This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B) over which the Court has jurisdiction pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(a).

Factual Background

The facts in this matter are not in dispute. Debtor filed her voluntary petition under chapter 7 of the Bankruptcy Code on March 26, 2020. At the time of filing, Debtor had $32.00 cash on hand, $2,177.71 in a checking account, and $5.00 in a savings account for a total of

$2,214.71. Debtor sought to exempt this amount under Mich. Comp. Laws §600.5451(1)(b), quoted above. The Trustee objected to Debtor's claim of exemption on the grounds that the "statute does not refer to cash or funds in a bank account, and those assets are not exempt under that statute." [Dkt. No. 19, p.2] Debtor, relying primarily on an unpublished opinion in the case *In re Barlow*, Case No. 17-48802-MBM (Bankr. E.D. Mich. 2017) [Dkt. Nos. 17, 18], argues that "funds in a bank account (and by extension, cash on hand) may be exempt under MCL §600.5451(1)(b) if such funds are *de minimis*, and are used by the debtor for food, fuel and other living expenses." [Dkt. No. 20-1, p. 1].

On July 8, 2020, a hearing was held on the Trustee's objection. At the conclusion of the hearing, the Court took the matter under advisement and invited, but did not require, the parties to file supplemental briefs. The Trustee filed her supplemental brief on July 24, 2020. [Dkt. No. 28]. Debtor elected to rely on the brief filed in support of her response to the Trustee's objection. [Dkt. No. 20-1]

Legal Analysis

On June 15, 2020, the United States Supreme Court issued its opinion in *Bostock v. Clayton County, Georgia*, 590 U.S. ___, 140 S.Ct. 1731 (2020). Although the issue in *Bostock* bears no resemblance to the issue presented here, the *Bostock* opinion is nevertheless the Supreme Court's most recent instructions on statutory interpretation and should be applied in this case. *See In re Spradlin*, 231 B.R. 254, 256 (Bankr. E.D. Mich. 1999) ("Michigan law on statutory interpretation is essentially the same as it is under federal law. 'The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the legislature.'") (internal citations omitted)

According to the *Bostock* Court, a statute is interpreted "in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock*, 140 S.Ct. at 1738.

> With this in mind, our task is clear. We must determine the ordinary public meaning of Title VII's command that it is "unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. §2000e-2(a)(1)." ***To do so, we orient ourselves to the time of the statute's adoption, here 1964, and begin by examining the key statutory terms in turn before assessing their impact on the cases at hand and then confirming our work against this Court's precedents***.

Id. at 1738-1739 (emphasis added).

To analyze the ordinary public meaning of the terms at issue in the 1964 statute, the Supreme Court turned to roughly contemporaneous dictionaries, including *Webster's New International Dictionary (2d ed. 1954)* and *Webster's New Collegiate Dictionary (1975)*. The specific exemption section at issue in this case, however, has a much longer history, dating back to 1846 and possibly before. *See* Thomas R. Morris, "*The History and Future of Michigan Debtor Exemptions*," Michigan Business Law Journal (Summer 2010). Therefore, this Court reviewed dictionaries from that time period including Webster's *An American Dictionary of the English Language* (1828), Worcester's *A Universal and Critical Dictionary of the English Language* (1846), Bouvier's *Law Dictionary* (1856), and De Colange, *The American Dictionary of Commerce* (1881), among others.

Bostock instructs that this Court's analysis must begin by examining the key statutory terms before applying them to this case and considering the Court's analysis against applicable precedent. In this case, the key statutory terms at issue are "provisions" and "comfortable subsistence." Turning first to the definition of "provisions," Webster's *An American Dictionary of the English Language* (1828), defined the word "provision" when used as a noun to mean "(1)

The act of providing or making previous preparation. (2) Things provided; preparation; measures taken beforehand, either for security, defense or attack, or for the supply of wants. (3) Stores provided; stock. (4) Victuals; food; provender; all manner of eatables for man and beast. (5) Previous stipulation; terms or agreement made, or measures taken for a future exigency." As a verb, the word "provision" was defined to mean "[t]o supply with victuals or food." In Worcester's *A Universal and Critical Dictionary of the English Language* (1846), "provision" when used as a noun meant "[a]ct of providing; thing provided; terms settled; care taken; measures taken beforehand; accumulation of stores beforehand; stock collected: -- victuals; food; fare." As a verb, "provision" is simply "to supply with provisions." In the Michigan exemption statute, "provisions" is a noun. Although the most common definition seems to be a stockpile of supplies and victuals, both dictionaries' definitions of the "provision" and "provisions" are broader and include all things provided and all preparations or measures taken beforehand. Notably, nothing in these definitions explicitly excludes cash.

In De Colange's *American Dictionary of Commerce* (1881), "provisions" is defined narrowly. "Under this term, taken in its most extensive sense, in reference to man, may be comprised all those articles used as food by the inhabitants of this and other countries; but commercially it is understood to comprise only fresh and salted butchers' meat, hams, and bacon, butter and cheese, eggs and a few other articles." While this definition excludes cash, it also excludes paper products, toiletry items and many other items that are ordinarily thought of as provisions. Contrasted with the Webster and Worcester definitions, the De Colange definition demonstrates that the terms "provision" and "provisions" as ordinarily used was elastic and broad, covering everything from the very specific -- "fresh and salted butchers' meat, hams, and bacon, butter and cheese, eggs and a few other articles" -- to the very general -- any "act of

providing or making previous preparation. [ ] Things provided; preparation; measures taken beforehand, either for security, defense or attack, or for the supply of wants."

In Bouvier's *Law Dictionary* (1856), a specialized legal dictionary presumably consulted by lawyers and legislators at the time, "provision" has two definitions. The first is "property which a drawer of a bill of exchange places in the hands of a drawee . . . ." The second definition is an "allowance granted by a judge to a party for his support; which is to be paid before there is a definitive judgment. In a civil case, for example, it is an allowance made to a wife who is separated from her husband." This latter definition contemplates a stream of cash payments as an allowance or form of spousal support.

If this were the end of the inquiry, the Trustee's more restrictive view of the word "provisions" as excluding cash would likely be the more plausible one. However, the question isn't simply the definition of the word "provisions," but what the statute "says about it." *Bostock*, 140 S.Ct. at 1739 ("Still, that's just the starting point. The question isn't just what "sex" meant, but what Title VII says about it.") Under either Michigan or federal law, statutory construction is a holistic endeavor requiring a court to give meaning to all words in the statute under consideration. *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988); *In re Spradlin*, 231 B.R. at 257 (compiling Michigan cases). Here, in addition to "provisions," the Court must also consider the term "comfortable subsistence." Even using the contemporary dictionary relied upon by the Trustee, the word "comfortable" means "1.a: affording or enjoying contentment and security; b: affording or enjoying physical comfort; 2.a: free from vexation or doubt; b: free from stress or tension." *Merriam-Webster.com*. The word "subsistence" is even more revealing. In Webster's *An American Dictionary of the English Language* (1828), subsistence is defined as "competent provisions; means of supporting life; *that*

which supplies the means of living; as money, pay or wages." (emphasis added). Similarly, in Worcester's *A Universal and Critical Dictionary of the English Language* (1846), subsistence is defined as "act of subsisting; that which subsists; inherence; real being; *means of support; maintenance; living; livelihood*; sustenance; support." (emphasis added). Taken as a whole, "provisions and fuel for comfortable subsistence of each householder and his or her family members for 6 months" cannot be read to exclude cash unless one also disregards the term "comfortable subsistence" which, by definition, affords a modicum of comfort and security and includes "that which supplies the means of living*; as money, pay or wages."* (emphasis added). But disregarding critical terms of a statute is precisely what the Supreme Court instructs a court cannot do.

Turning to the impact of these definitions on this case, the specific exemption at issue has been in existence and the key provisions under consideration here have remained largely unchanged since at least 1846.[1] *See e.g., King v. Moore*, 10 Mich. 538 (1862) (construing exemption for "provisions for the comfortable subsistence of a householder and family for six months"). The ordinary meaning of the key terms discussed above is consistent with the intention of Michigan's exemption statutes generally; "the law exempting property from execution, being remedial and resting upon a wise policy should, as far as practicable, be construed beneficially for the debtor." *Spradlin,* 231 B.R. at 258, quoting *Alvord, v. Lent*, 23 Mich. 369, 371 (1871). *See also Morrill v. Seymour*, 3 Mich. 64, 67 (1853) ("The object of the law [governing exemptions] is liberal and praiseworthy. It is in accordance with the spirit of the age. Together with other provisions of our statute, it secures to the poor man the means, if he already possesses it, of gaining a comfortable subsistence for himself and family.") *In re Sassak,*

[1] See, *Morris* article, *supra* for a brief history of the evolution and codification of the Michigan statutory exemptions.

426 B.R. 680, 681-682 (E.D. Mich. 2010) ("'A fundamental component of an individual debtor's fresh start in bankruptcy is the debtor's ability to set aside certain property as exempt from the claims of creditors. Exemption of property, together with the discharge of claims, lets the debtor maintain an appropriate standard of living as he or she goes forward after the bankruptcy case.'") (internal citation omitted). *Accord*, *In re Brown*, 189 B.R. 653, 660 (Bankr. M.D. La. 1996) ("the purpose underlying [Louisiana's exemption statute] is to provide for the subsistence, welfare and "fresh start" of the debtor, to the end that his or her family will not be destitute and so that the debtor will not become a charge on the state.") (internal citations omitted). These very same concerns are equally present today.[2] For these reasons, the Court concludes that cash on hand or on deposit falls within the meaning of §600.5451(1)(b) as "provisions . . . for comfortable subsistence," capped for "each householder and his or her family for 6 months."

Next, the *Bostock* Court instructs courts to consider their interpretation of the key terms of the statute against applicable precedent. Here, the parties and the Court have found only two cases since the exemption was first adopted that directly address whether cash falls within the meaning of Michigan's exemption for "provisions and fuel for comfortable subsistence . . . for sixth months". *See In re Barlow*, Case No. 17-48802-MBM (Bankr. E.D. Mich. 2017) [Bench Opinion, Dkt. No. 17, August 29, 2017] (allowing cash exemption) and *In re Thibaudeau*, No. 19-21006, 2019 WL 6125311 (Bankr. E.D. Mich. November 18, 2019) (disallowing cash exemption).

In *Barlow*, the debtor sought to exempt $400 in her checking account under Mich. Comp. Laws §600.5451(1)(b). Denying the Trustee's objection, the court held:

[2] Even were this Court to conclude that the statutory provision at issue is ambiguous and legislative history should be considered, the legislative history with respect to this statute has charitably been described as "sparse and admittedly not authoritative . . ., " *Sassak*, 426 B.R. at 694, but nevertheless showing "an intent to modernize, not limit, the exemptions available to debtor in bankruptcy." *Id.* at 691. This history would militate in favor of an expansive reading of the key statutory terms at issue here.

> While cash is not, technically, 'provisions and fuel,' this Court finds that money used to purchase provisions and fuel qualifies under this exemption. In 2017, people do not store six months of provisions and fuel; they purchase goods on a weekly or monthly basis. This Court finds that the provisions and fuel exemption applies to a *de minimus* amount contained in a checking account, which is most certainly necessary for debtor to buy groceries and pay her utility bills.

Barlow, Case No. 17-48802-MBM [Bench Opinion, Dkt. No. 17, August 29, 2017].

While this Court agrees with *Barlow's* holding, it does not agree with the court's finding that cash does not fall within the definition of "provisions." The *Barlow* court did not consider the entire statutory exemption, including the key terms "comfortable subsistence." Moreover, a court is not free disregard the specific language of the statute. Therefore, if "cash is not, technically, 'provisions and fuel,'" as the *Barlow* court believed, then cash does not fall within the terms of the exemption and the court should have granted the trustee's objection. Similarly, there is no basis for the *Barlow* court's conclusion that "the provision and fuel exemption applies to a *de minimus* amount contained in a checking account." Rather, the statute provides that a debtor is allowed to exempt that amount of cash which, coupled with other "provisions and fuel," provides "comfortable subsistence of each householder and his or her family for 6 months." Depending on the size of the householder's family and the amount of non-cash "provisions and fuel" on hand, among other considerations, the amount of cash that can be exempted could be considerably more than "a *de minimus* amount." How much more will necessarily have to be evaluated on a case by case basis. [3]

[3] The Court does not decide whether a cash exemption of $2,214.71, coupled with other "provisions and fuel" Debtor may have in her possession, exceeds the limited amount needed to attain comfortable subsistence for the householder and each family member capped at six months. The Trustee will evaluate this exemption utilizing the same considerations trustees have been using to evaluate §600.5451(1)(b). These considerations include an examination of the specific debtor's circumstances -- whether and why a debtor is working or not working, the number of family members in the household, the amount of other non-cash provisions already stockpiled, among others. It may also be appropriate to consider external factors at the time the exemption is taken. In this case, for example, Debtor filed her petition in the midst of a global pandemic, within days after the issuance of a state-wide "stay at home" order and at a time when unemployment rates have climbed sharply. These circumstances may

In *Thibaudeau*, debtor was a tax preparer with a busy season from January to mid-April. At the conclusion of tax season, debtor, by choice, no longer worked (or worked very little). Debtor sought to exempt approximately $28,000 under Mich. Comp. Laws §600.5451(1)(b) which he claimed he needed to live on until the next tax season. The chapter 7 trustee objected. In stark contrast to *Barlow*, the court denied the exemption, adopting many of the trustee's arguments. The court also noted that "[W]hile the Debtor's expertise is in the seasonal area of income tax preparation, nothing prohibits him from working at another position until January 2020 arrives. Although not ideal, he could earn money in other areas. The Bankruptcy Code does not contemplate or encourage debtors to remain idle after receiving a discharge." *Thibaudeau*, 2019 WL 6125311 at *4. This Court agrees with this aspect of the *Thibaudeau* court's opinion. The exemption for "provisions and fuel for a comfortable subsistence" is intended "to provide the subsistence, welfare and 'fresh start' of the debtor to the end that his or her family will not be destitute . . . ." *Brown*, 189 B.R. at 660. As the *Thibaudeau* court recognized, this exemption was not intended to give the debtor an eight month free pass at the expense of his creditors.

Although the Court agrees with the holding in *Thibaudeau*, it does not agree with the trustee's arguments made there, many of which have also been put forth by the Trustee in this case. First, the trustee argued that "in contrast to the word 'provisions' in MCL 600.5451(1)(b), the Michigan Legislature has used the word money in MCL 600.5451(1)(j). Thus, these two words mean different things. Applying the rule of statutory construction of expression *unius est exclusio alterius*, the expression of one thing in this statute implies the exclusion of others."

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impact a trustee's evaluation of the amount of cash and other provisions a debtor needs to comfortably subsist. Nothing in this opinion is intended to preclude the Trustee from contesting this aspect of Debtor's exemption.

The reference in MCL 600.5451(1)(j) is to "[M]oney or other benefits paid, provided, allowed to be paid or provided, or allowed, by a stock or mutual life, health, or casualty insurance company because of the disability due to injury or sickness of an insured person . . . ." Read as a whole, this exemption refers to disability insurance benefits in whatever form. A fair reading of this provision evidences that the exemption equally covers direct payments to a debtor, as well as payments made to third parties on a debtor's behalf, physical therapy and therapy and other health-related products, among other benefits. That this particular exemption references, among other benefits, "money" paid to a debtor as an insurance benefit is hardly surprising. Nevertheless, a disability benefit is not sufficiently similar to "provisions . . . for comfortable subsistence" such that the reference to "money and other benefits" justifies excluding cash from the definitions of "provisions . . . for comfortable subsistence . . . ." A better example for the application of this rule of statutory construction is found in the case *In re Glimcher*, 458 B.R. 549 (Bankr. D. Ariz. 2011). There, debtor sought to exempt $20,000 worth of gift cards purchased the day before his bankruptcy filing, arguing that they were exempt because they could be used to purchase food and fuel. In a separate section, the Arizona exemption statute allows a debtor to exempt "a bank deposit of $150 and certain insurance and annuity proceeds." *Id*. at 550. Because the Arizona statute specifically allows a debtor to exempt cash (up to a maximum of $150) in one section, the court appropriately excluded an exemption for gift or pre-paid credit cards, the functional equivalent of cash, sought under a different section. Unlike the Arizona statute, however, Michigan's exemption statute does not have a specific cash exception and, therefore, the application of *unius est exclusio alterius* is simply unwarranted here. *See National Labor Relations Board v. SW General, Inc*., 137 S.Ct. 929, 940 (2017) ("'The force of any negative implication, however, depends on context.' The *expressio*

unius canon applies only when 'circumstances support[ ] a sensible inference that the term left out must have been meant to be excluded.'") (internal citations omitted)

Second, the trustee argued that allowing cash to be exempted under Mich. Comp. Laws §600.5451(1)(b) would allow a debtor to also exempt cash under other provisions of §600.5451(1). For example, a debtor could conceivably exempt cash up to $2,775 for a motor vehicle. Mich. Comp. Laws §600.5451(1)(g). This argument, however, misses the mark. The trustee is treating cash not as a part of "provisions . . . for comfortable subsistence," but rather as something separate to exchange in order to acquire provisions. For the reasons stated above, the Court believes this is an incorrect reading of the exemption. Because it falls within the statutory definitions, cash can be utilized for the comfortable subsistence of the debtor and his or her family members up to the statutory limit.

Third, the trustee relies on Justice Christiancy's opinion in *King v. Moore*, 10 Mich. 538, which opined that edible crops not ripe for harvest could not be exempted as "provisions" because "to be exempt as provisions, [they] must be capable of being used as such when the exemption takes effect." *Id*. at 544. According to the trustee, this demonstrates that only things in the possession of a debtor and able to be used at the time the exemption is taken are capable of being "provisions." There are several problems with the trustee's argument. As Justice Christiancy recognized, "the statute, in exempting provisions 'for the comfortable subsistence of the householder and family for six months,' does not specify any particular kind of provisions . . . ." *Id*. at 543. Thus, even as of 1862, cash was not specifically excluded from the definition of provisions. Moreover, for the reasons set forth above, the Court concludes that cash is a provision as that term is used in the statute, not simply a means to acquire "provisions" sometime in the future. Cash has an immediate use. Also, the trustee's reliance on Justice Christiancy's

opinion in *King* was mistaken. The portion of Justice Christiancy's opinion on which the trustee relied was not the holding of the Michigan Supreme Court in that case. The four Justices split evenly on the issue of whether crops not yet harvestable could constitute provisions, with Justices Christiancy and Manning holding they could not, and Justices Campbell and Martin holding that they could. As a result, this issue was not decided and is not binding on that point. *See generally*, Maurice Kelman, *Some Little Things About Michigan Supreme Court Opinions that Annoy a Basically Genial Law Teacher*, 30 Wayne Law Review 191, 193 (Winter 1984).[4]

Lastly, the trustee argued, and the *Thibaudeau* court agreed, that "it is the Michigan Legislature's role to enact statutes, not this Court. In short, if the Michigan exemption statute which has remained untouched as to this provision for decades needs amending, it is the Michigan Legislature, not this Court, that should do so." *Thibaudeau*, 2019 WL 6125311 at *3. Although this is a compelling argument, it was specifically rejected by the Supreme Court. Here, as in *Bostock*, the statute in question was amended, and other amendments considered and not adopted, but this particular section was not. Similar to the trustee, the employers in *Bostock* argued that the post-enactment legislative history "should tell us something." *Bostock*, 140 S.Ct. at 1747. Rejecting this argument, the *Bostock* Court stated,

> But what? There's no authoritative evidence explaining why later Congresses adopted other laws referencing sexual orientation but didn't amend this one. Maybe some in the later legislatures understood the impact of Title VII's broad language already promised for cases like ours and didn't think a

[4] "Cases in which the court divides evenly pose another set of challenges for reporter and reader. Unlike the U.S. Supreme Court, in which a tie vote yields an affirmance without opinion, the Michigan court publishes opinions on both sides of the case, apparently in obedience to the state constitutional requirement that "[d]ecisions of the supreme court ... shall be in writing and shall contain a concise statement of the facts and reasons for each decision."' Given that none of the opinions is precedential, which deserves pride of place? Logic suggests it is opinions for affirmance since they at least comport with the outcome of the appeal. But in practice there is no uniformity in the arrangement of opinions in either the Michigan or Northwestern Reports. When an opinion for reversal is chosen as the lead opinion for publication the theory seems to be that of the old dissent-first cases -- that because the opinion for reversal began life as the putative majority opinion, it offers a more complete narration of the facts and proceedings in the case." (footnotes omitted)

> revision needed. Maybe others knew about its impact but hoped no one else would notice. Maybe still others, occupied by other concerns, didn't consider the issue at all. All we can know for certain is that speculation about why a later Congress declined to adopt new legislation offers a "particularly dangerous" basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt.

Id.

Given their long history, this seems particularly true with respect to Michigan's various exemption statutes. The fact that §600.5451 has previously been amended or that additional amendments were considered but not adopted does not make this provision more or less clear. Therefore, the ordinary public meaning of the key statutory terms at the time of enactment control.

The Court is aware that some bankruptcy courts outside of Michigan have reached the opposite conclusion based upon the specific language of their respective states' exemption statutes. Although some of these statutes reference the word "provisions," they are dissimilar in several important respects. Some statutes explicitly exempt cash up to a certain amount whereas Michigan's statute does not. *See e.g., In re Glimcher*, 458 B.R. at 549. Other statutes define exemptible items very specifically, thereby excluding cash by omission. *See e.g., In re Parks,* 2018 WL 6603722 (Bankr. D. Kan. 2018). In contrast, over its long history, this particular statute has not defined the term "provisions." *See King v. Moore*, 10 Mich. 538. Most importantly, Michigan's statutory language is unique, exempting "*provisions . . . for a comfortable subsistence . . . .*" (emphasis added) Ultimately, as the *Bostock* Court instructs, it is *all* of the words actually used by Michigan's legislature that control.

Conclusion

Essentially, the Trustee's argument can be characterized as follows: If the Michigan legislature wished to allow a debtor to exempt some amount of cash, it would have said so

explicitly. But as the *Bostock* Court instructs, there is no "such thing as a 'canon of donut holes,' in which Congress's failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception. Instead, when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule." *Id*. at 1747. The same holds true here. Based upon the forgoing, the Trustee's objection to Debtor's claim of exemption is DENIED.

For Publication
Signed on August 13, 2020

/s/ Joel D. Applebaum
Joel D. Applebaum
United States Bankruptcy Judge