



BANKRUPTCY EXEMPTION MAY NOT APPLY TO RETIREMENT BENEFITS RECEIVED IN DIVORCE

Lerbakken v Sieloff & Associates, PA, NO. 18-6018 (8th Cir. 2018)

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Background

- In his 2014 divorce settlement, Mr. Lerbakken (Mr. L) received half of his wife's 401(k) account and 100% of her IRA.
- He subsequently filed for bankruptcy protection. One of his creditors was Sieloff & Associates. The firm that handled Mr. L's divorce and remained unpaid.
- Mr. L claimed that the 401(k) account and the IRA received in the divorce were exempt from claims of creditors as retirement assets under 11 U.S.C. Section 522(d)(12).
- The bankruptcy court disallowed Mr. L's claimed exemption for the 401(k) and the IRA.
- Mr. L. appealed to the 8th Circuit Court.

8th Circuit Court Ruling

- The 8th Circuit Court (Court) upheld the lower court's disallowance of the exemption.
- The Court referred to a 2014 U.S. Supreme Court ruling that an inherited IRA did not qualify as a retirement asset qualifying for the bankruptcy exemption. *Clark v Rameker*, 134 SCt 2242 (2014).
- In so ruling, the United States Supreme Court indicated that retirement funds for purposes of the bankruptcy exemption meant funds set aside to be available when one stopped working and, hence, did not apply to an inherited IRA.
- The Court ruled that a retirement asset received as part of a property settlement does not qualify for the exemption either.
- The Court was not swayed by Mr. L's claim that his wife's 401(k) and IRA were accumulated specifically for their joint retirement.

- It was also noted that Mr. L had not rolled the assigned funds into his own retirement account. He could not even produce a QDRO indicating that he had accessed his assigned share of the 401(k).

Comments on the Case

- The Court seemed to narrowly construe the statute since, as Mr. L asserted, the funds in question were in fact set aside for his and his former wife's retirement.
- The division of the parties' retirement assets is frequently done with the objective of providing each party with sufficient financial security for retirement years.
- Where bankruptcy is a possibility, to lessen the chances of what happened to Mr. L, retirement funds received in a divorce should be accessed promptly and rolled into one's own retirement account.
- QDRO preparation and processing should be attended to forthwith after a divorce.

About the Author

Joe Cunningham has over 25 years of experience specializing in financial and tax aspects of divorce, including business valuation, valuing and dividing retirement benefits, and developing settlement proposals. He has lectured extensively for ICLE, the Family Law Section, and the MACPA. Joe is also the author of numerous journal articles and chapters in family law treatises. His office is in Troy, though his practice is statewide.

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