

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

KYLE A. NEWTON : BK No. 00-14336
Debtor Chapter 7

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TITLE: *In re Newton*

CITATION:

ORDER SUSTAINING TRUSTEE'S OBJECTION TO EXEMPTION

APPEARANCES:

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BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

Heard on June 19, 2001, on the Trustee's Objection to the Debtor's attempt to exempt certain items of personal property. The Debtor claims as exempt "Furs and Jewelry" in the amount of \$750 under R.I. Gen. Laws § 9-26-4(1), which covers "[t]he necessary wearing apparel of a debtor or of the debtor's family, if he or she has a family." The disputed items include a watch, a gold bracelet, and a necklace worth \$750 in total. The Debtor argues that the Rhode Island exemption for wearing apparel should include jewelry, provided it is not held for investment purposes, and he cites bankruptcy cases from the Districts of Texas, California, Montana, and Oklahoma to support his position. Based upon the plain meaning that must be ascribed to the Rhode Island statute, which requires no interpretation, and for the reasons set forth below, I cannot construe the "necessary wearing apparel" exemption to include the items claimed by the Debtor.

DISCUSSION

The Debtor filed the instant Chapter 7 petition on December 28, 2000, and elected the exemptions afforded under state law pursuant to 11 U.S.C. § 522(b)(2)(A). The Trustee has filed a

timely objection to the claimed exemptions. See Fed. R. Bankr. P. 4003(b).¹

Our research turns up no Rhode Island case on point, i.e., whether "jewelry" falls within the purview of "necessary wearing apparel." The First Circuit Court of Appeals has stated that when interpreting a statute, "[t]he 'plain meaning' of statutory language controls its construction." *Summit Inv. & Dev. Corp. v. Leroux*, 69 F.3d 608, 610 (1st Cir. 1995), and the Supreme Court has said "as long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240-41 (1989).

Black's Law Dictionary defines wearing apparel as follows: "As generally used in statutes, refers not merely to a person's outer clothing, but covers all articles usually worn, and includes underclothing." Black's Law Dictionary 1594 (6th ed. 1990). Necessary is defined by Webster's as "that cannot be dispensed with; essential; indispensable." Webster's New World Dictionary 905 (3d ed. 1988). Additionally, the Rhode Island

¹ The Section 341 meeting was held and adjourned on January 22, 2001, and the Trustee filed her Objection to the Debtor's exemptions on February 21, 2001.

Supreme Court has rejected a creditor's argument that because the debtor got along without certain clothing for several months, he had no need for the clothing and therefore it was not necessary, stating that: "The true test, in our opinion, is whether such apparel is necessary in the ordinary circumstances of family living or is a superfluous luxury. And there may be circumstances when even certain clothing which ordinarily is considered a luxury would be deemed a necessity." *Arch Lumber Co. v. Dohm*, 81 R.I. 69, 73 (1953). The terms "necessary" and "wearing apparel" should be construed together, and doing so I find and/or conclude in the context of this case that *necessary* wearing apparel does not include jewelry. Simply put, Rhode Island has not seen fit to craft an exemption for jewelry, possibly because it had in mind the other options available to Rhode Island debtors, i.e., had the Debtor elected federal exemptions, he could have claimed as exempt the jewelry at issue in this case. See 11 U.S.C. § 522(d)(4).² Having intelligently

² While this opinion was in draft, it came to our attention that the Rhode Island Legislature has in fact added an exemption for jewelry. See 2001 R.I. Laws Ch. 01-264 (01-H 5583), § 1. The legislature added sub-section 14 to R.I. Gen. Laws § 9-26-4 which states "The following goods and property shall be exempt from attachment... (14) Any and all jewelry owned by the debtor not to exceed an aggregate total of one thousand dollars (\$1,000)." R.I. Gen. Laws § 9-26-4(14) (2001). The Act took effect upon passage which was July 13, 2001. See 2001 R.I. Laws Ch. 01-264 (01-H 5583), § 2. Because

used the benefits³ of the Rhode Island state exemption scheme to his clear advantage, the Debtor must also accept the burden of said election.

The authorities cited by the Debtor are neither applicable nor persuasive. The Montana and Oklahoma cases involve exemption statutes that are markedly different from Rhode Island's, in that they do not use the word "necessary" before the words "wearing apparel." See *In re Stanhope*, 76 B.R. 165 (Bankr. D. Mont. 1987); *In re Miller*, 101 B.R. 713 (Bankr. E.D. Okla. 1989). The Debtor's Texas cases are of no help, considering Texas's notoriously generous exemption scheme and philosophy,⁴ see *In re Reed*, 89 B.R. 603, 606-07 (Bankr. N.D.

the instant case was filed well before that date, the amendment does not apply in this case.

³ I emphasize *benefits*, because the Debtor has already claimed a homestead exemption of \$100,000 pursuant to R.I. Gen. Laws § 9-26-4.1, so he is not faring poorly under his chosen exemption scheme.

⁴ For instance, Under Texas law a "homestead," regardless of value, is fully exempt from the reach of creditors, see Tex. Prop. Code Ann. § 41.001, and Texas law defines a homestead as:

a) If used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than 10 acres of land which may be in one or more contiguous lots, together with any improvements thereon.

(b) If used for the purposes of a rural home, the homestead shall consist of:

(1) for a family, not more than 200 acres, which may be in one or more parcels, with the

Tex. 1988), and since the publishing of those cases, the Texas legislature has added a specific exemption for jewelry. See Tex. Prop. Code Ann. § 42.002(6)(exempting "jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 42.001(a)"). Finally, the holding in the California case relied upon by the Debtor was restricted to the facts of that particular litigation and emphasized the "great sentimental value" that the debtor placed on the jewelry in question. *In re Westhem*, 642 F.2d 1139, 1140 (9th Cir. 1981). Without ruling here that sentimental value might carry the day in certain circumstances, that is not an issue in this case.

For the foregoing reasons, the Trustee's Objection to the Debtor's claimed exemption in "jewelry and furs" is SUSTAINED.

Enter judgment consistent with this opinion.

Dated at Providence, Rhode Island, this 26th day of September, 2001.

/s/ Arthur N. Votolato
Arthur N. Votolato
U.S. Bankruptcy Judge

improvements thereon; or
(2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

Tex. Prop. Code Ann. § 41.002.

