

08-4927-bk
In re Jackson:
Jackson v. Novak

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

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4 August Term, 2009

5 (Argued: November 19, 2009 Decided: January 22, 2010)

6 Docket No. 08-4927-bk

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8 IN RE: RICHARD E. JACKSON
9 and ANGELA J. SHELTON,

10 Debtors,

11 RICHARD E. JACKSON, ANGELA SHELTON,

12 Appellants,

13 - v. -

14 ANTHONY S. NOVAK, Chapter 7 Trustee,

15 Appellee.
16

17 Before: KEARSE, SACK, and KATZMANN, Circuit Judges.

18 Appeal from a judgment of the United States District Court
19 for the District of Connecticut, Vanessa L. Bryant, Judge,
20 affirming bankruptcy court order that allowed debtors, pursuant to
21 11 U.S.C. § 522(d)(11)(E), to exempt from their bankruptcy estate
22 only \$16,550 of a settlement payment, representing the portion of
23 the settlement constituting post-petition earnings reasonably
24 necessary for support. See 394 B.R. 8 (D. Conn. 2008), affirming
25 376 B.R. 75 (Bankr. D. Conn. 2007).

26 Affirmed.

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EDWARD P. JURKIEWICZ, Torrington, Connecticut (Lawrence & Jurkiewicz, Torrington, Connecticut, on the brief), for Appellants.

DEREK V. OATIS, Manchester, Connecticut (Lobo & Novak, Manchester, Connecticut, on the brief), for Appellees.

KEARSE, Circuit Judge:

Section 522(d)(11)(E) of the Bankruptcy Code (or "Code") allows a debtor to exclude from the bankruptcy estate "a payment in compensation of loss of future earnings of the debtor . . . to the extent reasonably necessary for the support of the debtor and any dependent of the debtor." 11 U.S.C. § 522(d)(11)(E). Debtors Richard E. Jackson and Angela J. Shelton ("Debtors") appeal from a judgment of the United States District Court for the District of Connecticut, Vanessa L. Bryant, Judge, affirming an order of the United States Bankruptcy Court for the District of Connecticut, Robert L. Krechevsky, Judge, which held that under § 522(d)(11)(E) Debtors were entitled to exempt from their bankruptcy estate \$16,550 of an \$83,203 payment received from Jackson's former employer in settlement of a claim of wrongful termination of employment, to wit, the portion of the settlement reflecting only so much of Jackson's lost earnings after the filing of Debtors' bankruptcy petition as were reasonably necessary for the support of Jackson and his dependents, see In re Jackson, 376 B.R. 75 (Bankr. D. Conn. 2007) ("Jackson I"), aff'd, 394 B.R. 8 (D. Conn. 2008) ("Jackson II"). On appeal, Debtors contend that the

1 bankruptcy and district courts erred (1) in ruling that a
2 § 522(d)(11)(E) exemption is not authorized for earnings related
3 to the prepetition period, and (2) in calculating the amount
4 reasonably necessary for support. Finding no merit in Debtors'
5 contentions, we affirm.

6 I. BACKGROUND

7 The relevant facts are undisputed and are set out in the
8 opinions of the bankruptcy court in Jackson I, 376 B.R. 75, and
9 the district court in Jackson II, 394 B.R. 8, familiarity with
10 which is assumed.

11 In 2001, Jackson, a medical doctor and psychiatrist, and
12 his wife Shelton, a Ph.D. in psychology, were employed by a
13 health insurance company in Connecticut (the "Company").
14 Jackson's job involved reviewing patient records to ensure that
15 their insurance claims were medically appropriate and reviewing
16 appeals of coverage decisions. On March 13, 2003, the Company
17 closed the office in which Jackson and Shelton worked and
18 terminated their employment. Jackson then became an independent
19 contractor. In addition to doing part-time work for several other
20 entities, he agreed to provide services to the Company at an
21 hourly rate, upon its request, until March 17, 2004. The Company
22 stopped sending Jackson work around the end of October 2003; it
23 paid him a total of \$98,180 for his services as an independent
24 contractor.

1 In the meantime, Jackson and Shelton had asserted claims
2 against the Company for wrongful termination of their employment.
3 While employed by the Company, Jackson had complained to it about
4 the manner in which certain health insurance claims were treated.
5 Jackson and Shelton, because their employment was terminated,
6 whereas other employees in their office were reassigned to other
7 Company offices, contended that the Company viewed Jackson as a
8 whistleblower and that the termination of their employment was
9 retaliation for his complaints.

10 A. The Bankruptcy Proceedings

11 On October 31, 2003, Jackson and Shelton filed a
12 bankruptcy petition under Chapter 7 of the Bankruptcy Code, see
13 11 U.S.C. §§ 701-727, reporting assets of \$556,113, including
14 property claimed as exempt, and liabilities of \$1,326,433.47. On
15 their schedules of income and expenses, they stated that their
16 combined monthly income was \$10,332 and that their monthly
17 expenses totaled \$14,071. On their schedule of "Personal
18 Property," they included their "Wrongful termination claims"
19 against the Company "for lost future earnings," stating that the
20 value of these claims was "Unknown." Jackson and Shelton also
21 listed these claims in their schedule of "Property Claimed as
22 Exempt" from inclusion in the bankruptcy estate pursuant to
23 § 522(d)(11)(E).

24 The bankruptcy court authorized the Chapter 7 Trustee to
25 retain Debtors' attorney Judith D. Meyer to pursue their claims

1 against the Company, and in June 2004 the claims were settled.
2 In the settlement, the Company agreed to pay Jackson \$130,000 "to
3 satisfy his claims for future lost earnings" (Settlement Agreement
4 ¶ 1), plus \$5,000 for attorney's fees; Shelton agreed to abandon
5 her claims. Meyer stated that the settlement "[e]ssentially
6 . . . 'bought out' [Jackson's] contract through March, 2004,"
7 paying him most of what he would have earned in the one-year
8 period following his termination, minus the amount actually paid
9 to him during that period as an independent contractor. (Letter
10 from Judith D. Meyer to Anthony S. Novak dated February 26, 2004
11 ("Meyer Letter"), at 1.) After deductions for taxes and
12 attorneys' fees, the Trustee received a net settlement payment of
13 \$83,203.

14 In anticipation of the settlement, Jackson and Shelton
15 had amended their bankruptcy schedules to assert that the value of
16 their wrongful termination claims was \$135,000 and to claim that
17 all \$135,000 was exempt under § 522(d)(11)(E). The Trustee
18 objected to the amended claim of exemption, contending principally
19 that the entire settlement payment was compensation for Debtors'
20 releases of other types of claims. (See Trustee's Brief and
21 Memorandum of Law in Support of Trustee's Objection to Debtors'
22 Second Amended Claim of Exemptions at 9-13, dated August 3, 2007.)
23 Alternatively, the Trustee argued that even if the settlement
24 compensated Debtors for lost wages, some portion reflected past
25 wages, rather than future wages, and that any claim for past wages
26 had become the property of the bankruptcy estate on October 31,

1 2003, the date on which the Chapter 7 petition was filed, and
2 could not be considered "future" wages. (See, e.g., id. at 12,
3 14.) He also contended that in light of the facts, inter alia,
4 that "[t]he Debtors retained post-petition a boat and trailer,
5 \$6,200.00 in cash, have use of four vehicles and live in a
6 \$435,000.00 house in Avon," that "[t]he Debtor-wife holds a one-
7 third interest in 20 acres of land in Tennessee which she claims
8 has little value and no encumbrances," and that "[b]oth Dr.
9 Jackson and Dr. Shelton have testified that they are both
10 currently working without any mental or physical disabilities or
11 restrictions" (id. at 17), no part of the settlement received from
12 the Company was necessary for the support of Debtors or their
13 dependents (see, e.g., id. at 16-17).

14 After a one-day trial in 2007, the bankruptcy court
15 rejected the Trustee's contention that no part of the settlement
16 payment was exempt under § 522(d)(11)(E). Stating that "the
17 settlement agreement provided compensation for the debtor's loss
18 of earnings for the one-year period following his termination of
19 employment, i.e. from March 14, 2003 through March 13, 2004,"
20 Jackson I, 376 B.R. at 79, the court found no support for the
21 Trustee's argument that all or part of the settlement was
22 attributable to anything other than lost earnings. However, the
23 court concluded, that, given the language of § 522(d)(11)(E), only
24 earnings related to the period after the filing of the bankruptcy
25 petition could be exempted:

26 Property of the estate, and a debtor's exemption
27 therein, is determined as of the bankruptcy petition

1 date. . . . Section 522(d)(11)(E) refers only to
2 post-petition loss of earnings, and the debtor may
3 not exempt that portion of the settlement proceeds
4 that provided compensation of his prepetition loss of
5 earnings.

6 Jackson I, 376 B.R. at 79

7 To determine what portion of the net settlement amount of
8 \$83,203 reflected post-petition earnings, the court prorated that
9 sum for the 135-day period from October 31, 2003, through March
10 13, 2004, i.e., the post-petition portion of the one-year period
11 for which the settlement compensated Jackson, and found that the
12 amount attributable to his loss of earnings post-petition was
13 \$30,690. See id. In determining how much of that \$30,690 was
14 reasonably necessary for the support of Jackson and his dependents
15 during the post-petition period, the court referred to numerous
16 factors, including Debtors' "present and anticipated living
17 expenses," their "present and anticipated income from all
18 sources," their "job skills, training and education" and "ability
19 to earn a living," and their "other assets, including exempt
20 assets." Id. at 80. Noting that, according to their bankruptcy
21 petition schedules, Debtors' monthly expenses (\$14,071) exceeded
22 their monthly income (\$10,332) by \$3,739, the court found that, on
23 an annualized basis, their shortfall totaled \$44,868; for the 135
24 post-petition days, the shortfall was thus $(\$44,868 \div 366$ (2004
25 being a leap year)) $\times 135$, or \$16,550. Accordingly, the court
26 found that Jackson and Shelton were entitled to exempt only
27 \$16,550 of the settlement proceeds pursuant to § 522(d)(11)(E).
28 See id.

1 B. The Ruling of the District Court

2 Debtors appealed to the district court, contending that
3 the bankruptcy court erred (a) in ruling that § 522(d)(11)(E)
4 allows a debtor to exempt only post-petition loss of earnings, and
5 (b) in calculating the amount reasonably necessary for their
6 support. The district court rejected both contentions. In
7 upholding the bankruptcy court's interpretation of
8 § 522(d)(11)(E), the court noted that a "debtor's estate is
9 undeniably created as of the bankruptcy petition date," and that
10 "the estate consists of 'all legal or equitable interests of the
11 debtor in property as of the commencement of the case,'" Jackson II,
12 394 B.R. at 11 & n.1 (citing 11 U.S.C. § 541(a) and
13 quoting id. § 541(a)(1)). The court stated that

14 [s]ection 522(d)(11)(E) specifies an exemption for "a
15 payment in compensation of loss of future earnings of
16 the debtor . . . to the extent reasonably necessary
17 for the support of the debtor and any dependent of
18 the debtor." 11 U.S.C. § 522(d)(11)(E).

19 The clear and unambiguous language of the
20 statute creates an estate on the petition date and
21 allows an exemption for a loss of any future earnings
22 after creation of that estate. Jackson and Shelton
23 argue that the term "future" applies to all earnings
24 after the date of their termination, not the date of
25 the petition. Such a reading of the statute is
26 against its clear language. To allow an exemption
27 for earnings prior to the petition date would make
28 the statute retroactive instead of future looking.
29 That reading would render the operative term of the
30 statute--"future"--obsolete and defeat the statute's
31 purpose. Under Jackson and Shelton's interpretation,
32 a debtor could receive a lump sum payment in
33 settlement of a dispute years prior to the petition
34 date and still claim that amount as an exemption even
35 though their entitlement to the asset accrued before
36 the petition was filed. That cannot be correct. In

1 A. The Meaning of "Future" in § 522(d)(11)(E)

2 As an order of the district court functioning in its
3 capacity as an appellate court in a bankruptcy case is subject to
4 plenary review, we "independently review the factual
5 determinations and legal conclusions of the bankruptcy court," In
6 re Momentum Manufacturing Corp., 25 F.3d 1132, 1136 (2d Cir. 1994)
7 (internal quotation marks omitted), accepting the bankruptcy
8 court's factual findings unless they are clearly erroneous, and
9 reviewing its conclusions of law de novo, see, e.g., In re Ames
10 Department Stores, Inc., 582 F.3d 422, 426 (2d Cir. 2009). We see
11 no errors in the decisions in the present case.

12 As a general matter, in a proceeding under Chapter 7, all
13 property of the bankruptcy estate, except exempt property, is
14 liquidated by a trustee and the resulting cash is distributed to
15 creditors. See generally 11 U.S.C. §§ 704(a)(1), 726. Under this
16 Chapter, in the absence of specified circumstances precluding a
17 discharge, debtors who are individuals are released from
18 liability for most prepetition debts. See id. § 727. Certain
19 property may be exempted from the estate and thereby preserved for
20 the debtor's own use after his discharge from bankruptcy. See id.
21 § 522.

22 The commencement of a bankruptcy proceeding "creates [the
23 bankruptcy] estate." 11 U.S.C. § 541(a). The bankruptcy estate
24 encompasses, with few exceptions, "all legal or equitable
25 interests of the debtor in property as of the commencement of the

1 case," id. § 541(a)(1), "wherever located and by whomever held,"
2 id. § 541(a). Such interests include causes of action possessed
3 by the debtor at the time of filing. See, e.g., Seward v. Devine,
4 888 F.2d 957, 963 (2d Cir. 1989).

5 Property that the debtor neither owns nor becomes entitled
6 to until after the filing of the Chapter 7 petition is generally
7 not property of the estate. For example, "earnings from services
8 performed by an individual debtor after the commencement of the
9 case" are excluded from the estate. 11 U.S.C. § 541(a)(6).
10 "Post-petition property will become property of the estate only if
11 it is 'sufficiently rooted in the pre-bankruptcy past.'" Chartschlaa v. Nationwide Mutual Insurance Co., 538 F.3d 116, 122
12 (2d Cir. 2008) (quoting Segal v. Rochelle, 382 U.S. 375, 380
13 (1966), which was interpreting the Bankruptcy Act of 1898)); see,
14 e.g., In re Bell, 225 F.3d 203, 215 (2d Cir. 2000) ("[P]roperty
15 acquired post-petition by the debtor does not enter the estate.").
16 Wages for services rendered by the debtor prior to the bankruptcy
17 filing are rooted in his pre-bankruptcy past and become property
18 of the estate even if paid subsequent to his bankruptcy filing.
19 See, e.g., In re Irish, 311 B.R. 63, 66 (B.A.P. 8th Cir. 2004)
20 ("Wages that are earned pre-petition but that have not yet been
21 paid are property of the estate. 11 U.S.C. § 541(a)(1) . . .").

22 Section 522(b) of the Code provides, with exceptions not
23 pertinent here, that "[n]otwithstanding section 541"--which states
24 that the estate encompasses all property of the debtor at the time
25 of the filing of the bankruptcy petition--"an individual debtor
26

1 may exempt from property of the estate . . . property that is
2 specified under subsection (d)," 11 U.S.C. §§ 522(b)(1) and (2).

3 Subsection (d) of § 522 provides, in pertinent part, as follows:

4 (d) The following property may be exempted under
5 subsection (b)(2) of this section:

6

7 (11) The debtor's right to receive, or
8 property that is traceable to--

9

10 (E) a payment in compensation of loss
11 of future earnings of the debtor . . . to
12 the extent reasonably necessary for the
13 support of the debtor and any dependent of
14 the debtor.

15 11 U.S.C. § 522(d)(11)(E) (emphasis added). In sum, § 541 was
16 designed to bring "anything of value that the debtors have into
17 the estate," and § 522 was designed to "permit an individual
18 debtor to take out of the estate that property that is necessary
19 for a fresh start and for the support of himself and his
20 dependents." H.R. Rep. No. 95-595, at 176 (1977), reprinted in
21 1978 U.S.C.C.A.N. 5963, 6136.

22 Given the design and goals of these provisions of the
23 Code, we conclude that the bankruptcy and district courts properly
24 interpreted "future" in § 522(d)(11)(E) as looking forward from
25 the date of the bankruptcy filing, not from some prior point in
26 time, and hence correctly interpreted "loss of future earnings" in
27 that section as referring to lost earnings for post-petition
28 periods and not for periods prior to the filing of the bankruptcy
29 petition.

1 In support of the contrary conclusion, Debtors cite three
2 bankruptcy court cases, none of which discusses the scope of
3 § 522(d)(11)(E)'s use of the word "future." See In re Lowery,
4 No. 05-13536, 2007 Bankr. LEXIS 3729 (Bankr. N.D. Ga. Sept. 24,
5 2007) (determining that state statute paralleling § 522(d)(11)(E)
6 encompasses the lost future earnings portion of a tort award for
7 personal injuries); In re Claude, 206 B.R. 374, 381 (Bankr. W.D.
8 Pa. 1997) (noting that an evidentiary hearing would be necessary
9 as the court was "unable to determine from the record how much of
10 the [tort damages] award may have been for loss of earnings"); and
11 In re Bova, 205 B.R. 467, 477 (Bankr. E.D. Pa. 1997) (interpreting
12 a settlement with respect to an insurance policy that "provided
13 coverage for the insured's 'work loss' and 'income loss expenses'
14 incurred over the insured's lifetime"). In any event, to the
15 extent that any of the rulings in these cases may have been based
16 on the assumption that "future earnings" in § 522(d)(11)(E)
17 encompasses earnings for services attributable to prepetition
18 periods, we are not bound by them and we disagree with such an
19 assumption.

20 Debtors' contention that all of Jackson's earnings
21 following the termination of his employment may be exempted under
22 § 522(d)(11)(E) because they would be termed future earnings under
23 tort law is unpersuasive given the different purposes of tort law
24 and bankruptcy law. See generally Segal, 382 U.S. at 379
25 (regardless of classifications for other purposes, the bankruptcy
26 laws' "own purposes must ultimately govern" the meaning of

1 "property" for bankruptcy purposes). Debtors' contention that
2 "future earnings" means simply any earnings for a period following
3 the termination of their employment, even for a period prior to
4 their filing for bankruptcy, is inconsistent with the treatment of
5 earnings provided for in § 541(a)(6) which, as noted above,
6 excludes from the estate only such earnings as were for "services
7 performed by an individual debtor after the commencement of the
8 case" (emphasis added).

9 Acceptance of Debtors' interpretation of § 522(d)(11)(E)
10 would also lead to results that we think would be absurd. Thus,
11 Debtors in their brief on appeal argued that § 522(d)(11)(E)
12 allows a debtor "to exempt compensation for lost earnings which
13 accrued years prior to the petition date" (Debtors' brief on
14 appeal at 32), and at oral argument took the position that an
15 unspent portion of a "payment in compensation of loss of future
16 earnings that was received 30 years before the filing of a
17 petition" could be claimed as exempt. Such an interpretation,
18 permitting the discharge of individual debtors' prepetition debts
19 while allowing them to exempt from the estate moneys earned while
20 incurring those debts, would create a windfall for the debtor,
21 albeit limited by the reasonably-necessary-for-support
22 restriction. We cannot conclude that this is what Congress
23 intended. We affirm the rulings of the district and bankruptcy
24 courts that "future earnings" in § 522(d)(11)(E) does not
25 encompass earnings attributable to the period prior to the
26 debtor's filing of the bankruptcy petition.

1 B. The Amount of the Settlement Representing Post-Petition
2 Earnings "Reasonably Necessary for . . . Support"

3 The bankruptcy court found that the settlement payment
4 made by the Company was compensation for Jackson's loss of
5 earnings for the year March 14, 2003, through March 13, 2004.
6 This finding of fact is supported by the record (see, e.g., Meyer
7 Letter at 1 (the Company "essentially . . . 'bought out' Jackson's
8 contract through March, 2004")), and is not clearly erroneous.
9 Nor are we persuaded the court erred in finding that \$30,690 of
10 the settlement was attributable to the post-petition period, which
11 it calculated by prorating the \$83,203, received by the Trustee
12 with respect to that year, for the 135 post-petition days from
13 October 31, 2003, through March 13, 2004.

14 Finally, as described in Part I.A. above, in determining
15 what portion of the \$30,690 in future earnings was "reasonably
16 necessary for the support" of Jackson and his dependents,
17 11 U.S.C. § 522(d)(11)(E), the bankruptcy court considered the
18 appropriate factors as to Debtors' needs, including their present
19 and anticipated expenses, their assets, their "present and
20 anticipated income from all sources," their training and
21 education, and their "ability to earn a living," noting that
22 "[t]he debtor and his wife are well-educated and their lack of
23 employment is likely to be short-lived", Jackson I, 376 B.R. at
24 80. Using the figures supplied by Debtors' on their monthly
25 income and expense schedules, the court subtracted \$10,332
26 (income) from \$14,071 (expenses) and found that Debtors' expenses

1 exceeded their income by \$3,739 per month; for the 135 post-
2 petition days, that shortfall added up to \$16,550. We see no
3 error in the factors considered by the court or in its arithmetic
4 calculation.

5 In contending that the "reasonably necessary" amount was
6 miscalculated, Debtors argue that, instead of using the \$10,332
7 monthly income figure reported on their income schedule--which
8 included the \$98,180 that Jackson had earned from the Company from
9 March through October 2003--the court should have attributed the
10 \$98,180 not to the months in which it was earned but rather to the
11 entire year covered by the Settlement Agreement. If spread over
12 12 months, instead of the approximately 7½ months in which it was
13 earned, Debtors argue that their net monthly income was not
14 \$10,332 but \$7,613, and that their monthly shortfall was thus not
15 \$3,739 but \$6,457.34. If the bankruptcy court had used the
16 latter figure with respect to the 135 post-petition days, Debtors
17 would have been entitled to exempt \$28,581.67, rather than
18 \$16,550.

19 In support of the argument that the \$98,180 earned by
20 Jackson for services he rendered prior to the bankruptcy filing
21 should have been divided by 12 rather than by the number of months
22 in which that sum was earned, Debtors state that the bankruptcy
23 court was required to consider Debtors' "actual income over the
24 entire one-year settlement period." (Debtors' brief on appeal
25 at 41.) Even assuming this is so, Debtors provided the court
26 with no evidence from which to determine that "actual income."

1 While acknowledging that Jackson "testified that he was doing
2 other work part-time" (id. at 41 n.16), Debtors state that "there
3 is no evidence in the record which reflects the amount he earned"
4 (id.). Given the absence of such evidence, we cannot say that it
5 was error for the court to calculate Debtors' monthly shortfall by
6 relying on the dollar amount stated by Debtors in the income
7 schedule they filed in the bankruptcy proceeding.

8

CONCLUSION

9 We have considered all of Debtors' contentions on this
10 appeal and have found them to be without merit. The judgment of
11 the district court, affirming the decision of the bankruptcy
12 court, is affirmed.