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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

6	In re:)	BAP No.	AZ-11-1083-KiWiJu
)		
7	TRAVIS M. HAMLIN and BRITTANY)	Bk. No.	10-18812-GBN
	B. HAMLIN,)		
8)		
	Debtors.)		
9	_____)		
)		
10	BRIAN J. MULLEN, Chapter 7)		
	Trustee,)		
11)		
	Appellant,)		
12	v.)	O P I N I O N	
)		
13	TRAVIS M. HAMLIN; BRITTANY)		
	B. HAMLIN,)		
14)		
	Appellees.)		
15	_____)		

Argued and Submitted on January 19, 2012,
at Phoenix, Arizona

Filed - February 21, 2012

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable George B. Nielsen, Bankruptcy Judge, Presiding

Appearances: Terry A. Dake of Terry A. Dake, Ltd. argued for
appellant, Brian J. Mullen, chapter 7 trustee;
Richard W. Hundley of Berens Kozub Klobberdanz &
Blonstein, PLC, argued for appellees, Travis and
Brittany Hamlin.

Before: KIRSCHER, WILLIAMS,¹ and JURY, Bankruptcy Judges.

¹ Hon. Patricia C. Williams, Bankruptcy Judge for the
Eastern District of Washington, sitting by designation.

1 KIRSCHER, Bankruptcy Judge:
2

3 Appellant, chapter 7² trustee Brian Mullen ("Trustee"),
4 appeals a bankruptcy court order allowing debtors' claimed
5 exemption under § 522(b)(3)(C) for an individual retirement
6 account ("IRA") Brittany Hamlin ("Ms. Hamlin") (collectively
7 "Debtors"), inherited from her grandmother prepetition. In this
8 issue of first impression before a court of appeals within the
9 Ninth Circuit, we hold that a debtor can exempt funds in an IRA
10 inherited from a non-spouse under § 522(b)(3)(C), and we AFFIRM.

11 I. FACTUAL AND PROCEDURAL BACKGROUND

12 In their Schedule C, Debtors claimed two IRA accounts
13 exempt under ARIZ. REV. STAT. ANN. ("A.R.S.") § 33-1126. The IRA
14 at issue in this appeal was funded by Ms. Hamlin's grandmother.
15 Trustee does not dispute that the grandmother's IRA was a
16 properly established retirement account exempt from taxation
17 under IRC § 408. Shortly after her death in 2004, the
18 grandmother's IRA funds were transferred via a trustee-to-
19 trustee transfer by RBC Wealth Management, as custodian, to an
20 inherited IRA account for the benefit of Ms. Hamlin (the
21 "Inherited IRA"). The Inherited IRA was valued at approximately
22 \$31,878.32 at the time of petition.

23 Trustee timely objected to Debtors' claimed exemption,
24 contending that inherited IRAs, unlike traditional IRAs funded

25
26 ² Unless specified otherwise, all chapter, code, and rule
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,
28 The Federal Rules of Bankruptcy Procedure, Rules 1001-9037.
The Federal Rules of Civil Procedure are referred to as "FRCP."
The Internal Revenue Code is referred to as "IRC."

1 by the debtor, are not exempt. In their response, Debtors
2 contended that Trustee failed to cite any Arizona authority
3 holding that inherited IRA's are not exempt, but argued that the
4 Inherited IRA would be exempt under the broad language of A.R.S.
5 § 33-1126(B).³

6 The bankruptcy court held an initial hearing on the matter
7 on September 28, 2010. It determined that the Inherited IRA was
8 likely exempt under § 522(b)(3)(C),⁴ but it requested additional
9 briefing from the parties on the matter.

10 In their supplemental brief, Debtors contended that the
11 Inherited IRA was exempt under § 522(b)(3)(C) and In re Tabor,
12 433 B.R. 469 (Bankr. M.D. Pa. 2010), aff'd, 10-CV-1580 (M.D. Pa.
13 Dec. 2, 2010). Debtors argued that Tabor correctly observed
14 Congress' intent to increase protections afforded debtors for
15 retirement funds with the addition of §§ 522(b)(3)(C),
16 522(b)(4)(C), and 522(d)(12) to the Code in 2005. Now, debtors
17 in opt-out states like Arizona could apply federal exemptions to
18 IRAs, which also included "trustee-to-trustee" accounts such as

19
20 ³ A.R.S. § 33-1126(B) provides, in relevant part:

21 B. Any money or other assets payable to a participant in
22 or beneficiary of, or any interest of any participant
23 or beneficiary in, a retirement plan under § 401(a),
24 403(a), 403(b), 408, 408A or 409 . . . of the United
25 States internal revenue code of 1986, as amended, . .
. is exempt from all claims of creditors of the
beneficiary or participant.

26 ⁴ Section 522(b)(3)(C) provides that a debtor may exempt
27 from property of the estate "retirement funds to the extent that
28 those funds are in a fund or account that is exempt from
taxation under section 401, 403, 408, 408A, 414, 457, or 501(a)
of the Internal Revenue Code of 1986."

1 inherited IRAs.

2 Trustee argued that because Debtors had claimed the
3 Inherited IRA exempt under A.R.S. § 33-1126(B), that was the
4 applicable statute here, not § 522(b)(3)(C). Alternatively, if
5 § 522(b)(3)(C) did apply, Trustee contended that In re Tabor,
6 which essentially adopted the reasoning of the Eighth Circuit
7 BAP in In re Nessa, 426 B.R. 312 (8th Cir. BAP 2010), got it
8 wrong. Trustee argued that Congress did not intend to extend
9 the umbrella of protection for IRA assets beyond the retirees
10 who earned those funds and encouraged the bankruptcy court to
11 adopt the holding of In re Chilton, 426 B.R. 612, 617 (Bankr.
12 E.D. Tex. 2010), rev'd, 444 B.R. 548, 552 (E.D. Tex. 2011),
13 which concluded that funds in an inherited IRA are not exempt
14 under § 522(d)(12) because they are not "retirement funds"
15 intended for the debtor's retirement (hereinafter "Chilton I").
16 Trustee contended that the reasoning in Chilton I extended to
17 inherited IRAs under § 522(b)(3)(C) because the language in the
18 two statutes is identical.⁵

20
21 ⁵ The language of § 522(d)(12) is identical to that of
22 § 522(b)(3)(C). Both sections allow an exemption for retirement
23 accounts, regardless of whether the debtor claims exemptions
24 under federal or state law. As a result, the two sections are
25 often analyzed interchangeably. See In re Tabor, 433 B.R. at
26 475; In re Thiem, 443 B.R. 832, 842 (Bankr. D. Ariz. 2011); In
27 re Mathusa, 446 B.R. 601, 603 (Bankr. M.D. Fla. 2011); In re
28 Kuchta, 434 B.R. 837, 843-44 (Bankr. N.D. Ohio 2010); In re
Weilhammer, 2010 WL 3431465, at *4 (Bankr. S.D. Cal. Aug. 30,
2010); In re Stephenson, 2011 WL 6152960, at *2 n.2 (E.D. Mich.
Dec. 12, 2011). We too believe the same analysis applies in
determining if funds in an inherited IRA are exempt regardless
of whether the exemption is claimed under § 522(d)(12) or
§ 522(b)(3)(C).

1 A second hearing on the matter was held on November 2,
2 2010. The bankruptcy court rejected the reasoning in Chilton I,
3 and agreed with the holdings of In re Nessa and In re Tabor that
4 an inherited IRA from a non-spouse is exempt under
5 § 522(b)(3)(C) and § 522(b)(4)(C).⁶ Accordingly, Trustee's
6 objection to Debtors' claimed exemption for the Inherited IRA
7 was overruled. However, because the question of whether Ms.
8 Hamlin had complied with the IRC to maintain the account's tax
9 exempt status remained unanswered, which could affect whether it
10 was an exemptible asset, the court was willing to hear further
11 motions on the issue if needed. The court ordered Debtors to
12 amend their Schedule C to reflect the claimed exemption for the
13 Inherited IRA under § 522(b)(3)(C). No order was entered, but a
14 minute entry from November 9, 2010 ("November 9 Minute Entry"),
15 states:

16 IT IS ORDERED that the objection is overruled. The
17 court will hear a motion to dismiss if needed. An
18 amendment to Schedule C is required. No further
19 hearings will be set unless requested.

19 Debtors filed their amended Schedule C on November 3, 2010.
20 Thirty days later, Trustee filed an objection to the amended
21 Schedule C. Trustee, observing that no final order had yet been
22

23 ⁶ Section 522(b)(4)(C) provides:

24
25 A direct transfer of retirement funds from 1 fund or
26 account that is exempt from taxation under section 401,
27 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue
28 Code of 1986, under section 401(a)(31) of the Internal
Revenue Code of 1986, or otherwise, shall not cease to
qualify for exemption under paragraph (3)(C) or subsection
(d)(12) by reason of such direct transfer.

1 signed, reserved his objection to Debtors' exemption of the
2 Inherited IRA pending information on whether appropriate
3 distributions had been made in order to maintain its tax exempt
4 status. Trustee requested an order denying Debtors' amended
5 exemption for the Inherited IRA.

6 The following day, Trustee filed a first amended objection
7 to the amended Schedule C. In addition to his prior objection,
8 Trustee argued that because Debtors had initially sought to
9 exempt the Inherited IRA under state law and litigated the
10 issue, they should not be allowed to now exempt it under federal
11 law. Alternatively, Trustee contended that allowance of the
12 amendment be conditioned upon reimbursement to the estate for
13 expenses incurred in litigating the first exemption asserted.

14 In his second amended objection to Debtors' amended
15 Schedule C filed a few weeks later, Trustee withdrew his first
16 objection that Ms. Hamlin had not maintained the account's tax
17 exempt status based on documentation establishing that she had
18 taken the required distributions. However, Trustee still
19 contended that Debtors were not allowed to seek an exemption
20 under federal law after their exemption under state law failed.
21 Debtors rejected Trustee's arguments.

22 A third hearing on the matter was held on February 4,
23 2011. The bankruptcy court rejected Trustee's argument that
24 Debtors were not allowed to amend their Schedule C to exempt the
25 Inherited IRA under § 522(b)(3)(C), especially when the court
26 instructed them to do so. Nonetheless, the court was willing to
27 consider Trustee's arguments about Debtors' eligibility under
28 § 522(b)(3)(C). Trustee's counsel responded that he had

1 exhausted the § 522 issue at the previous hearing, so he would
2 not argue it again. After hearing arguments from the parties on
3 the issue of reimbursing the estate, the bankruptcy court
4 overruled Trustee's second amended objection and determined that
5 each party would bear its own costs. The court accepted
6 Trustee's offer to lodge a proposed final order on the matter.

7 On February 9, 2011, the bankruptcy court entered an order
8 overruling Trustee's second amended objection to Debtors'
9 amended Schedule C, and allowing their claimed exemption for the
10 Inherited IRA under § 522(b)(3)(C) (the "February 9 Order").
11 Trustee timely appealed.

12 II. JURISDICTION

13 The bankruptcy court had jurisdiction under 28 U.S.C.
14 §§ 157(b)(2)(B) and 1334. We now address our jurisdiction over
15 this matter.

16 Debtors contend that Trustee's appeal of whether the
17 Inherited IRA is exempt under § 522(b)(3)(C) is untimely.
18 Specifically, Debtors contend that the bankruptcy court's ruling
19 on this issue was final when it entered the November 9 Minute
20 Entry. Debtors argue that the bankruptcy court further showed
21 its intent that its ruling on the issue was final with
22 statements it made at the hearing on November 2, 2010.

23 According to Debtors, the only issues remaining to be decided
24 after the November 9 Minute Entry were the two issues raised in
25 Trustee's subsequent objections to Debtors' amended Schedule C -
26 whether Ms. Hamlin took the required distributions to maintain
27 the IRA's tax exempt status, and whether Trustee was entitled to
28 attorney's fees and costs as a condition for allowing Debtors to

1 exempt the Inherited IRA under § 522(b)(3)(C). Trustee withdrew
2 his objection on the first issue, and the bankruptcy court
3 overruled his request for fees and costs in the February 9
4 Order. Therefore, contend Debtors, Trustee's appeal of the
5 bankruptcy court's ruling that the Inherited IRA was exempt
6 under § 522(b)(3)(C), which is contained in the November 9
7 Minute Entry, is untimely. Debtors argue that all Trustee has
8 timely appealed is the bankruptcy court's February 9 Order
9 denying his request for attorney's fees and costs.

10 We conclude that the November 9 Minute Entry was not a
11 final and appealable order. A minute entry may constitute a
12 dispositive order for notice of appeal purposes if it: (1)
13 states that it is an order; (2) is mailed to counsel; (3) is
14 signed by the clerk who prepared it; and (4) is entered on the
15 docket sheet. Kaun v. Lund (In re Lund), 202 B.R. 127, 130 (9th
16 Cir. BAP 1996). Here, the November 9 Minute Entry was entered
17 on the docket sheet and, under the Local Rules of Bankruptcy
18 Procedure for the District of Arizona, was mailed to counsel.
19 See Local Rule 5005-2(k) (electronic service by the clerk
20 "constitutes service of the pleading, petition, or other
21 document."). Furthermore, under the Local Rules, an
22 electronically filed document by the court need not contain the
23 judge's or clerk's signature to be official and binding.
24 See Local Rule 5005-2(j) ("Any order or other court-issued
25 document filed electronically without the original signature of
26 a judge or clerk has the same force and effect as if the judge
27 or clerk had signed a paper copy of such order or other
28 court-issued document and it had been entered on the docket

1 nonelectronically. Orders also may be issued as 'text-only'
2 entries on the docket, without an attached document. Such
3 orders are official and binding.").

4 However, the November 9 Minute Entry does not state that it
5 is an order. While it does contain dispositive language - "IT
6 IS ORDERED that the objection is overruled" - it omits any
7 language allowing the exemption, as opposed to the February 9
8 Order which expressly overruled Trustee's objection and allowed
9 the exemption. See Brown v. Wilshire Credit Corp. (In re
10 Brown), 484 F.3d 1116, 1121 (9th Cir. 2007).

11 The November 9 Minute Entry also does not clearly evidence
12 the bankruptcy judge's intention that it be the court's final
13 act in the matter. "A disposition is final if it contains 'a
14 complete act of adjudication,' that is, a full adjudication of
15 the issues at bar, and clearly evidences the judge's intention
16 that it be the court's final act in the matter." In re Brown,
17 484 F.3d at 1120 (quoting Slimick v. Silva (In re Slimick), 928
18 F.2d 304, 307 (9th Cir. 1990)) (emphasis in original).
19 "Evidence of intent consists of the Order's content and the
20 judge's and parties [sic] conduct." Id. (quoting In re Slimick,
21 928 F.2d at 308). As certain factual issues remained to be
22 determined before the matter was concluded, the court expressed
23 at the November 2 hearing that it was "overrul[ing] the
24 objection to the exemption at this point," pending further
25 discovery by Trustee and Debtors' amendment of their Schedule C.
26 Hr'g Tr. (Nov. 2, 2010) at 15:4-6. Notably, the court never
27 stated at the November 2 hearing that the exemption was allowed,
28 which is consistent with the November 9 Minute Entry. Moreover,

1 after Debtors filed their amended Schedule C, due process
2 required that any party in interest be given 30 days to
3 challenge the "new" claimed exemption under § 522(b)(3)(C).
4 Rule 4003(b). Finally, the first sentence in Trustee's amended
5 objection and first amended objection observed that no signed
6 order had yet been entered. Nothing in the February 4, 2011
7 transcript indicates the bankruptcy court's disagreement with
8 that statement. In fact, the court accepted Trustee's offer to
9 lodge a "final" order on the matter.

10 However, it is possible that Trustee waived his argument on
11 appeal that the Inherited IRA was not exempt under
12 § 522(b)(3)(C). In his subsequent objections to Debtors'
13 amended Schedule C, Trustee did not reassert his argument that
14 the Inherited IRA was not exemptible as a retirement fund. His
15 focus at that point was whether Ms. Hamlin took the required
16 distributions, and whether he was entitled to attorney's fees
17 and costs.

18 We believe the February 9 Order included the bankruptcy
19 court's interlocutory ruling from the November 9 Minute Entry
20 that the Inherited IRA was exempt. See United States v. 475
21 Martin Lane, 545 F.3d 1134, 1141 (9th Cir. 2008) (under merger
22 rule interlocutory orders entered prior to the judgment merge
23 into the judgment and may be challenged on appeal).

24 Therefore, we conclude that the formally written February 9
25 Order is the final appealable order because it fully adjudicated
26 the issues and clearly evidenced the bankruptcy judge's
27 intention that it was the court's final act in the matter. We
28 further conclude that the court's interlocutory ruling that the

1 Inherited IRA was exempt under § 522(b)(3)(C) merged into the
2 February 9 Order, thus preserving the issue for appeal. As a
3 result, we have jurisdiction under 28 U.S.C. § 158.

4 **III. ISSUE**

5 Are funds in an inherited IRA exempt under § 522(b)(3)(C)?

6 **IV. STANDARD OF REVIEW**

7 We review the bankruptcy court's conclusions of law and
8 questions of statutory interpretation de novo. Clear Channel
9 Outdoor, Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 32 (9th
10 Cir. BAP 2008).

11 **V. DISCUSSION**

12 By his silence in his opening brief, Trustee has abandoned
13 any argument that he is entitled to reimbursement of attorney's
14 fees and costs incurred by the estate in litigating Debtors'
15 initial attempt to claim the Inherited IRA exempt under state
16 law. See Branam v. Crowder (In re Branam), 226 B.R. 45, 55 (9th
17 Cir. BAP 1998), aff'd, 205 F.3d 1350 (9th Cir. 1999) (table).
18 Therefore, the only issue before us is whether funds in an IRA
19 inherited by a non-spouse are exempt under § 522(b)(3)(C). We
20 conclude that they are.

21 **A. Applicable Law.**

22 Upon the filing of a bankruptcy petition, an estate is
23 created consisting of all legal and equitable interests of the
24 debtor in property as of the date of the filing of the petition.
25 § 541(a)(1). Section 522 allows a debtor to exempt certain
26 property from his or her estate. Exemptions are to be liberally
27 construed in favor of the debtor who claims the exemption.
28 Arrol v. Broach (In re Arrol), 170 F.3d 934, 937 (9th Cir.

1 1999). A claim of exemption is presumed valid, and the burden
2 is on the objecting party to prove, by a preponderance of the
3 evidence, that an exemption is improperly claimed. Tyner v.
4 Nicholson (In re Nicholson), 435 B.R. 622, 630 (9th Cir. BAP
5 2010); Rule 4003(c); § 522(1).

6 Arizona has opted out of the federal exemption scheme
7 provided in § 522(d). See A.R.S. § 33-1133(B). Therefore,
8 Arizona debtors are required to take their exemptions under
9 Arizona law. However, with the enactment of BAPCPA in 2005,
10 Congress provided that a debtor who elects or is required to
11 take state exemptions is also entitled to exempt "retirement
12 funds to the extent that those funds are in a fund or account
13 that is exempt from taxation under section 401, 403, 408, 408A,
14 414, 457, or 501(a) of the Internal Revenue Code of 1986."
15 § 522(b)(3)(C).⁷ As a result, debtors in opt-out states like
16 Arizona are not limited to the IRA exemption provided by state
17 law but may, independent of state law, claim the exemption under
18 § 522(b)(3)(C), subject to any applicable dollar limitation in
19 § 522(n).⁸ Congress' intent was to preempt conflicting state
20 exemption laws and "to expand the protection for tax-favored
21 retirement plans or arrangements that may not be already
22

23
24 ⁷ BAPCPA also enacted § 522(d)(12), which is identical to
25 § 522(b)(3)(C), but applies to debtors who live in states that
26 have not opted out of the federal exemption scheme. Section
27 522(b)(3)(C) protects retirement funds to the same extent they
28 are protected under § 522(d)(12).

⁸ Section 522(n) imposes a cap of \$1,171,650 on the
aggregate value of assets that an individual debtor may claim as
exempt property under § 522(b)(3)(C).

1 protected under [§] 541(c)(2) pursuant to Patterson v. Shumate,
2 or other state or Federal law." H. R. REP. No. 109-31(I), pt.1
3 at 63-64 (2005), as reprinted in 2005 U.S.C.C.A.N. (Legislative
4 History) 88, 132-33.

5 For an IRA to be exempt under § 522(b)(3)(C), it must meet
6 only two requirements: "(1) the amount debtor seeks to exempt
7 must be retirement funds; and (2) the retirement funds must be
8 in an account that is exempt from taxation under one of the
9 provisions of the [IRC]" specified in § 522(b)(3)(C). In re
10 Nessa, 426 B.R. at 314 (applying two-factor test to
11 § 522(d)(12)); In re Johnson, 452 B.R. 804, 806 (Bankr. W.D.
12 Wash. 2011) (same); In re Stephenson, 2011 WL 6152960, at *1
13 (same); Chilton v. Moser (In re Chilton), 444 B.R. 548, 552
14 (E.D. Tex. 2011) (rev'g Chilton I and following Nessa and its
15 progeny) (hereinafter "Chilton II"); In re Kalso, 2011 WL
16 3678326, at *1 (Bankr. E.D. Mich. Aug. 19, 2011); In re Tabor,
17 433 B.R. at 475 (citing Nessa but applying two-factor test to
18 § 522(b)(3)(C)); In re Thiem, 443 B.R. at 842 (same); In re
19 Mathusa, 446 B.R. at 603 (same); In re Clark, 450 B.R. 858, 862
20 (Bankr. W.D. Wis. 2011) (same) (hereinafter "Clark I"), rev'd on
21 other grounds, 2012 WL 233990 (W.D. Wis. Jan. 05, 2012); In re
22 Kuchta, 434 B.R. at 843 (same); In re Weilhammer, 2010 WL
23 3431465, at *2 (same).

24 Whether an inherited IRA satisfies these two prongs has
25 been a subject of great debate, particularly in the past two
26 years. Nearly all courts that have decided this issue,
27 including the Eighth Circuit BAP, have held that they do. The
28 cases are not factually distinguishable to the instant case.

1 All include a debtor who inherited a non-spouse family member's
2 IRA sometime before filing bankruptcy, and each debtor sought to
3 exempt the IRA under either § 522(b)(3)(C) or § 522(d)(12).

4 **B. Inherited IRAs are exempt under § 522(b)(3)(C).**

5 Trustee argues that funds in an inherited IRA are not
6 "retirement funds" within the meaning of the statute because,
7 under the statute's plain meaning, the words "retirement funds"
8 means only those funds that belonged to, or were contributed by,
9 the debtor in his or her own IRA. Trustee further contends that
10 because inherited IRAs have absolutely nothing to do with the
11 recipient's retirement, in the hands of the debtor they are not
12 "retirement funds" protected by the statute. He suggests we
13 adopt the reasoning of Chilton I and reject Nessa and its
14 progeny that inherited IRAs are exempt under § 522(b)(3)(C), and
15 the corresponding § 522(d)(12). Although Trustee's arguments
16 are well reasoned, we decline to follow Chilton I.

17 **1. Funds in an inherited IRA are "retirement funds."**

18 The first step in the inquiry is to determine whether funds
19 in an inherited IRA are "retirement funds" within the meaning of
20 § 522(b)(3)(C). The Code does not define "retirement funds."

21 The plain language of a statute is determinative under
22 federal law. Patterson v. Shumate, 504 U.S. 753, 757 (1992).
23 Section 522(b)(3)(C) requires that the account be comprised of
24 retirement funds; it does not specify that they must be the
25 debtor's retirement funds. In re Nessa, 426 B.R. at 314 (but
26 analyzing § 522(d)(12)); accord In re Johnson, 452 B.R. at 808;
27 In re Kuchta, 434 B.R. at 843-44; Chilton II, 444 B.R. at 552;
28 In re Tabor, 433 B.R. at 476; In re Thiem, 443 B.R. at 843-44;

1 In re Mathusa, 446 B.R. at 603; In re Kalso, 2011 WL 3678326, at
2 *2; In re Stephenson, 2011 WL 6152960, at *3 (rev'g bankruptcy
3 court's contrary conclusion); In re Weilhammer, 2010 WL 3431465,
4 at *5. Limiting the exemption to funds Ms. Hamlin herself
5 contributed for retirement "would impermissibly limit the
6 statute beyond its plain language." In re Nessa, 426 B.R. at
7 314. Even though inherited IRAs do not contain a debtor's own
8 retirement funds, they were originally contributed by the
9 account owner as retirement funds and retained that status when
10 they were transferred via a trustee-to-trustee transfer in
11 compliance with the IRC. In re Johnson, 452 B.R. at 808.

12 We recognize that two courts have reached a contrary
13 conclusion on this issue: Chilton I, and Clark I.⁹ The

14
15 ⁹ Trustee cites to multiple decisions in which courts have
16 concluded that funds in inherited IRAs do not qualify as exempt.
17 However, these decisions are distinguishable because the
18 question before those courts was whether the debtor could exempt
19 the inherited IRA under state exemption statutes, not the
20 Bankruptcy Code, and/or these decisions were rendered pre-BAPCPA
21 and therefore prior to the enactment of either § 522(b)(3)(C) or
22 § 522(d)(12). In re Ard, 435 B.R. 719 (Bankr. M.D. Fla. 2010)
23 (holding that an inherited IRA cannot be exempted under Florida
24 law); In re Jarboe, 365 B.R. 717 (Bankr. S.D. Tex. 2007)
25 (holding that an inherited IRA cannot be exempted under Texas
26 law); In re Kirchen, 344 B.R. 908 (Bankr. E.D. Wis. 2006)
27 (holding that an inherited IRA cannot be exempted under
28 Wisconsin law and that an inherited IRA does not constitute a
retirement benefit nor serve a retirement purpose); In re
Taylor, 2006 WL 1275400 (Bankr. C.D. Ill. 2006) (construing
Illinois statute and determining that different treatment of
inherited IRAs disqualify them for exemption); In re Navarre,
332 B.R. 24 (Bankr. M.D. Ala. 2004) (determining that inherited
IRA is "sufficiently different" from traditional IRA as to
preclude exemption under Alabama law); In re Greenfield, 289
B.R. 146 (Bankr. S.D. Cal. 2003) (holding that an inherited IRA
cannot be exempted under California law); In re Sims, 241 B.R.

(continued...)

1 bankruptcy court in Chilton I concluded that funds contained in
2 an inherited IRA are not "retirement funds" within the meaning
3 of § 522(d)(12) because they "are not funds intended for
4 retirement purposes but, instead, are distributed to the
5 beneficiary of the account without regard to age or retirement
6 status." 426 B.R. at 618. The Chilton I court based its
7 decision primarily on the fact that inherited IRAs are subject
8 to rules under the IRC that do not apply to traditional IRAs.

9 Chilton I is no longer good law. In Chilton II, the United
10 States District Court for the Eastern District of Texas reversed
11 the bankruptcy court and expressly held that funds in an
12 inherited IRA are "retirement funds" within the meaning of the
13 statute, adopting the reasoning set forth in In re Nessa, In re
14 Tabor, In re Kuchta, In re Thiem, and In re Weilhammer. 444
15 B.R. at 552. Chilton II has been appealed to the Fifth Circuit
16 Court of Appeals and is scheduled for oral argument on February
17 28, 2012.

18 Clark I was decided after the reversal of Chilton I. In
19 its careful analysis of this issue, the Clark I court started
20 off by noting that the IRAs at issue in Nessa and its progeny
21 dealt with much smaller dollar amounts than what the court had
22 before it. 450 B.R. at 862. In Clark I, the inherited IRA at
23 issue was valued at nearly \$300,000, as compared to \$170,000 in
24 Chilton, \$105,100 in Tabor, \$55,000 in Weilhammer, and \$10,700
25 in Thiem. Id. The idea of exempting \$300,000 from the estate

26
27 ⁹(...continued)
28 467 (Bankr. N.D. Okla. 1999) (holding that an inherited IRA
cannot be exempted under Oklahoma law).

1 was troubling to the Clark I court and perhaps influenced its
2 decision that inherited IRAs do not contain "retirement funds"
3 within the meaning of § 522(b)(3)(C). In reaching this
4 conclusion, the Clark I court reasoned:

5 The debtors' Inherited IRA does not contain *anyone's*
6 'retirement funds.' Ruth Heffron established the
7 retirement account, and elected her daughter as a
8 beneficiary of the account. While living, the funds
9 in Ms. Heffron's account were indeed funds for *her*
10 retirement – that is held in anticipation of one day
11 withdrawing from her occupation. After Ms. Heffron
12 passed away, however, the funds passed to her
13 beneficiary. The funds could no longer be classified
14 as anyone's retirement funds – Ms. Heffron had died
15 and was incapable of retiring further or using the
16 funds during her retirement, and her daughter was able
17 (in fact obliged) to take distributions from the
18 account while both of the debtors continued to work.
19 Currently, the funds are held in anticipation of no
20 person's retirement and likewise cannot, under the
21 plain meaning of the statute, constitute 'retirement
22 funds.' They are not segregated to meet the needs of,
23 nor distributed on the occasion of, any person's
24 retirement.

25 Id. at 863 (emphasis in original). Arguably, this same
26 reasoning was rejected by the district court in Chilton II.
27 Furthermore, just prior to oral argument in the instant appeal,
28 Clark I was reversed by the District Court for the Western
District of Wisconsin. 2012 WL 233990 (W.D. Wis. Jan. 5, 2012)
(hereinafter "Clark II"). In Clark II, the district court
rejected the bankruptcy court's determination of what
constituted "retirement funds" within the meaning of the Code
and reasoned that neither § 522(b)(3)(C) nor § 522(d)(12)
distinguish between an account accumulated by a decedent and
inherited by a debtor and an account made up of contributions by
the debtor herself. Id., at *6.

We are persuaded by the reasoning in In re Nessa and its

1 progeny that funds in an inherited IRA are "retirement funds"
2 within the meaning of § 522(b)(3)(C).¹⁰ As the Thiem court
3 observed, while the bankruptcy court in Chilton I warned that
4 allowing the exemption would mean writing "retirement" out of
5 "retirement funds," the Nessa court observed that disallowing
6 the exemption would be impermissibly writing in "debtor's"
7 retirement funds. In re Thiem, 443 B.R. at 843. Furthermore,
8 if the IRA funds are no longer to be considered "retirement
9 funds" upon the account owner's passing, we see no reason why
10 the IRC would reference such funds in IRC § 408 - "Individual
11 retirement accounts" - and give them the same tax-exempt status
12 afforded to the original IRA owner.

13
14 **2. Funds in an inherited IRA are exempt from taxation
under IRC § 408.**

15 Next, we must determine whether the retirement funds are in
16 an account exempt from taxation under one of the provisions of
17 the IRC specified in § 522(b)(3)(C). Trustee is correct that
18 inherited IRAs do receive different treatment under the IRC than
19 "traditional" IRAs that were established and funded by an
20

21 ¹⁰ The Weilhammer court noted that it was inclined to adopt
22 the reasoning in Chilton I that funds in an inherited IRA may
23 not be required by the debtor's own retirement needs. However,
24 Weilhammer went on to note that Chilton I failed to consider or
25 discuss the express language of § 522(b)(4)(C). 2010 WL
26 3431465, at *5. Several other courts have criticized Chilton I
27 for failing to apply § 522(b)(4)(C) in conjunction with
28 § 522(b)(3)(C) because not considering that statute would render
meaningless the inclusive provisions it provides. In re Nessa,
426 B.R. at 315; In re Tabor, 433 B.R. at 475; In re Thiem, 443
B.R. at 843; In re Johnson, 452 B.R. at 807. We find this to be
a critical element in our analysis as well and discuss it in
more detail below.

1 individual with his or her employment earnings. However, this
2 is a difference without distinction.

3 An "inherited" IRA is one in which the account beneficiary
4 acquired the account because of the death of another individual
5 who was not the beneficiary's spouse. IRC § 408(d)(3)(C)(ii).
6 Beneficiaries of inherited IRAs cannot treat the inherited IRA
7 as their own. They cannot make any contributions to the IRA or
8 roll over any amounts into or out of the account. They may make
9 withdrawals at any time, without penalty, but they must begin
10 taking withdrawals of either annual distributions based on life
11 expectancy within one year, or the entire amount within five
12 years, regardless of age or retirement status.¹¹ IRC
13 §§ 401(a)(9)(B)(ii), 402(c)(11)(A)(iii), 408(a)(6); 26 C.F.R.
14 § 1.408-2(b)(7).

15 The bankruptcy courts in Chilton I and Clark I found the
16 distinctions between inherited IRAs and traditional IRAs
17 critical to their determination that inherited IRAs are not
18 funds in an account exempt from taxation. However, all other
19 courts addressing this issue post-BAPCPA have concluded that
20 these distinctions are irrelevant because IRC § 408(e) provides
21 that "any individual retirement account is exempt from taxation
22
23
24

25 ¹¹ Beneficiaries are, however, allowed to make a
26 trustee-to-trustee transfer as long as the IRA into which
27 amounts are being moved is set up and maintained in the name of
28 the deceased IRA owner for the benefit of the beneficiary. IRS
Publication 17, p. 80 (2011). Trustee does not dispute that is
what occurred in this case.

1 under [IRC § 408]" (emphasis added).¹² The plain meaning of this
2 language does not limit IRAs to only traditional IRAs; it could
3 include inherited IRAs, particularly since they are expressly
4 found in IRC § 408(d)(3)(C)(ii). In re Nessa, 426 B.R. at 315;
5 Chilton II, 444 B.R. at 552; In re Johnson, 452 B.R. at 808; In
6 re Tabor, 433 B.R. at 476; In re Weilhammer, 2010 WL 3431465, at
7 *5; In re Thiem, 443 B.R. at 845 (IRC provisions ensure that the
8 original retirement funds will be protected and remain unchanged
9 in character, e.g., by prohibiting contributions and rollovers
10 to the new account); Clark II, 2012 WL 233990, at *6 (because
11 the principal and interest earnings are exempt from income taxes
12 until they are distributed in either a traditional or inherited
13 IRA, this is sufficient to make them both tax exempt).

14 We, as did the Weilhammer court, expressly reject the
15 bankruptcy court's assertion in Chilton I that the tax exempt
16 status of inherited IRAs is found in IRC § 402(c)(11),¹³ which is

17
18 ¹² This is true, unless the account has ceased to be an IRA
19 by reason of paragraph (2) or (3), which includes the employee
20 engaging in certain prohibited transactions and borrowing from
21 an annuity contract. Neither of those circumstances has been
22 alleged here.

23 ¹³ IRC § 402(c)(11)(A) provides:

24 If, with respect to any portion of a distribution from an
25 eligible retirement plan described in paragraph (8)(B)(iii)
26 of a deceased employee, a direct trustee-to-trustee
27 transfer is made to an individual retirement plan described
28 in clause (i) or (ii) of paragraph (8)(B) established for
the purposes of receiving the distribution on behalf of an
individual who is a designated beneficiary (as defined by
section 401(a)(9)(E)) of the employee and who is not the
surviving spouse of the employee—

(continued...)

1 not listed in § 522(b)(3)(C) or the corresponding § 522(d)(12).
2 In re Weilhammer, 2010 WL 3431465, at *4. While IRC
3 § 402(c)(11) provides that trustee-to-trustee transfers from an
4 employee's eligible retirement plan to the designated
5 beneficiary's account will be treated as an eligible rollover
6 distribution (and not a taxable one), it further provides that
7 the individual retirement plan will be treated as an inherited
8 IRA under IRC § 408 and subject to IRC § 401(a)(9)(B) (which
9 sets forth the distribution scheme for inherited IRAs). Nothing
10 in IRC § 402 independently provides for tax-exemption. In re
11 Weilhammer, 2010 WL 3431465, at *5.

12 Under IRC § 408, an inherited IRA continues the tax-exempt
13 status afforded to the original IRA owner. Like traditional
14 IRAs, the beneficiary of the inherited IRA is not taxed until
15 the funds are withdrawn. Thus, despite any differences, both
16 types of accounts are exempt from taxation under IRC § 408,
17 which is all that is required under § 522. In re Thiem, 443
18 B.R. at 843; In re Tabor, 433 B.R. at 476; In re Stephenson,
19 2011 WL 6152960, at *3. Here, Ms. Hamlin chose not to withdraw
20 the IRA funds, and instead elected to transfer them via a
21

22 ¹³(...continued)

23 (i) the transfer shall be treated as an eligible
24 rollover distribution,

25 (ii) the individual retirement plan shall be treated
26 as an inherited individual retirement account or
27 individual retirement annuity (within the meaning of
28 section 408(d)(3)(C)) for purposes of this title, and

(iii) section 401(a)(9)(B) (other than clause (iv)
thereof) shall apply to such plan.

1 trustee-to-trustee transfer. As a result, these funds are still
2 exempt under IRC § 408(e).

3 **3. Section 522(b)(4)(C).**

4 Our conclusion that funds in an inherited IRA are exempt
5 under § 522(b)(3)(C) is further supported by § 522(b)(4)(C),
6 which provides, in relevant part:

7 A direct transfer of retirement funds from 1 fund or
8 account that is exempt from taxation under [IRC] . . .
9 § 408 . . . shall not cease to qualify for exemption
under paragraph (3)(C) or subsection (d)(12) by reason
of such direct transfer.

10 Chilton I failed to consider § 522(b)(4)(C) in its analysis, but
11 we believe, as have several other courts discussing Chilton I,
12 that § 522(b)(3)(C), or § 522(d)(12), cannot be read in
13 isolation; the entirety of the statute must be considered. In
14 re Nessa, 426 B.R. at 315; In re Tabor, 433 B.R. at 475; In re
15 Mathusa, 446 B.R. at 604; In re Johnson, 452 B.R. at 809; In re
16 Kuchta, 434 B.R. at 844; In re Stephenson, 2011 WL 6152960, at
17 *3; In re Weilhammer, 2010 WL 3431465, at *5; Chilton II, 444
18 B.R. at 552 (reasoning that § 522(b)(4)(C) provides that
19 transfers of the type creating inherited IRAs do not remove the
20 transfer from eligibility for exemption under § 522(d)(12)). A
21 common rule of statutory construction is that every provision of
22 a statute should be construed so that no other provision is
23 rendered superfluous or meaningless. See Kawaauhau v. Geiger,
24 523 U.S. 57, 61-62 (1998). As we noted above, failing to apply
25 § 522(b)(4)(C) in conjunction with § 522(b)(3)(C) would render
26 that statute meaningless and ignore the inclusive provisions it
27 provides.

28 The plain language of § 522(b)(4)(C) expressly provides

1 that direct transfers from one account that is tax-exempt under
2 IRC § 408 to another are exempt under § 522(b)(3)(C) or
3 § 522(d)(12). As the In re Tabor court correctly observed, the
4 increased protections afforded debtors under § 522(b)(3)(C)
5 applies not only to accounts created by the debtor, but also
6 extends to accounts that are transferred directly between
7 trustees (i.e., inherited accounts) via § 522(b)(4)(C). In re
8 Tabor, 433 B.R. at 475. "Whether or not Congress realized that
9 inherited accounts were 'trustee to trustee' accounts, the
10 language of § 522(b)(4)(C) is unambiguous and applies to
11 inherited accounts whether state or federal exemptions are
12 claimed." Id. The funds in Ms. Hamlin's grandmother's IRA were
13 exempt from taxation under IRC § 408, and the direct trustee-to-
14 trustee transfer of those funds did not eliminate Debtors'
15 ability to claim the funds exempt under § 522(b)(3)(C) by virtue
16 of § 522(b)(4)(C).¹⁴

17 VI. CONCLUSION

18 We conclude that funds in an inherited IRA are exempt under
19 § 522(b)(3)(C), subject to any applicable dollar limitation set
20 forth in § 522(n). Therefore, the bankruptcy court did not err
21 when it overruled Trustee's second amended objection and allowed
22 Debtors' claimed exemption for the Inherited IRA under
23 § 522(b)(3)(C). We AFFIRM.¹⁵

24
25 ¹⁴ Unlike Chilton I, the Clark I court did address
26 § 522(b)(4)(C), but reasoned that it did not apply because the
27 debtor's inherited IRA did not contain "retirement funds," 450
28 B.R. at 865, a conclusion with which we disagree.

¹⁵ Debtors contend that even if the bankruptcy court erred
(continued...)

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21 ¹⁵(...continued)

22 in determining the Inherited IRA was exempt under
23 § 522(b)(3)(C), then we should determine that it is exempt under
24 the Arizona statute. This issue is not properly before us.
25 Although Debtors initially claimed the Inherited IRA exempt
26 under A.R.S. § 33-1126(B), they subsequently filed an amended
27 Schedule C to reflect the exemption under § 522(b)(3)(C).
28 Additionally, since Debtors have not cross appealed the
February 9 Order, the Panel cannot consider this issue as it
would modify the order. Ball v. Rodgers, 492 F.3d 1094, 1118
(9th Cir. 2007) (although arguments that support a judgment as
entered can be made without a cross appeal, a cross appeal is
required to support a modification of that judgment).