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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Brian J. Mullen,

10 Appellant,

11 v.

12 George William Peters, Jr.,

13 Appellee.
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No. CV-24-00305-PHX-MTL

ORDER

15 Before the Court is Appellant Brian J. Mullen’s (“the Trustee”) appeal of the
16 bankruptcy court’s February 5, 2024 Order overruling the Trustee’s objections. (Doc. 1 at
17 5.) The appeal is fully briefed, and the parties do not dispute the facts underlying this case.
18 (Docs. 3, 6, 7.) For the following reasons, the order is reversed.

19 **I. BACKGROUND**

20 On February 7, 2023, George William Peters, Jr. (“Debtor”), filed for Chapter 7
21 bankruptcy, claiming exemptions under Arizona law. (Doc. 4-1 at 17-18.) The Trustee
22 objected, arguing Debtor was not domiciled in Arizona for the full 730 days prior to
23 bankruptcy as required by 11 U.S.C. § 522(b)(1)(A). (Doc. 4-2 at 2-3.) On August 31,
24 2023, the bankruptcy court held a hearing on the trustee’s objection and issued final orders,
25 finding Debtor ineligible for Arizona exemptions. (Doc. 4-8 at 2.)

26 The next day, on September 1, 2023, Debtor filed his amended Schedule C to claim
27 exemptions under Ohio law. (Doc. 4-6 at 7-8.) The Trustee objected, arguing res judicata
28 barred Debtor from claiming the same assets under a different legal theory. (Doc. 4-11 at

1 2-6.) The Trustee also argued Debtor was only eligible for one exemption under Ohio law.
2 (*Id.*) After a hearing on December 5, 2023, the bankruptcy court issued a final order that
3 sustained the Trustee’s second objection: Debtor was ineligible under Ohio law to claim
4 all exemptions other than his life insurance. (Doc. 4-12 at 3.) Further, the bankruptcy court
5 found res judicata did not bar Debtor from claiming the same assets under Ohio law. (*Id.*)
6

7 Then, on December 13, 2023, Debtor once again amended his Schedule C, this time
8 to claim exemptions under federal law. (Doc. 4-13 at 2-3.) In response, the Trustee objected
9 on various grounds, contending that res judicata barred Debtor from claiming the same
10 assets under federal exemption law and that Debtor was ineligible for exemptions under
11 both state and federal law. (Doc. 4-14 at 2-3, 4-7.) After full briefing and another hearing
12 on February 5, 2024, the bankruptcy court overruled the Trustee’s objections—finding that
13 res judicata did not apply and that Debtor qualified for both state and federal exemptions.
14 (Doc. 4-18 at 2.) The Trustee timely appealed. (Doc. 1.)

15 **II. LEGAL STANDARD**

16 The Court has jurisdiction over this case pursuant to 28 U.S.C. § 158(a), which
17 states “[t]he district courts of the United States shall have jurisdiction to hear appeals from
18 final judgments, orders, and decrees . . . of bankruptcy judges entered in cases and
19 proceedings referred to the bankruptcy judges under section 157 of this title.” 28 U.S.C.
20 § 158(a)(1).

21 A district court reviews the bankruptcy court’s conclusions of law de novo and its
22 findings of fact for clear error. *See In re JTS Corp.*, 617 F.3d 1102, 1109 (9th Cir. 2010).
23 The Court must accept the bankruptcy court’s findings of fact unless the Court “is left with
24 the definite and firm conviction that a mistake has been committed by the bankruptcy
25 judge.” *In re Greene*, 583 F.3d 614, 618 (9th Cir. 2009). The Court reviews the evidence
26 in the light most favorable to the prevailing party. *Lozier v. Auto Owners Ins. Co.*,
27 951 F.2d 251, 253 (9th Cir. 1991); *In re Jake’s Granite Supplies, L.L.C.*, 442 B.R. 694, 699
28 (D. Ariz. 2010).

1 **III. DISCUSSION**

2 The Trustee raises two issues on appeal: (1) whether the bankruptcy court erred in
3 permitting Debtor’s third attempt to exempt the same assets after Debtor’s first two
4 attempts were denied by final orders and (2) whether the bankruptcy court erred in
5 permitting Debtor to claim federal exemptions when Debtor already had an allowed state
6 exemption. (Doc. 3 at 4.) The Court addresses these issues in turn.

7 **A. Law of the Case Doctrine**

8 Debtor argues that the law of the case doctrine precludes this Court from
9 reconsidering an issue that has already been decided by the bankruptcy court. (Doc. 6 at 6.)

10 Under the law of the case doctrine, “a court is generally precluded from
11 reconsidering an issue that has already been decided by the same court, or a higher court
12 in the identical case.” *United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997). On
13 appeal, “law of the case is a jurisprudential doctrine under which an appellate court does
14 not reconsider matters resolved on a prior appeal.” *Snow-Erlin v. United States*, 470 F.3d
15 804, 807 (9th Cir. 2006).

16 This Court has jurisdiction for this case because it is as an appeal from the
17 bankruptcy court. *See* 28 U.S.C. § 158(a). The record shows that this is the first appeal of
18 the lower court’s decision. (*See* Doc. 4.) Therefore, the law of the case doctrine does not
19 apply here.

20 **B. Res Judicata**

21 The Trustee argues that res judicata bars Debtor from claiming the same assets
22 exempt under a different legal theory after litigating and losing his first claim. (*Id.* at 6-9.)
23 The Court finds the bankruptcy court erred when it found Debtor eligible to re-assert the
24 same assets under a different exemption law.

25 Courts review a bankruptcy court’s “determination of whether issue or claim
26 preclusion applies de novo as mixed questions of law and fact in which legal questions
27 predominate.” *In re Cogliano*, 355 B.R. 792, 800 (B.A.P. 9th Cir. 2006) (cleaned up); *see*
28 *also In re Paine*, 283 B.R. 33, 39 (B.A.P. 9th Cir. 2002) (“Claim and issue preclusion apply

1 in bankruptcy.”).

2 “Res judicata, also known as claim preclusion, bars litigation in a subsequent action
3 of any claims that were raised or could have been raised in the prior action.” *GP Vincent*
4 *II v. Estate of Beard*, 68 F.4th 508, 514 (9th Cir. 2023) (quoting *Owens v. Kaiser Found.*
5 *Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001)). Res judicata applies if the earlier
6 litigation involved the same claim as the later lawsuit, reached a final judgment on the
7 merits, and involved the same parties. *Id.* (citation omitted). In the unique context of
8 bankruptcy, “the principle of res judicata should be invoked only after careful inquiry
9 because it blocks unexplored paths that may lead to truth.” *In re Enewally*, 368 F.3d 1165,
10 1172-73 (9th Cir. 2004) (quoting *Latman v. Burdette*, 366 F.3d 774, 784 (9th Cir. 2004)).

11 **1. Identity of Claims**

12 The first element of res judicata requires courts to examine the identity of the claims.
13 When evaluating this element, courts use a four-factor analysis:

14 (1) whether the rights or interests established by the prior
15 judgment would be destroyed or impaired by prosecution of
16 the second action, (2) whether substantially the same evidence
17 is presented in the two actions, (3) whether the two suits
18 involve infringement of the same right, and (4) whether the two
suits arise out of the same transactional nucleus of facts.

19 *GP Vincent II*, 68 F.4th at 515 (citing *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985,
20 987 (9th Cir. 2005)). The fourth factor is generally deemed the most important, with the
21 Ninth Circuit often holding the “common nucleus criterion to be outcome determinative
22 under the first res judicata element.” *Mpoyo*, 430 F.3d at 988.

23 The Trustee argues res judicata bars Debtor from “fil[ing] three different exemption
24 claims in the same assets.” (Doc. 3 at 6.) In support, the Trustee cites *In re Bryan*, 466 B.R.
25 460, 465 (B.A.P. 8th Cir. 2012), *In re Magallanes*, 96 B.R. 253, 256 (B.A.P. 9th Cir. 1988),
26 and *In re Cogliano*, 355 B.R. at 803, to argue Debtor cannot exempt the same assets under
27 different exemption laws. (*Id.* at 7.) The bankruptcy court previously stated these cases
28 were unpersuasive because they involved instances:

1 [W]here the debtor tried to recast the exemptions under the
2 same exemption scheme None of them involved a situation
3 where one state or the federal law was chosen as the exemption
4 rules against, and then the party attempted to assert the same
assets as exempt only under a different scheme.

5 (Doc. 4-19 at 14-15.) In light of this, the bankruptcy court ruled that res judicata did not
6 bar Debtor from amending his exemptions under Ohio law. (*Id.* at 18.) Similarly, the
7 bankruptcy court later found res judicata did not bar Debtor from amending his exemptions
8 under federal law because it “[was] an entirely new issue.” (Doc. 4-20 at 10.)

9 Here, Debtor’s claimed exemptions under Arizona, Ohio, and federal law arise out
10 of the same nucleus of operative facts. Each time Debtor amended his exemptions, he
11 copied the same facts and merely substituted which exemption law applied. For example,
12 Debtor listed the same assets (e.g., home, car, household goods, bank accounts, etc.) at the
13 same value in each Schedule C, with the exception of his car value which likely reflects its
14 depreciation over time. (Docs. 4-1 at 17-18, 4-6 at 7-8, 4-13 at 2-3.) As a result, the
15 bankruptcy court had to conduct a similar analysis of Debtor’s assets, financial history,
16 liabilities, residency, etc.—regardless of which legal scheme Debtor chose to assert. None
17 of Debtor’s amendments changed his liabilities or the underlying facts of his financial
18 status. Therefore, the Court finds that the common nucleus criterion is satisfied because
19 each amended exemption related to the same set of facts.

20 Other factors also support a finding that the “identity of claims” element is satisfied.
21 For instance, Debtor would need to present “substantially the same evidence” for his
22 homestead exemptions. *Mpoyo*, 430 F.3d at 987. Because Arizona, Ohio, and federal
23 exemptions laws require the homestead to be used as a dwelling or residence, Debtor would
24 need to present the same evidence to show whether the homestead is used in the appropriate
25 manner. *See* A.R.S. § 33-1101(A) (explaining that homestead exemption should not exceed
26 \$250,000 in value in real property where the person resides); Ohio Rev. Code Ann.
27 § 2329.66(A)(1) (stating that person domiciled in Ohio may claim up to \$125,000 in real
28 property the person uses as a residence); 11 U.S.C. § 522(d)(1) (permitting debtor to

1 exempt up to \$27,900 in real property the debtor uses as a residence).¹

2 For the above reasons, the first element of res judicata is satisfied.

3 **2. Final Judgment on the Merits**

4 The second element of res judicata hinges on whether the earlier lawsuit “reached a
5 final judgment on the merits.” *Myopo*, 430 F.3d at 987 (citation omitted). In the Ninth
6 Circuit, “an order denying an exemption constitutes a final appealable order.” *In re Gilman*,
7 887 F.3d 956, 961 (9th Cir. 2018); *Warfield v. Nance*, 658 B.R. 152, 165 (D. Ariz. 2024).

8 The Trustee argues that the bankruptcy court’s ruling on Debtor’s exemptions
9 constitute final orders. (Doc. 3 at 4, 8.) Debtor argues that he has a right to amend his
10 Schedule C any time prior to the closing of his case. (Doc. 6 at 5.)

11 Debtor is allowed to amend the Schedule C form before the closing of the case. *See*
12 Fed. R. Bankr. P. 1009 (“A voluntary petition, list, schedule or statement may be amended
13 by the debtor as a matter of course at any time before the case is closed.”). Debtor, however,
14 should have filed the amendment *before* the bankruptcy court issued its orders sustaining
15 the Trustee’s objections because these orders constitute a final judgment on the merits. *See*
16 *In re Gilman*, 887 F.3d at 961-62; *In re Albert*, 998 F.3d 1088, 1090 (9th Cir. 2021)
17 (clarifying “that a bankruptcy court’s prior rejection of claimed exemptions preclusive
18 weight”); *see also In re St. Hill*, No. 04-30919F, 2005 WL 6522764, at *10 (Bankr. E.D.
19 Pa. Sept. 2, 2005) (noting that when a trustee objects to an exemption, the debtor must
20 make any necessary amendments prior to any ruling, not afterward). As a result, the second
21 element of claim preclusion is satisfied.

22 **3. Identity of the Parties**

23 The final element of res judicata is whether the earlier lawsuit “involved identical
24 parties.” *Mpoyo*, 430 F.3d at 987 (citation omitted). Although Debtor does not contest
25 whether this element is satisfied, the Court finds the parties here and the parties to the
26 bankruptcy proceedings are the same. (*See* Docs. 4-19 at 2, 4-20 at 2.)

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¹ The Ohio Revised Code requires a person claiming a homestead exemption to be domiciled in that state. Ohio Rev. Code § 2329.66(A).

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4. Conclusion

The bankruptcy court erred when it overruled the Trustee’s objection that res judicata barred Debtor’s amended exemptions. Although Debtor argues he has the right to amend his schedules at any time prior to the closing of his case, this right is not absolute. (Doc. 6 at 5.) Because the bankruptcy court issued two final orders regarding Debtor’s first and second amended exemptions, Rule 1009(a) does not entitle Debtor to amend his exemptions again under a new legal theory. Fed. R. Bank. P. 1009(a); *In re Wolfberg*, 255 B.R. 879, 883 (B.A.P. 9th Cir. 2000), *aff’d*, 37 F.App’x 891 (9th Cir. 2002).

Therefore, for the reasons discussed above, all the elements of res judicata are satisfied. To hold otherwise would permit a debtor to “delay matters by claiming the same property as exempt time and time again,” which would contravene the burdens res judicata is designed to void. *In re Albert*, 998 F.3d at 1092; *see e.g., In re St. Hill*, 2005 WL 6522764, *9 (Bankr. E.D. Pa. 2005) (“[W]here a debtor has claimed certain property as exempt, the bankruptcy trustee has objected to that exemption claim, and there has been a final, non-appealed ruling sustaining the trustee’s objection, all of the elements of claim preclusion have been established.”)

C. Federal Exemptions Are Not Permitted

The Court now turns to whether Debtor can claim exemptions under both Ohio and federal law. Debtor argues the last sentence in 11 U.S.C. § 522(b)(3) of the Bankruptcy Code—known as the hanging paragraph—permits him to claim exemptions under both state and federal law. (Doc. 6 at 7-8.) The bankruptcy court agreed, relying on *In re Withington*, 594 B.R. 696, 707 (Bank. D. Colo. 2018). (Doc. 4-20 at 14.) The Trustee argues the bankruptcy court erred because the plain language of the hanging paragraph does not support a finding that debtor is entitled to exemptions under both laws. (Doc. 3 at 12.) Debtor argues that exemption laws should be construed liberally in favor of debtors, meaning that the statute should be interpreted to allow Debtor to claim both Ohio and federal exemptions here. (Doc. 6 at 7-8.)

When a debtor has lived in different states prior to filing the bankruptcy petition,

1 Section 522(b)(3)(A) of the Bankruptcy Code provides:
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3 (3) Property listed in this paragraph is—

4 (A) subject to subsections (o) and (p), any property that is
5 exempt under Federal law, other than subsection (d) of this
6 section, or State or local law that is applicable on the date of
7 the filing of the petition to the place in which the debtor's
8 domicile has been located for the 730 days immediately
9 preceding the date of the filing of the petition or if the debtor's
10 domicile has not been located in a single State for such a 730-
11 day period, the place in which the debtor's domicile was
12 located for 180 days immediately preceding the 730-day period
13 or for a longer portion of such 180-day period than in any other
14 place;

15 11 U.S.C. § 522(b)(3)(A) (emphasis added). Section 522(b)(2) permits states to opt out of
16 federal exemptions and limit their residents to state-created exemptions. As a result, the
17 domiciliary requirements in 11 U.S.C. § 522(b)(3)(A) may render the debtor ineligible for
18 any exemption if the applicable state exemption law restricts the use of state exemptions
19 to in-state residents. *In re Rodenbough*, 579 B.R. 545, 551 (Bankr. D. Idaho 2018). To
20 remedy this effect, Congress enacted the hanging paragraph, which permits a debtor to
21 claim federal exemptions under 11 U.S.C. § 522(d). It states:

22 If the effect of the domiciliary requirement under subparagraph
23 (A) is to render the debtor ineligible for *any* exemption, the
24 debtor may elect to exempt property that is specified under
25 subsection (d).

26 11 U.S.C. § 522(b)(3) (emphasis added).

27 Here, Debtor was not domiciled in Arizona for more than 730 days prior to the
28 bankruptcy; therefore, the bankruptcy court properly found Debtor ineligible for
exemptions under Arizona law. (Doc. 4-19 at 4.) In the 180 days preceding the 730-day
period before filing the bankruptcy petition, Debtor lived in Ohio. (*Id.* at 8.) The
bankruptcy court found Debtor had to claim exemptions under Ohio law. (*Id.*) However,
many of the Ohio exemption laws require the person claiming them to be domiciled in

1 Ohio. Ohio Rev. C. 2329.66(A). (Doc. 4-19 at 16-17.) Because Debtor was living in
2 Arizona at the time he filed the bankruptcy petition, the bankruptcy court found that under
3 Ohio law, Debtor was ineligible to claim any exemptions other than his life insurance
4 claim. (*Id.* at 17.) The parties now dispute whether Debtor qualifies for federal exemptions
5 under the hanging paragraph when Debtor was previously allowed a claim under Ohio law
6 for his life insurance. (Docs. 3 at 9-12, 6 at 7-8.) The Court finds that the bankruptcy court
7 erred when it found Debtor eligible for both state and federal exemptions.

8 Section 522(b)(3) allows a debtor to claim federal exemptions under § 522(d) when
9 the debtor is “ineligible for *any* exemption.” 11 U.S.C. § 522(b)(3) (emphasis added).
10 Although the Bankruptcy Code does not define “any,” courts generally give words their
11 ordinary plain meaning by “consulting common dictionary definitions” when a statute does
12 not define a term. *Animal Legal Def. Fund v. United States Dep’t of Agric.*, 933 F.3d 1088,
13 1093 (9th Cir. 2019); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The*
14 *Interpretation of Legal Texts*, 69 (2012) (“The ordinary-meaning rule is the most
15 fundamental semantic rule of interpretation.”). Any means “one, some, or all
16 indiscriminately of whatever quantity.” *Any*, Merriam-Webster Dictionary,
17 <https://www.merriam-webster.com/dictionary/any> (last visited Nov. 7, 2024).

18 Under the plain language of the hanging paragraph, the federal exemptions are only
19 available to debtors who are “ineligible for *any* exemption.” 11 U.S.C. § 522(b)(3)
20 (emphasis added). *See, e.g., In re Rodenbough*, 579 B.R. at 551 (“[I]f a debtor has access
21 to ‘any’ exception, then the resort to the federal exemptions is not employed.”); *In re*
22 *Karavias*, 438 B.R. 86, 88 (Bankr. W.D. Pa.2010) (“[B]ecause such debtor is then left
23 without any exemption at all, such debtor is thus entitled to take the federal exemptions
24 under § 522(d.)”); *In re Kauer*, 2020 WL 4195758, *3 (Bankr. D. Ariz. 2020) (“Even those
25 courts that interpret the word ‘any’ in § 522(b)(3)(A) literally recognize that the debtor
26 must be eligible for and receive the exemption.” (emphasis removed)). Therefore, because
27 Debtor qualifies for the life insurance exemption under Ohio law, he is ineligible to claim
28 federal exemptions under the hanging paragraph. *See* 4 Collier on Bankr. P. 522.06 (16th

1 2024) (“Thus, the phrase ‘ineligible for any exemption’ in the sentence is best construed
2 as applying when the debtor is ineligible for *any single* exemption under the state
3 exemption scheme, rather than ineligible for all exemptions.” emphasis added)).²

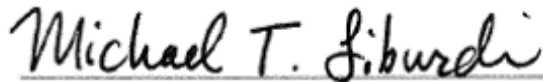
4 **IV. CONCLUSION**

5 Accordingly,

6 **IT IS ORDERED reversing** the bankruptcy court’s February 5, 2024 Order
7 (Doc. 4-18) in its entirety. This action is remanded to the bankruptcy court for further
8 proceedings consistent with this decision.

9 **IT IS FURTHER ORDERED** directing the Clerk of the Court to enter judgment
10 in favor of Trustee Brian J. Mullen and to close this case.

11 Dated this 22nd day of November, 2024.

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15 Michael T. Liburdi
16 United States District Judge
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26 ² The Court recognizes the meaning of “any” in the hanging paragraph is widely disputed
27 among bankruptcy courts. For example, some courts find the debtor eligible to claim
28 federal exemptions only if the debtor is entirely ineligible for all state exemptions due to
522(b)(3)(A)’s domiciliary requirements. *E.g.*, *In re Goldstein*, No. 20-20406, 2021 WL
5443542, at *9 (Bankr. D. Me. Nov. 19, 2021). Meanwhile, other courts hold that a debtor
is ineligible to invoke the hanging paragraph if he qualifies for even one state exemption.
E.g., *In re Wilson*, No. 14-20557, 2015 WL 1850919, at *4 (Bankr. D. Idaho Jan. 13, 2015).