

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: JUDY ANN WILMOTH, Debtor

**No. 5:12-bk-73414
Ch. 7**

ORDER

Before the Court is the trustee's *Objection to Exemptions as Amended* filed on July 22, 2014, by the chapter 7 trustee. The trustee's objection relates to the debtor's amended schedules in which the debtor attempts to exempt \$19,366.66 the debtor received from the sale of a home after her mother died and \$2767.00 for a 2001 Ford Taurus. At the trial held on August 21, 2014, the trustee withdrew his objection to the \$2767.00 exemption amount for the car and the Court will not consider the car further. For the reasons stated below, the Court overrules the trustee's objection and finds that the proceeds the debtor received from the sale of her mother's home are not property of the estate.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(B). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014.

Some background in this case is in order. The debtor filed her voluntary chapter 13 petition on September 5, 2012, and her plan was confirmed on November 15, 2012. Almost three years prior to the debtor's bankruptcy filing, the debtor's mother executed a Missouri Beneficiary Deed in favor of the debtor on June 8, 2009. The property subject to the deed was located in a subdivision in Jackson County, Missouri, and the deed was recorded in the Jackson County land records on June 9, 2009. On February 26, 2014, the debtor's mother died and the debtor acquired a 100% fee simple interest in the subject

property. Three months later, on May 21, 2014, the debtor converted her case to a case under chapter 7 and the chapter 7 trustee was appointed. On July 9, 2014, the debtor amended her schedules to list the proceeds from the sale of the property on Schedule B and attempt to exempt the proceeds on Schedule C under 11 U.S.C. § 541(a)(5)(A).

The trustee states in his trial brief that the debtor's attempt to exempt her interest under § 541(a)(5)(A) was improper.¹ Section 541(a)(5) draws into the estate any inheritance received within 180 days of the bankruptcy filing in a chapter 7 case. The trustee argues that even though the debtor did not receive the property until more than 180 days from the filing of the petition, the debtor had a pre-petition contingent interest in the property because the beneficiary deed was executed and recorded prior to the debtor filing for bankruptcy protection. The debtor's argument is based on the belief that the inherited property, which was acquired well beyond 180 days from the filing of the petition, is not property of the estate in the first place.

In support of his position, the trustee cited an unpublished opinion from the Bankruptcy Appellate Panel of the Ninth Circuit: *Jones v. Mullen (In re Jones)*, BAP No. AZ-12-1644, 2014 WL 465631 (B.A.P. 9th Cir. Feb. 5, 2014). Under similar facts, the B.A.P. affirmed the bankruptcy court's holding that a beneficiary deed properly executed and recorded pre-petition amounted to a contingent interest of the named beneficiary upon the filing of the beneficiary's bankruptcy petition. Thus, under Arizona law, even though the fee interest may vest post-petition, the contingent interest is property of the estate. The court's holding is based on the germinal principle that "[p]roperty interests are created and defined by state law." *Butner v. United States*, 440 U.S. 48, 55 (1979).

In the case before this Court, the deed in question was properly executed and recorded in Missouri. Therefore, Missouri law will apply. The statutory provision that recognizes a

¹ The debtor's amended claim of exemptions was filed by the debtor's prior counsel.

beneficiary deed in Missouri and Arizona are substantially similar and state:

A deed that conveys an interest in real property to a grantee designated by the owner, that expressly states that the deed is not to take effect until the death of the owner, transfers the interest provided to the designated grantee beneficiary, effective on death of the owner, if the deed is executed and filed of record with the recorder of deeds in the city or county or counties in which the real property is situated prior to the death of the owner.

Mo. Ann. Stat. § 461.025(1.) (West 2014). *See also* Ariz. Rev. Stat. Ann. § 33-405(A.) (2014). However, Missouri law includes an additional provision relating to beneficiary deeds that does not appear under Arizona law: “Prior to the death of an owner, a beneficiary shall have *no rights* in the property by reason of the beneficiary designation” Mo. Ann. Stat. § 461.031(1.) (West 2014) (emphasis added). This statutory provision under Missouri law directly contradicts the Ninth Circuit B.A.P. finding that a beneficiary deed properly executed and recorded pre-petition amounted to a contingent interest owned by the beneficiary. Because Missouri law applies, the trustee’s argument that the debtor held a contingent interest in the property on account of the beneficiary deed must fail. As of the date the debtor filed her chapter 13 voluntary petition, she did not have an interest in her mother’s property.

However, that is not the end of the story. Section 1306 of the code effectively expands the 180 day inclusionary period under § 541(a)(5)(A) in a chapter 13 case. In addition to the property described in § 541(a), in a chapter 13 case property of the estate includes “all property of the kind specified in such section [§ 541] that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, 12 of this title, whichever occurs first.” 11 U.S.C. § 1306(a)(1). In other words, property of the estate in a chapter 13 case includes not only the § 541 definition of property, but also any property acquired during the pendency of the chapter 13 case. *Educ. Assistance Corp. v. Zellner*, 827 F.2d 1222, 1224 (8th Cir. 1987); *see also In re Guentert*, 206 B.R. 958, 962 (Bankr. W.D. Mo. 1997). The debtor acquired her mother’s house on February 26, 2014, as a result of her mother’s death. Although this was after the initial 180 days had run, it was before the debtor converted her case to a

case under chapter 7. As such, the proceeds were property of the estate when they were acquired. Under the bankruptcy rules, within fourteen days of acquiring the interest in property, the debtor should have filed a supplemental schedule in her chapter 13 case disclosing the receipt of this property. If she wanted to claim an exemption in the property, she should have claimed the exemption in the supplemental schedule. Fed. R. Bankr. P. 1007(h).

As a general rule, property that is not abandoned or administered remains property of the estate. 11 U.S.C. § 554(d). In order for property to be abandoned or administered, it must be scheduled in accordance with § 521(1) and Federal Rule of Bankruptcy Procedure 1007(h). *Vreugdenhill v. Navistar Int'l Transp. Corp.*, 950 F.2d 524, 526 (8th Cir. 1991). It would appear, then, that the proceeds the debtor received from the sale of her mother's home would remain property of the estate, regardless of the case being closed, dismissed, or converted. That result, though, does not comport with § 348(f) of the code, which states as follows:

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—
(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion.

...
(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property in the converted case shall consist of the property of the estate as of the date of conversion.

11 U.S.C. § 348(f). According to Collier on Bankruptcy, “[u]nder section 348(f), it is clear that, in most cases, the property that came into the estate *only because of section 1306(a)* is not included in the estate in the converted case.” 8 Collier on Bankruptcy ¶ 1306.04, at 1306-9 (16th ed. rev. 2012) (emphasis added). Congress’s intent in enacting § 348(f) was to “avoid penalizing debtors for their chapter 13 efforts by placing them in the same economic position they would have occupied if they had filed chapter 7 originally.” *Wyss v. Fobber (In re Fobber)*, 256 B.R. 268, 277-78 (Bankr. E.D. Tenn.

2000).

In this case, because the debtor acquired her interest after the 180 day inclusionary period, the house and resulting proceeds were property of the estate only as a result of § 1306(a). The trustee did not allege that the debtor converted her case in bad faith. Because of that, the Court finds that the house and resulting proceeds that the debtor received as a result of her mother's death were not property of the estate upon the conversion of her case to a case under chapter 7. Accordingly, the trustee's objection to the debtor's claim of exemptions is overruled.

IT IS SO ORDERED.

cc: William M. Clark Jr., chapter 7 trustee
Forrest Stolzer, attorney for the debtor