

IT IS SO ORDERED.

Dated: 12:41 PM April 20 2011



**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE)	CASE NO. 10-51116
)	
ERIC KING AND JEANNETTE)	CHAPTER 7
KING,)	
)	JUDGE MARILYN SHEA-STONUM
DEBTORS.)	
)	ORDER DENYING MOTION FOR
)	TURNOVER, WITHOUT PREJUDICE
)	
)	

On October 14, 2010, the chapter 7 trustee filed a motion seeking the turnover of a 2003 Chevrolet Malibu (the "Turnover Motion"). Jeanette King (the "Debtor") filed a response in opposition to the Turnover Motion and attached an affidavit of the Debtor and an affidavit of the Debtor's mother in support. The Court held a hearing on January 12, 2011 at which counsel for the chapter 7 trustee and Debtor's counsel appeared.¹ Counsel entered into stipulations during the hearing and the Court heard oral argument from counsel. Based on the matters presented to the Court, the Court directed that unless counsel reported the

¹ The hearing on the Turnover Motion was originally scheduled for December 1, 2010, but was ultimately rescheduled and held on January 12, 2011.

Turnover Motion was resolved, the matter would be considered under advisement as of January 19, 2011.

Upon further consideration of the record before it, the Court entered an order on February 11, 2011 directing counsel to file written stipulations by not later than February 18, 2011 which shall include those stipulations reached during the hearing on January 12, 2011 and any other additional matters, relevant to the dispute before the Court, which counsel agree are beyond reasonable dispute. No stipulations were filed with the Court before February 18, 2011. On March 3, 2011, the chapter 7 trustee's counsel filed a motion asking the Court to deem the exhibit thereto as an accurate reflection of the stipulations reached between counsel on January 12, 2011. No response having been filed to the motion, the request is granted on a default basis. Exhibit A to the motion is deemed an accurate representation of the stipulations in this matter.

Based on those stipulations and other matters of record in this case, including the affidavits of the Debtor and her mother which were attached to the Debtor's response, the Court finds as follows:

1. On March 12, 2010 (the "Petition Date"), the Debtor and her husband filed a joint voluntary petition for relief under chapter 7 of the Bankruptcy Code.
2. Richard Wilson was appointed as the chapter 7 trustee (the "Trustee") in the Debtor's bankruptcy case.
3. Prior to the Petition Date, on the January 13, 2010, the Debtor was listed as the owner on the title of a certain motor vehicle. That vehicle was insured by the Debtor through Nationwide Insurance. On January 13, 2010, that vehicle was destroyed in an accident.
4. The Debtor submitted an insurance claim to Nationwide Insurance and received a draft in the amount of \$4,000.00 as the insurance settlement for that vehicle.
5. The Debtor negotiated the draft and received cash. The Debtor searched for a replacement vehicle on Craig's list. She found a 2003 Chevrolet Malibu (the

“Malibu”) and purchased it with cash. The Malibu was placed into the Debtor’s name on January 28, 2010.

6. On Schedule B, the Debtor lists the Malibu, but indicates that her mother “owns, operates and maintains the vehicle” which is located at her mother’s residence. On Schedule C, the Debtor claims an exemption in the Malibu.²
7. The Debtor did not disclose the destruction of the prior vehicle or the insurance payment in her bankruptcy petition or schedules.
8. The Debtor claims that her mother, Brenda Goodloe, is the beneficial owner of the Malibu (and was the beneficial owner of the prior vehicle). The Debtor maintains that the Malibu and the prior vehicle were titled to her as owner for insurance purposes only so that she could take advantage of a multi-car discount in her insurance premium. The Debtor’s affidavit, dated October 28, 2010, provides, “The Malibu in fact belongs to my mother, Ms. Brenda Goodloe. My mother’s previous car was destroyed in an accident on January 13, 2010. My mother used her insurance money from that accident to purchase the Malibu from a seller on Craigslist.com on January 28, 2010. My mother’s previous car was titled in my name so she, my husband, and I could take advantage of my automobile insurance company’s multiple car discount. We titled the Malibu in my name for the same reason. My mother and I have an express agreement that the car belongs to her. Under this agreement, my mother pays for all expenses on the car and enjoys full beneficial use of the car.”
9. Brenda Goodloe pays all operating expenses and paid all operating expenses for both vehicles. She paid the insurance premium associated with the Malibu and the prior vehicle, and for all repairs and maintenance on the vehicles. Brenda Goodloe has continued to make such payments after the Petition Date and she remains in possession of the Malibu.
10. According to the affidavit of Brenda Goodloe, dated October 28, 2010, the average amount of these expenses is \$250.00 per month. In addition, Ms. Goodloe’s affidavit provides, “I am the owner of the ... Malibu that I arranged to have titled in [the Debtor’s] name [because] ... I was the owner of a previous automobile (hereinafter the “First Automobile”), which was titled in [the Debtor’s] name to take advantage of the multiple car discount automobile insurance policy upon which the [Debtor, the Debtor’s husband] and I were listed. The First Automobile was destroyed in a January 13, 2010 accident. I used the insurance proceeds from the accident to buy the Malibu on January 28, 2010. As with the First Automobile, I agreed to title the

² The Trustee objected to the Debtor’s claim of an exemption in the Malibu. A hearing on the Trustee’s objection was scheduled. Prior to the hearing, the matter was reported as resolved, so no hearing was held. The order sustaining the objection to the exemption indicates that Debtor’s counsel verbally agreed to the order, but did not return a signed copy of the order for submission to the Court. The order was entered by the Court on October 12, 2010.

car in [the Debtor's name] to retain the multiple car discount [The Debtor] and I have an express agreement that even though the Malibu is titled in [the Debtor's] name, I am the beneficial owner of the Malibu.”

11. The Trustee's Turnover Motion and memorandum in support were served only on the Debtor, her counsel, the United States Trustee and counsel for American Express and counsel for Chrysler Financial Services Americas, LLC. The Turnover Motion and memorandum in support were not served on Brenda Goodloe.

Conclusions of Law

The Trustee seeks relief pursuant to § 542, which provides, in pertinent part, “an entity, ... in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, ..., shall deliver to the trustee, ..., such property.” 11 U.S.C. § 542. To recover property from a non-debtor, a trustee should commence an adversary proceeding. *See* Fed. R. Bankr. P. 7001(1). Typically, the party seeking turnover must establish that the property to be turned over is property of the estate, is of more than inconsequential value or benefit to the estate and the person being ordered to turn over the property has the property in her possession or under her control. *See In re Bailey*, 380 B.R. 486, 490 (B.A.P. 6th Cir. 2008) (holding that turnover is appropriate only from one who had possession of the property at some point during the pendency of the bankruptcy case). In this case, the Trustee bears the burden of proving each element by a preponderance of the evidence.

In this case, the Trustee filed a motion seeking turnover of the Malibu. To the extent the Trustee seeks to have Brenda Goodloe, whom the parties have stipulated is in possession of the Malibu, turnover the Malibu, he should have commenced an adversary proceeding. Having filed a motion, which he did not serve on Brenda Goodloe, the relief requested by the Trustee is not well taken. To the extent, the Trustee was seeking turnover from the Debtor, the Trustee failed to show that the Malibu was, or ever had been, in the possession

or control of the Debtor, having stipulated that Brenda Goodloe is and has been in possession of the Malibu.

Therefore, the Trustee's Turnover Motion is denied, without prejudice.

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cc:(via electronic mail)

Michael Moran, counsel for Trustee
Mark A. Novak, counsel for Debtors