

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
Eastern Division**

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In Re:

In Proceedings Under Chapter 7

ALPHONSO H. MILLER,

Case No.: 11-13132

Debtor.

JUDGE RANDOLPH BAXTER

MEMORANDUM OF OPINION AND ORDER

Before the Court is the Chapter 7 Trustee's Motion for Turnover (the "Motion"). The Debtor opposes the Motion. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and General Order No. 84 of this District. After considering the pleadings filed by both parties, and conducting a duly-noticed evidentiary hearing, the Court rules as follows:

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The parties have stipulated to the relevant facts. The Debtor is the recipient of a settlement check in the amount of \$5,000 from Beneficial Mortgage Company. The payment was in settlement of a lawsuit that was filed as a class action but dismissed prior to class certification. The Debtor was the only named payee on the check. The Debtor, and an unrelated person, Carolyn Wyley, were the only named plaintiffs in the action. The Debtor's non-filing spouse, Ruby Miller, was neither a named plaintiff nor a payee on the settlement check. The Debtor scheduled the settlement proceeds in the amount of \$2,500 and has agreed to turnover that amount less his available exemptions.

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The Trustee seeks turnover of the full amount of the settlement check, \$5,000, minus the Debtor's available exemptions. The Debtor alleges that only half of the settlement is property of the estate and subject to turnover. He alleges that the remaining \$2,500 belongs to his non-filing spouse. The Trustee relies on Ohio Revised Code Section § 3103.04, which defines one spouse's interest in the property of the other as:

Neither husband nor wife has any interest in the property of the other except as mentioned in Section 3103.03 of the Revised Code, the right to dower, and the right to remain in the mansion house of the death of either."

Section 3103.03 of the Revised Code addresses support obligations.

The Debtor alleges that, because the lawsuit was filed as a class action, Ruby Miller is entitled to half of the proceeds because she was similarly situated to her husband and she would be barred from bringing an action on her own behalf. The Debtor further alleges that, because the Debtor is married, half the proceeds belong to his wife. In support of that argument the Debtor cites to a Tennessee bankruptcy case applying a Tennessee domestic relations provision.

The dispositive issue for the Court is whether the full amount of the settlement is property of the bankruptcy estate pursuant to 11 U.S.C. § 541 and subject to turnover pursuant to 11 U.S.C. § 542.

The statutory provisions applicable to resolution of the Trustee's Motion are as follows:

Section 542(a) of the Bankruptcy Code provides that:

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title [11 USCS § 363], or that the debtor may exempt under section 522 of this title [11 USCS § 522], shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

Section 541 of the Bankruptcy Code provides that:

(a) The commencement of a case under section 301, 302 or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

The burden of proof is upon the trustee seeking turnover of estate property, which burden must be met by a preponderance of the evidence. *In re Danowski*, 320 B.R. 886, 887 (Bankr. N.D. Ohio 2005) citing *Gorenz v. Illinois Dep't of Agriculture*, 653 F.2d 1179, 1184 (7th Cir. 1981)(the burden of proof in a turnover proceeding is at all times on the receiver or trustee; he must at least establish a prima facie case. After that, the burden of explaining or going forward shifts to the other party.) Property of the bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. §541(a)(1). Once the Trustee has prima facie shown that the Debtor has an ownership interest in property "the burden of proving that property is removed from the ambit of the estate . . . is on the party

claiming the equitable interest.” *In re Arter & Hadden, LLP*, 335 B.R. 666, 671 (Bankr.N.D. Ohio 2005)(internal quotations omitted.)

The legislative history of §541 reveals that Congress intended a broad interpretation of what is to be included in the bankruptcy estate. *See Kovacs v. Thomson, Hewitt, & O'Brien*, 117 Ohio App.3d 465, 469 (9th Dist. 1997); *In re Dow*, 132 B.R. 853, 860 (Bankr.S.D.Ohio 1991). As the Supreme Court has stated, “[T]he term ‘property’ has been construed most generously and an interest is not outside its reach because it is novel or contingent or because enjoyment can be postponed.” *Segal v. Rochelle*, 382 U.S. 375, 379 (1966). Although federal law determines whether a debtor’s interest in property is property of the estate, it is state law that generally controls the question of whether a debtor has an interest in property. *See Butner v. United States*, 440 U.S. 48, 55 (1979).

Herein, the Trustee has made a prima facie showing that the settlement proceeds are property of the bankruptcy estate. The subject lawsuit was brought by the Debtor on his own behalf. Mrs. Miller is not a named plaintiff in the lawsuit. The settlement check was paid only to Mr. Miller, not Mrs. Miller. Pursuant to ORC § 3103.04, Mrs. Miller does not have any interest in the subject settlement proceeds.

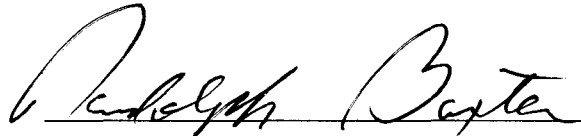
Having shown that the settlement proceeds are property of the estate, the burden shifts to the Debtor to show that the property is “removed from the ambit of the estate.” *In re Arter & Hadden*, 335 B.R. at 671. The Debtor has failed to meet such burden. Since no class was certified in the lawsuit, his argument that he is required to share the proceeds with Mrs. Miller because she was similarly situated and cannot now bring her own action is without merit.

Bittinger v. Tecumseh Products Company, 123 F.3d 877, 882 (6th Cir. 1997)(“Under the proper test-that of the Restatement and Rule 23-the plaintiffs are not precluded from pursuing their claims. Section 41 clearly requires ‘approval of the court’ for a representative of a class to ‘represent.’”) His argument that he has to share the proceeds with Mrs. Miller because they are married is also without merit. As stated above, ORC § 3103.04 shows that Mrs. Miller has no interest in the proceeds. The Tennessee bankruptcy case cited by the Debtor, which interprets a Tennessee code section, is inapplicable herein.

Accordingly, the Trustee’s Motion for Turnover in the amount of \$5,000 is hereby granted. The Debtor’s opposition thereto is overruled. Each party is to bear its respective costs.

IT IS SO ORDERED

Dated this 11th day of
August, 2011.



JUDGE RANDOLPH BAXTER

UNITED STATES BANKRUPTCY COURT