IT IS SO ORDERED.

Dated: January 12, 2016
02:42:35 PM

Kay Woods
Kay Woods
United States Bankruptcy Judge

EUNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	**CASE NUMBER 09-43814**
JARRED R. COMBIS and	*	
MICHELLE K. COMBIS,	*	**CHAPTER 7**
	*	
Debtors.	*	**HONORABLE KAY WOODS**
	*	

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on the Motion, at which the Trustee appeared. At the hearing, the Court granted the Trustee the opportunity to file a brief in support of the Motion.[2] The Trustee filed Brief of Trustee in Support of Motion to Reopen Chapter 7 Case ("Brief") (Doc. 57) on January 6, 2016. No party has opposed the Motion. For the reasons set forth herein, the Court will grant the Motion.

By way of background, the Debtors filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code on October 8, 2009. The Debtors' Statement of Financial Affairs lists inheritance in the amount of $74,800.00 as non-employment income received by the Debtors during the two years preceding the petition date. (Doc. 1, S.O.F.A. at 2.) The Debtors did not include their interest in the probate estate of James Combis ("Probate Estate") in Schedule B – Personal Property.

The first meeting of creditors was held and concluded on December 1, 2009. (*See* Doc. 18.) The Trustee filed his initial report (Doc. 19) on December 24, 2009, in which he listed the Probate Estate as an unscheduled asset of the Debtors with an unknown value. (Doc. 19, Ref. # 19.) The lone activity listed under the heading "major activities affecting case closing" was

[2] At the hearing, the Court stated that it appeared the Trustee had previously compromised the value of the probate estate of James Combis in 2009 and that the probate estate had been fully administered by the Trustee. The Motion is devoid of any facts concerning the Trustee's prior motion to compromise.

"Trustee is investigating the probate estate of James Combis." (*Id.* at 2.)

On the same date that he filed the initial report, the Trustee filed Motion for Approval of Compromise of Controversy ("Compromise Motion") (Doc. 21). The entirety of the Compromise Motion stated:

> Now comes [the Trustee] and moves this Court to approve compromise of controversies in regards to monies received by [the Debtors] for inheritance from the Probate Estate of James Combis, pre-petition. The Trustee has examined and reviewed the inheritance received by debtors and arrived at a compromise in the amount of $5000.00, which has been received as to date. It is the opinion of Trustee that the amount compromised for is a fair and adequate amount for the estate herein given the facts of said case and would maximize the amount recovered for the estate.
>
> The Trustee has discussed this with Debtors and their attorney, to come to the determination that the proposed settlement is a good compromise for the estate. This compromise will allow the estate to receive the full amount of value of said interest without attendant costs of litigation, thereby maximizing recovery. It is the opinion of Trustee that the amount compromised for is a fair and adequate amount for the estate herein given the facts of said case and would maximize the amount recovered for the estate.

(Compromise Mot. at 1.) The Compromise Motion failed to identify (i) when the Debtors received the inheritance; (ii) the amount of inheritance the Debtors received; and (iii) the amount of inheritance, if any, remaining in the possession of the Debtors as of the petition date. The Compromise Motion also failed to indicate that the Probate Estate remained open. No party objected

to the Compromise Motion, and the Court granted the Compromise Motion on January 22, 2010 (Doc. 29).

The Debtors received a discharge on April 13, 2010 (Doc. 38).

The Trustee filed his first interim report (Doc. 40) on May 2, 2011. The Trustee listed the Probate Estate as an asset of the bankruptcy estate and indicated that (i) the Probate Estate had an estimated net value of $7,000.00; (ii) the Trustee had received $5,000.00 as a result of the Compromise Motion; and (iii) the "gross remaining value" of the Probate Estate was $2,500.00.[3] (Doc. 40, Ref. # 19.) The Trustee also stated that he was "awaiting conclusion of the [Probate Estate]. Order to substitute Trustee on [sic] probate case filed on 2/8/10 . . . ." (*Id.* at 2.) The Trustee filed his second interim report (Doc. 41) on April 24, 2012 and his third interim report (Doc. 42) on April 23, 2013. Each of the three interim reports contained the identical entry concerning the Probate Estate and stated that the Trustee was awaiting closure of the Probate Estate. Finally, on February 24, 2015, the Trustee filed his final report and account (Doc. 45), in which he stated that the <u>Probate Estate had been fully administered as an asset of the bankruptcy estate</u>. The compromise amount of

[3] Based on the Trustee's filings, it is not possible for the Court to know what the $2,500.00 entry represented. It appears the Trustee anticipated a further distribution of Probate Estate property in the amount of $2,500.00 to the bankruptcy estate; however, the Trustee never explained what, if anything, occurred regarding the $2,500.00.

$5,000.00 for the Debtors' pre-petition inheritance was the only amount the Trustee recovered in connection with the Probate Estate.

The Debtors' bankruptcy case was closed on August 21, 2015 (Doc. 53).

The Trustee now requests the Court to reopen the Debtors' bankruptcy case so that the Probate Estate can be administered as an asset of the bankruptcy estate. The Trustee further requests the Court to direct the United States Trustee to appoint a chapter 7 trustee in this case and to defer the cost of reopening this case until final administration.

The Trustee's affirmative statement in his final report that the Probate Estate had been fully administered would appear to require the Court to deny the Motion.[4] Moreover, the Trustee waited two months after learning about the unclaimed funds in the Probate Estate before filing the Motion. However, as set forth below, the circumstances of this case do not warrant denial of the Motion.

In his Brief, the Trustee explains that the administrator of the Probate Estate, Douglas M. Toot, informed the Trustee that there would be no more funds in the Probate Estate to which the Debtors would be entitled. The Trustee does not state when this representation was made; however, based on the final report, the

[4] No party, including the Debtors, opposed the Motion on the basis that the Probate Estate had been fully administered.

Court assumes that this representation was made prior to February 24, 2015 because the Trustee states that he filed his final report and closed the Debtors' bankruptcy case based on this representation. An affidavit executed by Mr. Toot ("Toot Affidavit") is attached to the Brief and dated December 15, 2015. It states that Mr. Toot "informed [the Trustee] about six months ago that [Mr. Toot] did not anticipate any distribution to [the Trustee] . . . ." (Toot Aff. at 1.) If this time period is accurate, the Trustee filed his final report approximately four months prior to being told that there would be no further distribution from the Probate Estate. This circumstance does not make sense, so the Court assumes that Mr. Toot communicated with the Trustee earlier than the Toot Affidavit indicates.

At least two months ago, Mr. Toot informed the Trustee that unclaimed funds held by the state of Ohio were discovered in the approximate amount of $40,000.00. Of that amount, $11,503.00 would inure to the Debtors and, thus, the bankruptcy estate.

Whether or not to reopen a bankruptcy case is discretionary. As set forth above, at first blush, resolution of this Motion appears to be simple and requires denial based on the Trustee's full administration of the Probate Estate prior to case closing. However, circumstances of this case make the decision to grant or deny the Motion a close call. On balance, the Court finds that the circumstances warrant granting the Motion.

First and most significantly, the Debtors did not oppose the Trustee's Motion. Second, the Trustee relied on the representation of Mr. Toot, as administrator of the Probate Estate, when he determined that the Debtors did not have any remaining interest of value in the Probate Estate. In reliance on this representation, the Trustee determined that the Probate Estate had been fully administered as an asset of the bankruptcy estate and filed his final report. Finally, granting the Motion will benefit the creditors of the Debtors' bankruptcy estate and, thus, is the most equitable outcome in this case.

As a consequence, the Court will grant the Motion. The United States Trustee will be directed to appoint a chapter 7 trustee in this case, and the Court will defer the fee associated with reopening this case until final administration.

# # #

IT IS SO ORDERED.

Dated: January 12, 2016
02:42:36 PM

Kay Woods
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United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
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ORDER GRANTING MOTION TO REOPEN CASE

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This cause is before the Court on Motion to Reopen Case ("Motion") (Doc. 54) filed by Michael D. Buzulencia, Chapter 7 Trustee, on November 18, 2015. The Trustee requests the Court to reopen the bankruptcy case of Debtors Jarred R. Combis and Michelle K. Combis to administer "assets in the nature of [unclaimed] funds [that] were found in [the] Estate of James J. Combis." (Mot ¶ 2.) On December 3, 2015, the Court held a hearing on the Motion, at which the Trustee appeared. At the hearing, the Court granted the Trustee the opportunity to file a brief in

support of the Motion. The Trustee filed Brief of Trustee in Support of Motion to Reopen Chapter 7 Case (Doc. 57) on January 6, 2016. No party has opposed the Motion.

For the reasons set forth in the Court's Memorandum Opinion Regarding Motion to Reopen Case entered on this date, the Court hereby:

1. Grants the Motion to Reopen Case;
2. Orders the United States Trustee to appoint a chapter 7 trustee in this case; and
3. Defers the fee associated with reopening this case until final administration.

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