

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
*
ANNIE M. FOSTER, *
* CASE NUMBER 04-44787
Debtor. *
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RICHARD G. ZELLERS, TRUSTEE, *
* ADVERSARY NUMBER 05-4087
Plaintiff, *
*
vs. *
*
GWENDOLYN J. FOSTER, *
* THE HONORABLE KAY WOODS
Defendant. *
*

M E M O R A N D U M O P I N I O N

This cause came before the Court for a bench trial on February 10, 2006. Plaintiff Richard G. Zellers, Esq., Trustee ("Plaintiff"), appeared on his own behalf. Defendant Gwendolyn J. Foster ("Defendant") was present and represented by George N. Kafantaris, Esq. The Court received the testimony of Defendant and her mother, Debtor Annie M. Foster ("Debtor").

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue in this Court is proper pursuant to 28 U.S.C. § 1409(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(H). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

In his Complaint, Plaintiff alleges that Debtor transferred 2.25 acres of vacant real estate on Layer Road in Trumbull County, Ohio ("the Layer Road property") to Defendant on January 15, 2003, in violation of R.C. § 1336.05 of the Ohio Uniform Fraudulent Transfer Act. Complaint ¶¶ 6, 8.

Section 544(b)(1) of the Bankruptcy Code permits the trustee to "avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title[.]" 11 U.S.C. § 544 (1998).

Upon avoiding a transfer under Section 544, the trustee may recover, for the benefit of the estate, "the property transferred, or, if the court so orders, the value of such property, from the initial transferee of such transfer[.]" 11 U.S.C. § 550 (1994).

Statute of Limitations

For the first time, at trial, Defendant argued that the claim for relief in this matter is time-barred as a result of the statute of limitations set forth in R.C. § 1336.09(C). R.C. § 1336.09, captioned "Limitation of Actions," reads, in pertinent part:

A claim for relief with respect to a transfer or an obligation that is fraudulent under section 1336.04 or 1336.05 of the Revised Code is extinguished unless an action is brought in accordance with one of the following:

. . .

(B) If the transfer or obligation is fraudulent under . . . division (A) of

section 1336.05 of the Revised Code, within four years after the transfer was made or the obligation was incurred;

(C) If the transfer or obligation is fraudulent under division (B) of section 1336.05 of the Revised Code, within one year after the transfer was made or the obligation was incurred.

OHIO REV. CODE ANN. § 1336.09 (West 2006). Defendant's statute of limitations argument is based upon the misapprehension that Plaintiff's claim for relief is premised upon R.C. § 1336.05(B).

In order to address Defendant's argument, it is important to first understand both the structure and content of R.C. § 1336.05, which is divided into two subsections: Section 1336.05(B) addresses transfers from a debtor to a specific type of transferee, an "insider," as that term is defined in R.C. § 1336.01(G). R.C. § 1336.05(A), on the other hand, addresses transfers made by a debtor without regard to the status of the transferee.

To prove a violation of R.C. § 1336.05(B), a creditor must demonstrate that: (1) a transfer was made; (2) his claim arose prior to the transfer; (3) the transfer was made by an insolvent debtor; (4) the transfer was made to an insider; (5) the transfer was made for an antecedent debt; and (6) the insider had reasonable cause to believe that the debtor was insolvent at the time of the transfer. See OHIO REV. CODE ANN. § 1336.05 (West 2006).

To prove a violation of R.C. § 1336.05(A), a creditor must demonstrate that: (1) a transfer was made; (2) his claim arose prior to the transfer; (3) the transfer was made by a debtor who was

either insolvent or made insolvent by the transfer; and (4) the debtor did not receive reasonably equivalent value for the transfer. See OHIO REV. CODE ANN. § 1336.05 (West 2006).

Although Plaintiff identifies Defendant as an "insider" at paragraph five of his Complaint, it is clear from the remainder of the allegations that Plaintiff is asserting a violation of R.C. § 1336.05(A). See Complaint ¶ 6 ("The Debtor received no consideration in exchange for such transfer and at the time thereof was insolvent or became insolvent as a result of such transfer."). Consequently, Defendant's reliance on the statute of limitations set forth in R.C. § 1330.09(C) is wholly misplaced based upon the allegations in the Complaint.

In response to Defendant's argument at trial, Plaintiff asserted that the claim is not time-barred based upon the four-year statute of limitations for violations of R.C. § 1336.05(A) set forth in R.C. § 1336.09(B). See OHIO REV. CODE ANN. § 1336.09 (West 2006). Although Plaintiff is ultimately correct that the claim for relief before this Court was timely filed, his argument also misses the mark.

In fact, fraudulent conveyance actions brought by the Trustee pursuant to 11 U.S.C. § 544 are governed by the statute of limitations set forth in 11 U.S.C. § 546. See 11 U.S.C. § 546 (1998); see also *Hunter v. Hansen (In re Hansen)*, 114 B.R. 927, 934 (Bankr. N.D. Ohio 1990); *Corzin v. Haugen (In re Flexible Artcraft Graphics Unlimited, Inc.)*, 74 B.R. 917, 920 (Bankr. N.D. Ohio 1987). Section 546 reads, in pertinent part:

(a) An action or proceeding under section 544 . . . of this title may not be commenced after the earlier of--

(1) the later of--

(A) 2 years after the entry of the order for relief; or

(B) 1 year after the appointment or election of the first trustee under section 702 . . . ; or

(2) the time the case is closed or dismissed.

11 U.S.C. § 546 (1998).

The Petition in this case was filed on September 30, 2004 ("the Petition Date") and Plaintiff was subsequently appointed as the interim trustee. See 11 U.S.C. § 701 (1986). By operation of the default provision set forth in 11 U.S.C. § 702(d), as no trustee was elected by the creditors at meeting conducted on October 3, 2004, Plaintiff became the permanent trustee on that day. See 11 U.S.C. § 702 (1984); see also *Grella v. Zimmerman (In re Art & Co.)*, 179 B.R. 757, 761 (Bankr. D. Mass. 1995) ("In a Chapter 7 case, the appointment of the interim trustee as the permanent trustee takes place automatically at the first § 341 meeting of creditors in the absence of an election by creditors.").

This adversary proceeding was filed on April 18, 2005. As such, it is clear that Plaintiff filed this action within two years of the entry of the order for relief in this case, which is the later of the two events listed in 11 U.S.C. § 546(A)(1).

Accordingly, the matter is not barred by the applicable statute of limitations.¹

Law

Turning to the substantive issues presented in this case, the burden of proof rests upon Plaintiff to demonstrate the statutory elements of constructive fraud. *Youngstown Osteopathic Hosp. Assn. v. Pathways Center for Geriatric Psychiatry, Inc. (In re Youngstown Osteopathic Hosp. Ass'n)*, 280 B.R. 400, 409 (Bankr. N.D. Ohio 2002). However, "[o]nce the creditor proves the requisite elements, the debtor then has the opportunity to rebut the presumption of a fraudulent transfer by demonstrating that the transaction was made for value or consideration." *Id.* (citing OHIO REV. CODE ANN. § 1336.08 (West 2006)); see also *In re Jones*, 305 B.R. 276, 280 (Bankr. S.D. Ohio 2003) ("Fair consideration is an absolute defense to a fraudulent conveyance action under Ohio law.").

Contrary to Defendant's assertions at trial, the actual intent of the Debtor is irrelevant in analyzing an action under R.C. § 1336.05(A). "To establish a fraudulent transfer, trustee must demonstrate debtor's insolvency and the lack of fair consideration for the transfer. If trustee is able to prove these elements, neither debtor's intent nor his knowledge is relevant." *Silagy v. Gagnon (In re Gabor)*, 280 B.R. 149, 157 (Bankr. N.D. Ohio 2002); see also *In re Youngstown Osteopathic Hosp. Ass'n*, 280 B.R. at 408

¹Furthermore, as acknowledged at trial, Defendant failed to assert the statute of limitations as a defense in her Answer as required by FED. R. CIV. P. 8(C) and FED. R. BANKR. P. 7008. As a consequence, that defense was not properly preserved, but was waived. See *Horton v. Potter*, 369 F.3d 906, 911 (6th Cir. 2004) (citing *Haskell v. Washington Twp.*, 864 F.2d 1266, 1273 (6th Cir. 1988)).

("Pursuant to the Ohio Uniform Transfer Act . . . fraud is imputed to the debtor when the statutory elements are met.").

State courts interpreting R.C. § 1336.05 agree. "In order to establish a fraudulent conveyance under . . . [R.C. §] 1336.05, a creditor must prove that the debtor was insolvent or would be made so by the transfer in issue and that the transfer was made without fair consideration. If both of these burdens are met, the transfer is fraudulent as a matter of law. Neither the intent of the debtor nor the knowledge of the transferee need be proven." *Cardiovascular & Thoracic Surgery of Canton, Inc. v. DiMazzio*, 37 Ohio App.3d 162, 165, 524 N.E.2d 915, 918 (5th Dist. 1987) (internal citations omitted); see also *W.H. Ford v. Star Bank*, 1998 WL 553003 *4 (4th Dist. 1998) (debtor's intent irrelevant to a claim based upon R.C. § 1336.05(A)).

Both federal and state courts have reached the same conclusion with respect to other sections of the Ohio Uniform Fraudulent Transfer Act, which rely upon elements of constructive, rather than actual, fraud. See *Blood v. Nofzinger*, 162 Ohio App.3d 545, 560, 834 N.E.2d 358, 369 (6th Dist. 2005) ("In contrast to claims involving actual intent to commit fraud in an asset transfer, R.C. § 1336.04(A)(2) permits claims for constructive fraud against future creditors. Constructive fraud focuses on the effect of the transaction(s) and may exist even where the debtor has no actual intent to commit fraud."); *Comer v. Calim*, 128 Ohio App.3d 599, 606, 716 N.E.2d 245, 249 (1st Dist. 1998), appeal not allowed by 83 Ohio St.3d 1452, 700 N.E.2d 334 (1998), reconsideration denied by 84 Ohio

St.3d 1412, 701 N.E.2d 1021 (1998) (fraud is imputed under R.C. § 1336.05(B) whenever the statutory elements are met); *Haynes v. Holstein (In re Crescent Communities, Inc.)*, 298 B.R. 143, 149 (Bankr. S.D. Ohio 2003) (quoting *Aristocrat Lakewood Nursing Home v. Mayne*, 133 Ohio App.3d 651, 667, 729 N.E.2d 768, 780 (Ohio App. 8th Dist. 1999) ("Unlike actual fraud under O.R.C. § 1336.04(A)(1), constructive fraud under [R.C.] § 1336(A)(2) [sic] focuses more on effect of the transaction rather than the intent with which they were undertaken. Constructive fraud may exist even when the debtor has no actual intent to hinder, delay, or defraud an existing or future creditor.")).

Consequently, in order to prevail in this fraudulent transfer action, Plaintiff need only demonstrate that: (1) Debtor transferred the Layer Road property to Defendant; (2) Plaintiff has standing to assert a violation of R.C. § 1336.05 based upon the claim of a creditor which arose prior to the transfer; (3) Debtor was either insolvent or made insolvent by the transfer; and (4) the debtor did not receive a reasonably equivalent value for the transfer.

Facts

According to Debtor, she transferred the Layer Road property to Defendant by quit claim deed on January 14, 2003. See Certified copy of Quit Claim Deed, Plaintiff's Exhibit C. The deed was recorded on January 15, 2003. See *id.*

At the time of the transfer, Debtor testified that she was retired and relied upon her late husband's pension and social

security payments, as well as financial support from Defendant, for her maintenance.

Although Debtor stated that she had no thought of filing bankruptcy in January 2003, she conceded that her income and expenses on the date of the transfer, specifically her credit card debt, were substantially the same as they were on the Petition Date.

Debtor also admitted that she was not making any payments on her credit card balances in January 2003. She further testified that she had requested that the credit card companies reduce her payments around the same time that she transferred the Layer Road property to Defendant, but the credit card companies refused to accommodate her request.

Debtor stated that although she has seven children, she relies upon Defendant almost exclusively for financial support. Prior to the transfer of the Layer Road property, Debtor testified that Defendant had "helped [her] ongoing," and had given her Eighteen Thousand Dollars (\$18,000.00) to Nineteen Thousand Dollars (\$19,000.00). Debtor further stated that Defendant gave her "a little bit, not that much" before the transfer but "more after." Finally, Debtor testified that Defendant gave her "something" in January 2003, but that she could not recall what Defendant gave her.

Although Debtor admitted that her recollection of the events surrounding the transfer was not clear, she stated that she transferred the property to Defendant because "she did not have money to repay [Defendant]" and "[Defendant] had given [her] so much." Specifically, Debtor testified that she gave Defendant the

Layer Road property expecting that Defendant would "help" her in the future.

Defendant, on the other hand, testified that she and Debtor had an oral agreement with respect to the transfer of the Layer Road property that dated back to 1998, before the death of Defendant's father. Defendant stated that Debtor agreed in 1998 to transfer the Layer Road property to Defendant in exchange for Defendant's continuing financial support following her father's death. Defendant explained that the transfer was not documented until January 2003 because she was living in California and did not return to Warren, Ohio until January 2003. According to Defendant's testimony, she visited Warren at that time for the funeral of her ex-husband. Defendant further testified that, although she did not give Debtor any money or property on the date of the transfer, she has given a total of Twenty-Two Thousand Dollars (\$22,000.00) to her mother as of the date of trial.²

During Debtor's testimony, Plaintiff offered into evidence a property assessment by the Trumbull County Auditor which indicates the that total value of the Layer Road property is Thirteen Thousand Four Hundred Dollars (\$13,400.00). See SMDA Taxpayer Inquiry, Plaintiff's Exhibit D. In addition, Plaintiff offered a second valuation of the property during Debtor's testimony which reflects

²Defendant testified that she has canceled checks and wire transfer receipts in the amount of Four Thousand Nine Hundred Thirty-Four Dollars (\$4,934.00) made out to Debtor and dated between 1995 and January 2003. The alleged documentation, however, was not disclosed as an exhibit and, therefore, the Court struck Defendant's testimony with respect to the alleged checks and wire transfers.

a value of Eleven Thousand Two Hundred Dollars (\$11,200.00). See Real Estate Tax Information Report, Plaintiff's Exhibit E.

Neither Debtor nor Defendant offered any credible testimony regarding the value of the Layer Road property. Debtor testified that the property was worth between Four Thousand Dollars (\$4,000.00) and Six Thousand Dollars (\$6,000.00), based upon a property valuation dating back to the time when she received the property through a bequest approximately 22 years ago. The Court, upon objection, struck Debtor's valuation testimony as hearsay. Defendant stated that the value of the property was between Five Thousand Dollars (\$5,000.00) to Six Thousand Dollars (\$6,000.00) based upon tax bills that she received from the Auditor; however, the tax bills were not offered into evidence.

Analysis

The Court received conflicting testimony with respect to the date upon which the transfer of the Layer Road property was made. Debtor warranted that the transfer occurred on January 15, 2003, while Defendant testified that the parties entered into an oral agreement to transfer the Layer Road property in 1998.

R.C. § 1336.06, captioned "Effectiveness of transfer or obligation," reads, in pertinent part:

For the purposes of this chapter:

(A)(1) A transfer is made if either of the following applies:

(a) with respect to an asset that is real property . . . when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom

applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee

OHIO REV. CODE ANN. § 1336.06 (West 2006). Based upon the quit claim deed admitted into evidence at trial, it is clear that Debtor transferred the Layer Road property to Defendant on January 15, 2003 for purposes of this case. See *Ransier v. McFarland (In re McFarland)*, 170 B.R. 613, 623 (Bankr. S.D. Ohio 1994) (transfer occurred when deed was filed with appropriate county recorder).

Defendant's testimony that the transfer occurred in 1998 and was merely formalized in writing January 2003 lacks merit because it is premised upon the supposition that Defendant had to be present in the state of Ohio in order for the transfer to be valid. In fact, there is no evidence before the Court to establish that Defendant's presence in the state of Ohio was required to complete the transfer. To the contrary, the quick claim deed in evidence bears only three signatures – the signatures of Debtor, the county recorder, and a notary public. Defendant's signature was not required on the quit claim deed.

Defendant's testimony regarding the timing of the transfer of the Layer Road property is further undercut by her earlier testimony regarding the financial support she provided to her mother. During cross examination, when Defendant was asked about the specific amount of money she had given to her mother, Defendant stated, "Whenever I'm home I leave my mother with something." Therefore, her later statement that the transfer did not occur until

January 2003 because she was not in Warren, Ohio at any other time after the death of her father is less than credible.

Moreover, although Debtor explained that her daughter's financial support continued after her husband's death, she did not corroborate Defendant's testimony regarding the oral agreement for the transfer of the Layer Road property in 1998. Debtor made no mention of such an agreement. Instead, her testimony was consistent with the conclusion that the transfer was made on the date on which the quit claim deed was recorded.

Finally, Defendant is prevented from asserting that the transfer of the Layer Road property occurred in 1998 as a defense to the present action because the transfer of real property by oral agreement violates the Ohio Statute of Frauds. See OHIO REV. CODE ANN. § 1335.05 (West 2006) ("No action shall be brought whereby to charge a person . . . upon a contract or sale of lands, tenements . . . unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized.").

Having concluded that the transfer of the Layer Road property occurred on January 15, 2003, the Court must next examine the Debtor's financial situation at that time in order to determine whether Plaintiff has carried his burden of proof with respect to the remaining elements of his case.

At trial, Debtor admitted that she was not making payments on her credit card accounts in January 2003. This single piece of

evidence serves a two-fold purpose: First, in Ohio, "[a] debtor who generally is not paying his debts as they become due is presumed to be insolvent." OHIO REV. CODE ANN. § 1336.02(A)(2)(West 2006). Defendant did not present any evidence to overcome the presumption of Debtor's insolvency on the date of the transfer. Therefore, Debtor's testimony about her credit card debt in January 2003 establishes that she was insolvent at the time of the transfer of the Layer Road property.

Second, the antecedent credit card debt establishes the existence of unsecured creditors whose claims arose prior to the transfer. Under the strong-arm provision of the Bankruptcy Code, 11 U.S.C. § 544(b), the trustee can avoid any transaction of the debtor that would be voidable by any actual unsecured creditor under state law. See *Leibowitz v. Parkway Bank & Trust Co. (In re Image Worldwide, Ltd.)*, 139 F.3d 574, 576-77 (7th Cir. 1998). "The trustee need not identify the creditor, so long as the unsecured creditor exists." *Id.* at 577; see also *Matter of Leonard*, 125 F.3d 543, 544-45 (7th Cir. 1997); *Sender v. Simon*, 84 F.3d 1299, 1304 (10th Cir. 1996). Consequently, Debtor's testimony regarding her inability to pay her credit card debt in January 2003 demonstrates the existence of an actual unsecured creditor, which is essential to establish Plaintiff's standing in this case.

Turning to the final element of a fraudulent transfer action under R.C. § 1336.05(A), Plaintiff must prove that Debtor did not receive "reasonably equivalent value" for the Layer Road property. See OHIO REV. CODE ANN. § 1336.05 (West 2006). To

determine "reasonably equivalent value," value must be measured from the standpoint of the debtor. See *Aristocrat Lakewood Nursing Home*, 133 Ohio App.3d at 665, 729 N.E.2d at 777-78 (citing *SPC Plastics Corp. v. Griffith (In re Structurlite Plastics Corp.)*, 193 B.R. 451, 456 (Bankr. S.D. Ohio 1995)). "[T]he test used to determine whether a transfer was supported by reasonably equivalent value focuses on whether there is a reasonable equivalence between the value of property surrendered and that which was received in exchange." *Corzin v. Fordu (In re Fordu)*, 201 F.3d 693, 708 (6th Cir. 1999).

Both Debtor and Defendant testified that Debtor transferred the Layer Road property to Defendant in recognition of Defendant's financial support – both before and after the transfer. Debtor testified that Defendant gave her Eighteen Thousand Dollars (\$18,000.00) to Nineteen Thousand Dollars (\$19,000.00) prior to January 15, 2003, and "more after [January 15, 2003]." Defendant testified that she gave Debtor approximately Twenty-Two Thousand Dollars (\$22,000.00) between 1995 and the date of trial.

However, to the extent that the transfer of the Layer Road property may have been undertaken in exchange for Defendant's promise of future support to Debtor, it is clear from the plain language of the Act that Debtor did not receive any value for the transfer. R.C. § 1336.03(A) reads, in pertinent part, "value does not include an unperformed promise made otherwise than in the ordinary course of the business of the promisor to furnish support to the debtor or another person." OHIO REV. CODE ANN. § 1336.03 (West 2006).

Accordingly, the Court must limit its analysis to the financial support provided to the Debtor prior to the transfer in order to determine whether "reasonably equivalent value" was given in exchange for the Layer Road property. Value is given for a transfer, according to R.C. § 1336.03(A), if "in exchange for the transfer . . . property is transferred or an antecedent debt is secured or satisfied" R.C. § 1336.03 (West 2006).

Although Defendant did not cite R.C. § 1336.03(A), her argument is based upon the assertion that the Layer Road property was transferred to her by Debtor to repay Defendant for the financial support she provided to Debtor prior to the transfer. However, this Court finds that the alleged indebtedness in this case is more analogous to a debt of gratitude, than a legal debt cognizable under R.C. § 1336.03(A).

"Debt" is defined in R.C. § 1336.01(E) as "liability on a claim." OHIO REV. CODE ANN. § 1336.01 (West 2006). R.C. § 1336.01(C) defines a "claim" as "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, or unsecured." *Id.*

Despite the broad definition of "debt," Defendant's financial support of her mother prior to the transfer did not create a debt, as that term is defined in R.C. § 1336.01. The evidence adduced at trial does not support the conclusion that Defendant's financial support of her mother generated "a right to payment" from Debtor to Defendant.

There is no evidence before this Court to establish that Defendant considered the money she gave to her mother prior to the transfer to create an indebtedness. The parties failed to execute a note or other evidence of indebtedness. Likewise, Defendant did not submit a proof of claim for the alleged obligation in the Chapter 13 case. Moreover, neither Debtor nor Defendant characterized the transfer of the Layer Road property as a repayment of an existing loan. Not surprisingly, even though Defendant testified that she and her mother had entered into an oral agreement to transfer the property prior to her father's death, there is no evidence that Defendant would not have provided financial support to her mother if Defendant did not believe that she would receive title to the property.

Therefore, the testimony at trial establishes that the transfer of the Layer Road property was gratuitous and that Debtor transferred the property in order to reward her daughter's generosity, rather than to secure or satisfy an antecedent debt as required by R.C. § 1336.03(C).

Defendant argued at trial that an informal family arrangement like the one presented in this case is commonplace and that such an arrangement should be recognized as creating a legal debt in Ohio. In fact, the developing body of family law in Ohio reflects the contrary view.

Both state and federal courts in Ohio have adopted the maxim: When a child performs services for a parent, there is a presumption that such performance was gratuitous, and to be entitled

to compensation, the child must prove an express contract for compensation for services. 46 Ohio Jur.3d Family Law 239 (2005); see also *Vargo v. Clark*, 128 Ohio App.3d 589, 598, 716 N.E.2d 238, 244 (4th Dist. 1998) (recognizing "family service rule"); *Kandel v. Shanklin (In Re Shanklin)*, 1995 WL 33473 *4 (Bankr. N.D. Ohio); *Sabin v. Graves*, 86 Ohio App.3d 628, 632, 621 N.E.2d 748, 751 (6th Dist. 1993).

For instance, in *United States v. Hughel*, 20 F. Supp. 2d 1154 (S.D. Ohio 1997), the United States sought to avoid a transfer of real property from a taxpayer (Hughel) to his sister (Young). After Hughel and Young each inherited an undivided one-half interest in their parent's residence following the death of their mother, Hughel conveyed his one-half interest in the property to Young. *Id.* at 1157. According to deposition testimony, Young gave Hughel no money or other property in exchange for his one-half interest in the property because Young had undertaken the burden of caring for both of their parents. *Id.*

But the district court in *Hughel* refused to recognize that the care of a parent creates a legal debt in Ohio. *Id.* at 1159. Although the Court recognized that both Hughel and Young had a moral obligation to assist in the care of their parents, the Court ultimately held that "[t]he fact that Ms. Young carried more than her fair share of that moral obligation did not give rise to a legal obligation, the discharge of which constituted fair consideration for [Hughel's] one-half interest in the house." *Id.* at 1158-59.

Here, the issue before the Court is repayment of money rather than payment for services. However, it is the opinion of this Court that the policy recognized by the "family service rule" applies with equal force to the facts presented in the case *sub judice*. Based upon the testimony at trial, Defendant's financial support of her mother was borne of a moral, rather than legal, duty. Defendant simply has not produced any evidence to overcome the presumption that her financial support did not create a legal obligation for repayment by Debtor. Therefore, the transfer of the Layer Road property was not for "reasonably equivalent value" because the transfer did not secure or satisfy an antecedent debt.

As Plaintiff has successfully demonstrated the elements of constructive fraud, the burden shifts to Defendant to prove that Debtor received reasonably equivalent value in exchange for the transfer of the Layer Road property. However, Defendant did not come forward with any evidence to demonstrate that she gave Debtor anything of reasonably equivalent value in exchange for the Layer Road property.³

³In his closing argument, counsel for Defendant relied on two cases which are clearly distinguishable from the above-captioned case. In *Crocker v. Hood*, 113 Ohio App.3d 478, 681 N.E.2d 460 (9th Dist. 1996), a judgment creditor (Crocker) sought to avoid the conveyance of the interest of the debtor (Hood) in his residential/marital property to his wife (Shirley).

Although the face of the deed indicated that Shirley paid only Ten Dollars (\$10.00) for the land, her testimony at trial revealed that she endured other legal detriments, such as securing a second mortgage and renouncing any claims to Hood's pension and profit-sharing plan in their pending divorce. Based upon Shirley's testimony at trial, the Ninth District held that the trial court did not err in concluding that the transfer of marital property was supported by adequate consideration.

Here, Defendant did not present any evidence that she received any value or that she assumed any "legal detriment" in exchange for the Layer Road property. Thus, her reliance on the precedent established in *Hood, supra*, is misplaced.

Conclusion

In summary, the transfer at issue in this case occurred on January 15, 2003. The uncontroverted testimony at trial establishes that Debtor was not paying her bills as they became due in January 2003. The existence of the antecedent credit card debt demonstrates that Plaintiff has standing to bring this fraudulent conveyance action and that Debtor was insolvent as a matter of law pursuant to R.C. § 1336.02(A)(2).

Debtor received no "value" for the Layer Road property. To the extent that the transfer may have been made in exchange for an unperformed promise by Defendant to furnish future support to Debtor, that promise does not constitute value pursuant to R.C. § 1336.03(A). Furthermore, to the extent that the transfer may have been made in exchange for past support of Debtor by Defendant, it is clear that Defendant's financial support did not create an "antecedent debt" which was either secured or satisfied by the transfer.

Accordingly, this Court finds that the transfer of the Layer Road property was a fraudulent conveyance under R.C. § 1336.05(A). Therefore, pursuant to 11 U.S.C. § 550, the Court

In *Ransier v. McFarland*, 170 B.R. 613 (Bankr. S.D. Ohio 1994), a Chapter 7 trustee successfully avoided the transfer of interests in real property from a debtor to her husband. Because the debtor in *Ransier* did not retain a sufficient beneficial interest in the real property, the Court concluded that the "continuing concealment doctrine" could not be invoked to by the trustee to deny the debtor's discharge.

Defendant's reliance on *McFarland*, *supra*, is equally unavailing. Insofar as Plaintiff has not sought to deny Debtor's discharge in this case, the "continuing concealment doctrine" is irrelevant to this fraudulent transfer action.

hereby orders that Plaintiff may recover the property transferred for the benefit of the creditors in Case No. 04-44787. Defendant shall immediately convey the Layer Road property to the Trustee for the benefit of the estate.

An appropriate order will follow.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
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ANNIE M. FOSTER, *
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Debtor. * CASE NUMBER 04-44787
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RICHARD G. ZELLERS, TRUSTEE, *
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Plaintiff, * ADVERSARY NUMBER 05-4087
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vs. *
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GWENDOLYN J. FOSTER, *
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Defendant. * THE HONORABLE KAY WOODS
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O R D E R

For the reasons set forth in this Court's memorandum opinion entered on this date, the transfer of the Layer Road property on January 15, 2003 was a fraudulent conveyance pursuant to R.C. § 1336.05(A). Accordingly, Defendant shall immediately convey the Layer Road property to the Trustee for the benefit of the estate.

IT IS SO ORDERED.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE