The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.

Dated: April 13 2006

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	)	Case No. 05-76317
	)	
Randy Lee Groves,	)	Chapter 7
Dawn M. Groves,	)	
	)	
Debtors.	)	JUDGE MARY ANN WHIPPLE

MEMORANDUM OF DECISION AND ORDER DENYING MOTION FOR TURNOVER

This matter is before the court after hearing on the Chapter 7 Trustee's Motion for Turnover [Doc. # 8] and Debtors' response [Doc. # 9]. The Trustee seeks an order for turnover of a 2003 Chevrolet Monte Carlo titled in the name of Debtor Dawn M. Groves ("Debtor"). The court has reviewed the submitted materials and the entire record of the case. Based upon that review, and for the following reasons, the Motion for Turnover will be DENIED.

FACTUAL BACKGROUND

The following facts are undisputed. On April 28, 2005, Debtor's son, Justin A. Wittenmyer, obtained a loan from First Citizens Bank in the amount of $15,100 for the purpose of purchasing the vehicle at issue in this matter. The loan was secured by a savings account with First Citizens Bank that is owned by Wittenmyer's employer. The purpose of using the savings account to secure the loan was to enable Wittenmyer to obtain a low interest rate loan at 3 1/2 per cent.

At the time he obtained the loan, Wittenmyer was a student at Bowling Green State University. On the same day that he obtained the loan, he gave Debtor a check made out to the previous owner as payment

for the vehicle so that his mother could complete the purchase on his behalf and he could hurry back to school. Debtor delivered the check to the owner and picked up the vehicle, taking title in her name so that she could get temporary tags for her son. Loan proceeds in excess of the purchase price were used to pay the sales tax on the vehicle. On the day of the purchase, Debtor delivered the vehicle to her son. Wittenmyer has had possession of the vehicle since that time and has made all of the payments on the loan obtained for the purpose of purchasing the vehicle.

Debtor and her husband filed a joint Chapter 7 petition on October 15, 2005. She did not schedule the vehicle as personal property owned by her on Schedule B, having forgotten about it. She did, however, inform the Trustee at the first meeting of creditors that she held title to the vehicle, and she informed him of the circumstances surrounding the purchase of the vehicle. There being no liens on the vehicle, the Trustee filed the instant Motion for Turnover.

LAW AND ANALYSIS

The issue before the court is whether the vehicle is property of the bankruptcy estate subject to turnover under the circumstances presented. The turnover provision of the Bankruptcy Code provides that "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, . . . shall deliver to the trustee . . . such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a). In order to prevail, the Trustee must demonstrate that the property is property the trustee may use under § 363; that is, it must be property of the estate. *United States v. Chalmers (In re Wheeler),* 252 B.R. 420, 425 (W.D. Mich. 2000); 11 U.S.C. § 363(b)(1) (providing that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, *property of the estate*").

The bankruptcy estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). However, "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) . . . of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." *Id.* § 541(d).

In determining whether the vehicle is property of the estate, the court must therefore determine the nature of Debtor's interest in the vehicle under circumstances in which the certificate of title was put in Debtor's name but her son provided the funds for its purchase and has had possession of the vehicle since its purchase. This determination is governed by Ohio law. *See Butner v. United States*, 440 U.S. 48, 54

(1979) ("Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law"). The court has previously addressed a similar issue in its unpublished opinion in *Kovacs v. Burr (In re Burr)*, Adv. No. 01-3174 (Bankr. N.D. Ohio Feb. 7, 2002). Although the Trustee contends that Ohio's Certificate of Motor Vehicle Title Act, Ohio Revised Code § 4505.01, *et seq.*, controls in determining whether the vehicle is property of the estate, he concedes that, unless otherwise overruled, the reasoning in *Burr* is equally applicable in this case.

Ohio's Certificate of Motor Vehicle Title Act provides in relevant part as follows:

> (A) No person acquiring a motor vehicle from its owner, whether the owner is a manufacturer, importer, dealer, or any other person, shall acquire any right, title, claim, or interest in or to the motor vehicle until there is issued to the person a certificate of title to the motor vehicle, or there is delivered to the person a manufacturer's or importer's certificate for it, or a certificate of title to it is assigned as authorized by section 4505.032 of the Revised Code; and no waiver or estoppel operates in favor of such person against a person having possession of the certificate of title to, or manufacturer's or importer's certificate for, the motor vehicle, for a valuable consideration.
>
> (B) Subject to division (C) of this section, no court shall recognize the right, title, claim, or interest of any person in or to any motor vehicle sold or disposed of, or mortgaged or encumbered, unless evidenced:
>
> (1) By a certificate of title . . . ;
>
> (2) By admission in the pleadings or stipulation of the parties. . . .

Ohio Rev. Code § 4505.04.

In *Burr*, the debtor was the title owner of a motorcycle that she alleged was purchased by her on behalf of another person who had made all the payments and had paid for all repairs and improvements on the motorcycle. The court found that despite the apparent clarity of § 4505.04, the statute did not preclude the court from recognizing, if the alleged facts were proven at trial, that an express trust was created, with the beneficial interest in the motorcycle owned by someone other than debtor, and that, under those circumstances, only Burr's legal title to, and not the equitable interest in, the motorcycle becomes property of the bankruptcy estate. In so finding, the court considered the following cases interpreting § 4505.04.

In *In re Amos*, 201 B.R. 184 (Bankr. N.D. Ohio 1996), the debtor agreed to take legal title to a van simply as an accommodation in order to overcome a problem raised by the dealer of titling the van in her boyfriend's name. The debtor's boyfriend paid for the van and the van was used exclusively by him. *Id.* at 185. The court found the agreement between the debtor and her boyfriend created an express trust, under which the boyfriend owned the equitable interest in the van. *Id.* at 187. The court considered that the

purpose of the Ohio Certificate of Motor Vehicle Title Act, as stated by the Ohio Supreme Court, "is to prevent the importation of stolen motor vehicles, to protect Ohio bona-fide purchasers against thieves and wrongdoers, and to create an instrument evidencing title to and ownership of motor vehicles." *Id.* (citing *Hughes v. Al Green, Inc.*, 65 Ohio St. 2d 110, 115 (1981)). The court also considered the Ohio Supreme Court's explanation that "R.C. 4505.04 is irrelevant to all issues of ownership except those regarding the importation of vehicles, rights as between lienholders, rights of bona-fide purchasers, and instruments evidencing title and ownership." *Id.* (citing *Smith v. Nationwide Mut. Ins. Co.*, 37 Ohio St. 3d 150, 153 (1988). In both *Hughes* and *Smith*, the Ohio Supreme Court carved out exceptions to § 4505.04 where applying the statute would not further any purpose of the statute. *See Hughes*, 65 Ohio St. 2d at 115-17 (holding that § 4505.04 does not preclude a buyer from obtaining a recognizable insurable interest prior to the execution of a certificate of title in his name); *Smith*, 37 Ohio St. 3d at syllabus (holding that criteria found in the Uniform Commercial Code, not § 4505.04, identify the owner of a motor vehicle for purposes of determining insurance coverage in case of an accident); *see also State v. Shimits*, 10 Ohio St. 3d 83, 85 (stating that it does not construe § 4505.04 "to effectively deprive equitable owners of their interest in a vehicle where that vehicle may be forfeited to the state"). There being no dispute as to who was intended to own the beneficial interest in the van in *Amos*, the court found "no reason to expect that Ohio courts would interpret section 4505.04 to invalidate express trusts where doing so would further none of the purposes the Supreme Court has said that the section was intended to achieve." *Amos*, 201 B.R. at 187. As such, the court found that the van was not property of the estate subject to sale by the Chapter 7 trustee because the debtor did not own the equitable interest in the vehicle. *Id.* at 187-88. The court explained that "employing section 4505.04 to give the Debtor beneficial ownership of the Van would enrich the Debtor's estate and her creditors without justification." *Id.* at 187. In *Bavely v. Powell (In re Baskett)*, 219 B.R. 754, 761-62 (B.A.P. 6th Cir. 1998), the United States Bankruptcy Panel for the Sixth Circuit adopted the reasoning in *Amos* and concluded that a claim of an express trust may have merit as a defense to a trustee's turnover action, even though the vehicle was titled in the debtor's name.

In *Burr*, this court also considered the Ohio Supreme Court's most recent analysis of § 4505.04 in *Saturn of Kings Automall, Inc. v. Mike Albert Leasing, Inc.*, 92 Ohio St. 3d 513 (2001). In *Saturn*, a car dealer sold vehicles to a second dealer who in turn sold them to a third dealer. The original seller allowed the second dealer to take possession of the vehicles but retained the certificates of title, in its name, pending receipt of payment. While the third dealer paid the second dealer for the vehicles, the first dealer was never paid and refused to release the certificates of title. The original dealer sought replevin and damages against

the third dealer, arguing that, under § 4505.04, it was the legal owner of the vehicles. *Id.* at 513-14. The third dealer argued that ownership should be determined under the Uniform Commercial Code's provision relating to entrustment of possession of goods to a merchant who deals in goods of that kind. Ultimately, the Ohio Supreme Court held that "[i]n determining competing claims of ownership of a motor vehicle, R.C. 4505.04(A) controls over the provisions of the Uniform Commercial Code." *Id.* at 514. However, as this court observed in *Burr*, the *Saturn* opinion does not cite *Shimits*, a case in which the Ohio Supreme Court explicitly recognized that equitable ownership interests can, under some circumstances, trump the certificate of title.

As in *Burr,* the bankruptcy estate in this case acquires it rights only through Debtor. There is no issue regarding the sale or theft of the vehicle and no dispute between Debtor and Wittenmyer, the purported equitable interest holder, as to the beneficial ownership of the vehicle. In this case, Debtor and Wittenmyer agreed that Debtor would deliver payment provided by Wittenmyer to the prior owner of the vehicle and take title to the vehicle solely as an accommodation to Wittenmyer. This agreement created an express trust, under which Debtor holds title to the vehicle for the benefit and use of Wittenmyer. *See Brown v. Concerned Citizens for Sickle Cell Anemia, Inc.*, 56 Ohio St. 2d 85 (1978) (stating the elements of an express trust are an intent to create a trust, the existence of trust property, and a fiduciary relationship); *Norris v. Norris ,* 57 N.E.2d 254, 258 (Ohio App.1943) ("An express trust may be created even though the parties do not understand what a trust is, and whether or not so created may be determined from all the circumstances surrounding the transactions between the parties). The court does not read *Saturn* as abrogating the Ohio Supreme Court's earlier recognition of equitable ownership exceptions to § 4505.04, especially where, as here, there is no dispute as to the intended owner and application of the statute would further none of its purposes. The court concludes that the reasoning in *Amos* and *Bavely* remains valid, notwithstanding the Ohio Supreme Court's opinion in *Saturn*.

The court finds support for this conclusion in two post-*Saturn* cases dealing with the application of § 4505.04. In *In re Ward*, 300 B.R. 692 (Bankr. S.D. Ohio 2003), the court applied the reasoning in *Amos* and *Bavely* in finding that § 4505.04 did not foreclose the express trust claim of the debtor's son under facts similar to those presented in this case. The court found no reported decision that holds an express trust granting ownership interest in a vehicle to be prohibited by § 4505.04 and found that *Saturn* does not mention, much less address, the issue. *Id.* at 698-99.

In *Bobby Layman Chevrolet, Inc. v. Spire Motor Co.*, 157 Ohio App. 3d 13 (2004), a dealer caused two vehicles to be delivered to an auctioneer. The auctioneer, acting as the dealer's agent, sold the vehicle

to a third party, who, after paying the auctioneer, took possession of the vehicles. However, the auctioneer failed to pay the dealer and the dealer refused to transfer title to the vehicles to the third party. *Id.* at 903. The trial court entered judgment in favor of the dealer, finding *Saturn* to be dispositive. The court of appeals reversed, finding that *Saturn* only protects the dealer from an obligation to transfer title pursuant to the entrustment provisions under the Uniform Commercial Code and not from the obligations it accepted by appointing the auctioneer as its agent and directing the auctioneer to sell the vehicles. *Id.* at 905.

Similarly, in this case, *Saturn* does not protect the bankruptcy estate, which acquires its rights only through Debtor, from the obligation imposed upon Debtor pursuant to the express trust agreement with her son. Debtor holds legal title to the vehicle solely for the benefit of her son. Holding no equitable ownership interest in the vehicle, under § 541(d), the equitable interest in the vehicle is excluded from property of the estate. *See XL/Datacomp, Inc. v. Wilson (In re Omegas Group, Inc.)*, 16 F.3d 1443, 1449 (6th Cir. 1994) (explaining that "[a] debtor that served prior to bankruptcy as trustee of an express trust generally has no right to the assets kept in trust, and the trustee in bankruptcy must fork them over to the beneficiary"). As such, the vehicle is not subject to the turnover provisions of § 542.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that the Trustee's Motion for Turnover [Doc. # 8] be, and hereby is, **DENIED.**