

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.



Mary Ann Whipple
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In Re)	Case No. 05-36255
)	
Mattie Mae McClain)	Chapter 13
)	
Debtor(s).)	
)	JUDGE MARY ANN WHIPPLE

ORDER DENYING MOTION TO ALLOW TRANSFER

The court held a hearing on July 16, 2008, on the Motion to Allow Transfer of Debtor’s Real Estate to Probate Heirs [Doc. #33] and the Chapter 13 Trustee’s objection [Doc. #34].

Debtor is now deceased, and the beneficiaries of her state court-administered probate estate seek relief from the routine injunction upon transfer of her real estate entered in this case so that they may transfer it into their names. Under Rule 1016 of the Federal Rules of Bankruptcy Procedure, the death of a debtor does not automatically abate a Chapter 13 case. Rather, “the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.”

Debtor’s real estate is free and clear of any liens, and the case was filed and the plan for repayment of her unsecured creditors confirmed in a manner so as to comply with the best interests of creditors test under Chapter 13. Had Debtor filed a Chapter 7 case, a Chapter 7

Trustee would have seized and sold her real estate to satisfy the claims of Debtor's unsecured creditors; her plan prevents that result by essentially allowing the real estate to be acquired from her creditors through payment of its value over time under the protection of the automatic stay and allowing a discharge of the unsatisfied percentages of their claims upon completion of the plan.

As Chapter 13 cases may be dismissed at any time at the request of a debtor under 11 U.S.C. § 1307, and because the court lacks any means other than continued jurisdiction over the real estate to insure compliance with the plan as long as this case remains pending in this court, the motion will be denied. Had Debtor not died, the court likewise would not have been willing to authorize transfer of her real estate without consideration on her request. The very purpose of the routine injunction upon transfer of assets that would otherwise be available to satisfy the claims of creditors would be circumvented. Thus, in denying Movants' request the case is being administered in the same manner as it would have been if Debtor had not died and in compliance with Rule 1016.

For good cause shown,

IT IS ORDERED that Motion to Allow Transfer of Debtor's Real Estate to Probate Heirs [Doc. #33] is hereby **DENIED**.