

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. 09-32922
	)	
Joseph F. Conner, Jr.	)	Chapter 13
	)	
Debtor(s)	)	JUDGE MARY ANN WHIPPLE
	)	
	)	

**ORDER DENYING CONFIRMATION**

This matter came before the court for hearing on confirmation on June 16, 2009. The Chapter 13 Trustee and an Attorney for Susan Pioch, executor of the Estate of Joseph Conner, Sr., appeared in person at the hearing.

Debtor proposes to cure a default in and maintain payments on a mortgage on real property located at 4833 Catalina, Toledo, Ohio. Debtor does not own the real property and is not on the note or mortgage for the property. The real property was his father's property. Debtor has apparently been living there and making payments on the mortgage debt, although not consistently as there is a default therein that he proposes to cure through his Chapter 13 plan. His father is now deceased, and the real property is part of the Estate of Joseph Conner, Sr. being probated in the Lucas County, Ohio Common Pleas Court in proceedings that commenced before this bankruptcy case.

In addition to curing defaults in the mortgage debt, Debtor's plan proposes to pay a minor

co-legatee of the probate estate, Brittany Marie Conner, the sum of \$27,000 through the Chapter 13 case on account of her interest in the Conner probate estate. There is no information of record as to how that sum was arrived at or what it represents. Specifically, the proposed plan [Doc. # 2, ¶ 13] states that “[i]f the other heir accepts payment through the plan, she must release any claim she has under the estate once the plan payments to the heir have been made. The payments to the heir Brittany Conner are to be made to an account to be set up through the probate court in trust for the minor heir until the heir reaches the age of 18.”

Susan Pioch, the executor for the Estate of Joseph Conner, Sr., has objected to confirmation of the plan on the grounds that it impermissibly interferes with the probate estate. [Doc. #16].

The court agrees that the objection to confirmation is well-taken. In *Marshall v. Marshall*, 547 U.S. 293, 311-12 (2006), the Supreme Court recently reaffirmed that there is a narrow judicially created probate exception to federal jurisdiction, including bankruptcy jurisdiction: “the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent’s estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court.” Narrow though it may be, the court finds that Debtor’s proposed plan falls directly within the probate exception. Debtor’s proposed plan seeks to bind and prevent the sale of real property in which he has at most a possessory interest that is under the direct control of the executor of a state court probate estate commenced before this bankruptcy case. As another bankruptcy court has stated, *Marshall* stands “for the proposition that the probate exception prevents federal courts from exercising in rem jurisdiction over a res when a state court is simultaneously doing the same.” *Nickless v. Kessler (In re Berman)*, 352 B.R. 533, 543 (Bankr. D. Mass. 2006). Debtor also apparently proposes to value that probate estate property by declaration in a Chapter 13 plan and then determine and force a (minor) co-legatee’s interest in that probate estate to be paid by a co-beneficiary through a bankruptcy proceeding instead of by the executor through the probate proceedings. These proposals present a direct interference with the ongoing state court probate proceedings of the Estate of Joseph Conner, Sr. This court lacks jurisdiction to authorize such actions under the probate exception to federal jurisdiction.

To the extent that Debtor’s objectives through Chapter 13 might properly be met without implicating the probate exception to federal court jurisdiction, the court will afford him the opportunity to file a proposed amended plan to bring it within the jurisdiction of this court. If an

amended plan is not timely filed as provided in this order, this case will be dismissed without further notice or opportunity for hearing. *See* 11 U.S.C. § 1307(c)(5).

**IT IS ORDERED** that an amended plan must be filed and served on all creditors and parties in interest on or before **July 15, 2009, absent which this case will be dismissed without further notice or opportunity for hearing.**

**IT IS FURTHER ORDERED** that, in the event a proposed amended plan is filed as provided in this order, **the Confirmation Hearing thereon will be held on August 18, 2009, at 3:00 o'clock p.m. Objections to confirmation of any amended plan must be filed and served on or before August 11, 2009.**