

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 29 2010

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 09-36839
)	
Steven L. Heiskell,)	Chapter 7
)	
Debtor.)	
)	JUDGE MARY ANN WHIPPLE

MEMORANDUM OF DECISION

This case came before the court for hearing on the Chapter 7 Trustee’s Motion for Turnover (“Motion”) [Doc. # 12], Debtor’s opposition [Doc. #14] and supplemental response [Doc. # 24].¹ Debtor and his attorney attended the hearing in person and the Trustee attended by telephone. The Trustee seeks an order pursuant to 11 U.S.C. § 542 directing Debtor to turn over proceeds of a student loan and grant held by him in his bank account on the date of filing his bankruptcy petition. The parties agreed that there are no facts in dispute and that the issue for the court to decide is whether the proceeds are property of the estate.

The district court has jurisdiction over this Chapter 7 case pursuant to 28 U.S.C. § 1334(a) as a case under Title 11. It has been referred to this court by the district court under its general order of reference. 28 U.S.C. § 157(a); General Order 84-1 of the United States District Court for the Northern District of

¹ The court granted Debtor's counsel fourteen days to file a supplement to his legal arguments. Although he did not file a supplemental brief, Debtor filed a pro se supplement setting forth the circumstances surrounding his use of the funds that are the subject of the turnover motion.

Ohio. Proceedings involving the turnover of property of the bankruptcy estate are core proceedings that the court may hear and determine under 28 U.S.C. § 157(b)(1) and (b)(2)(E). For the reasons that follow, the Trustee's Motion will be granted.

The relevant facts are straightforward. On October 1, 2009, Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. On that date, Debtor had on deposit in his bank account \$5,324.19. These funds constitute proceeds of a direct loan disbursement made under the William D. Ford Federal Direct Loan Program and a Pell grant disbursement made on or about September 18, 2009. After his petition was filed, Debtor used these funds, at least in part, to pay for certain living expenses and to purchase a vehicle for transportation to work and school. Debtor asserts that these funds are not property of the bankruptcy estate and, therefore, are not subject to turnover to the Trustee under § 542.

LAW AND ANALYSIS

Under 11 U.S.C. § 542(a), “an entity . . . in possession, custody, or control, during the case, of property that the trustee may use . . . under section 363 of this title. . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.” An action to recover money or property generally requires an adversary proceeding. Fed. R. Bankr. P. 7001(1). Rule 7001(1) provides an exception if the proceeding, as is the case here, is brought by a trustee to compel the debtor to deliver property to the trustee. *Id.* Such relief can be sought by motion. *See* Fed. R. Bankr. P. 9014. And while a turnover action by motion is generally appropriate only when the debtor has possession of the property of the estate in issue, when the property sought to be turned over is money, a debtor can be ordered to turnover an equivalent amount of cash. *E.g., In re Gentry*, 275 B.R. 747, 751 (Bankr. W.D. Va. 2001).

The burden of proof is on the party seeking turnover. *United States v. Chalmers (In re Wheeler)*, 252 B.R. 420, 425 (W.D. Mich. 2000). In order for the Trustee 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. *See id.*; 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*”); *In re Osterwalder*, 407 B.R. 291, 294 (Bankr. N.D. Ohio 2008). “Property of the estate” broadly includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). While state law determines a debtor's property interest in the property in issue, “the extent to which a debtor's interest in property creates ‘property of the estate’ for turnover is a question of federal law.” *Demczyk v. The Mutual Life Ins. Co. of New York (In re Graham Square, Inc.)*, 126 F.3d 823, 831 (6th Cir. 1997)(quoting *In re Amdura Corp.*

167 B.R. 640, 644 (D. Colo. 1994)).

In the context of a preference claim, the Sixth Circuit Court of Appeals recently explained that “the degree of control a debtor exercises over the property transferred is the principal determinant of whether the debtor has an ‘interest’ in the property such that its transfer may be avoided under § 547(b).” *MBNA Am. Bank, N.A. v. Meoli (In re Wells)*, 561 F.3d 633, 635 (6th Cir. 2009) (citing *McLemore v. Third Nat’l Bank (In re Montgomery)*, 983 F.2d 1389, 1395 (6th Cir. 1993)). In *Wells*, the trustee sought to avoid as preferential transfers prepetition payments the debtor made to one credit card company, MBNA, using convenience checks that she received from another credit card company. The question before the court was whether the convenience checks effected transfers of any interest of the debtor in property. *Id.* at 635. In finding that debtor possessed sufficient control over the funds transferred such that she had an ownership interest in those funds, the court considered the fact that the funds were not “earmarked,” or restricted, by the lending credit card company to be paid solely to MBNA; rather, the debtor was free to use the convenience checks for any reason she chose. *Id.* The court explained that in deciding to pay down her credit card balance with MBNA and drawing the checks on the lending credit card company to do so, the debtor exercised complete control over the funds drawn. *Id.*

This court finds the Sixth Circuit’s reasoning in *Wells* equally applicable in determining whether Debtor had any interest in the funds on deposit in his bank account that in turn became the estate’s interest in property at filing of this case for purposes of turnover under § 542. In this case, the proceeds of the student loan and Pell grant were deposited into Debtor’s bank account prepetition and the \$5,324.19 of those funds now in issue were in that account on the petition date. There is no evidence showing that the funds were earmarked for payment of or conditioned upon any particular debt or expense. After the deposits were made, Debtor had complete control over how the funds would be used as confirmed by his explanation of how they were used. The court concludes, therefore, under the reasoning in *Wells*, that Debtor had and exercised sufficient control over the funds at the time he filed his bankruptcy petition such that the funds are property of the estate subject to turnover under § 542.

The fact that the funds are proceeds of a student loan and Pell grant and that the student loan is nondischargeable does not change the court’s analysis. While the timing of the deposit of these funds in relation to the filing of Debtor’s petition is unfortunate, Debtor nevertheless had complete control over the use of the funds once they were deposited in his bank account. Consequently, the funds constitute an interest of Debtor in property that the Trustee may use under § 363 and the funds or the value of those funds are, therefore, subject to turnover.

In light of the foregoing, the court will grant the Trustee's Motion and will order Debtor to turn over \$5,324.19 less any exemptions in those funds properly claimed by Debtor in an amended Schedule C.² A separate order conforming to this memorandum of decision will be entered by the court

² At the hearing on the Motion, the Trustee acknowledged that Debtor may be entitled to exempt a portion of the \$5,324.19 at issue. However, Debtor has not claimed any exemption in the funds on his Schedule C filed with the court.