

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

Mitchell C. Dilday,

Case No. 97-11374

Debtor.

Chapter 13

MEMORANDUM OPINION AND ORDER (1) RESCINDING DECEMBER 7, 2000, "ORDER ON TRUSTEE'S MOTION TO SET ASIDE ORDER DISCHARGING DEBTOR AFTER COMPLETION OF CHAPTER 13 PLAN, CLOSING CASE AND DISCHARGING TRUSTEE" and (2) REINSTATING NOVEMBER 3, 2000, "ORDER DISCHARGING DEBTOR AFTER COMPLETION OF CHAPTER 13 PLAN, CLOSING CASE AND DISCHARGING TRUSTEE"

The Court conducted a hearing on the Debtor's Motion to Payoff Bankruptcy and Receive Discharge on May 3, 2001. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

The facts in this case are essentially undisputed. The Debtor, Mitchell Dilday, filed for Chapter 13 bankruptcy relief on April 18, 1997. Pursuant to his Chapter 13 plan, the percentage to be paid to unsecured creditors was set at 4%. Dilday filed a Motion to Payoff his case with monies received from a relative on September 27, 2000. The Chapter 13 Trustee's office filed a Motion to Close the case after completion of the plan on November 3, 2000. Said motion was granted on November 3, 2000, and Dilday received a Chapter 13 discharge on that date. After discovering that the debtor's Motion to Payoff the case was still pending at the time of the discharge, the Chapter 13 Trustee filed a Motion to Set Aside the Discharge on November 14, 2000. The Court granted the motion and set aside Dilday's discharge on December 7, 2000.

On November 11, 2000, Dilday and his brother received the proceeds of their father's life insurance policies. Dilday's portion of the proceeds was approximately \$34,147.00. Dilday used \$7,549.00 of these proceeds to pay his father's funeral expenses. Dilday used the remainder of the money to pay off several of his father's debts, including:

- \$14,441.55 for a boat to which Mitchell Dilday and his brother now have title;
- \$3,199.00 to the Bank of Gleason for a business partnership note;
- \$6,302.44 to Fleet Credit Card Services;
- \$2,511.56 to First USA Credit Card Company;

\$3500.00 to Discover Credit Card Company.

There are no proceeds left at this time. Dilday currently works for H & M Construction and earns \$12.00/hour.

At the time the Trustee's "Motion to Close Case" was filed, Dilday had paid \$1,256.35 to his unsecured creditors. The total amount of his unsecured debt was \$31,408.60.

II. CONCLUSIONS OF LAW

In the case at bar, one of Dilday's creditors has alleged that the proceeds Dilday received as a beneficiary of his father's life insurance policy were property of the estate and should have been paid to the Chapter 13 Trustee for distribution among Dilday's unsecured creditors. Section 541(a) of the Bankruptcy Code includes within its definition of "Property of the Estate:"

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date –

...

(C) as beneficiary of a life insurance policy or of a death benefit plan.

11 U.S.C. § 541(a)(5)(C) (emphasis added). In the case of *In re Carter*, 260 B.R. 130 (Bankr. W.D.Tenn. 2001), Judge Kennedy held that proceeds of a life insurance policy received by a chapter 7 debtor more than 180 days after the filing of a petition are not included within "property of the estate." *Id.* at 133. In the Chapter 13 setting, however, § 1306(a)(1) enlarges § 541's definition of "property of the estate" to include "all property of the kind specified in such section that the debtor acquires after the commencement of the case, **but before the case is closed**, dismissed, or converted to a case under Chapter 7, 11, or 12 of this title whichever occurs first." 11 U.S.C. § 1306(a)(1) (emphasis added). In the case of *In re Guentert*, 206 B.R. 958 (Bankr. W.D. Mo. 1997), the court held that life insurance proceeds acquired by a Chapter 13 debtor any time before the case is dismissed, closed or converted are property of the estate. *Id.* at 962.

In the case at bar, Dilday's case was closed and discharged on November 3, 2000. Dilday received the proceeds of the life insurance policy on November 11, 2000. The Trustee's office did not file its Motion to Set Aside the Discharge until November 14, 2000. The order setting aside the discharge was not signed and entered until December 7, 2000. Clearly, Dilday received the proceeds of his father's life insurance policy after his case was closed and before his discharge was set aside. Pursuant to §1306(a)(1), this Court has no authority to require Dilday to remit any of the proceeds to the Chapter 13 Trustee for distribution among his creditors.

III. ORDER

It is therefore **ORDERED** that:

(1) The December 7, 2000, "Order on Trustee's Motion to Set Aside Order Discharging Debtor After Completion of Chapter 13 Plan, Closing Case and Discharging Trustee" is **RESCINDED**; and

(2) The November 3, 2000, "Order Discharging Debtor After Completion of Chapter 13 Plan, Closing Case and Discharging Trustee" is **REINSTATED**.

It is so ordered.

By the Court,

**G. Harvey Boswell
United States Bankruptcy Judge**

Date: June 5, 2001