

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

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FILED
APR 24 1997
JED G. WEINTRAUB
CLERK OF COURT
WESTERN DISTRICT OF TENNESSEE

IN RE:

EDNA MAE WILLIAMS

Case No. 96-37 172-WHB
Chapter 7

Debtor.

EDNA MAE WILLIAMS,
Plaintiff,

97-0430

vs

Adversary Proceeding 97-_____

JEFFCOAT,
Defendant.

ALL DOCUMENTS REGARDING THIS
MATTER MUST BE IDENTIFIED BY
BOTH ADVERSARY AND BANKRUPTCY
CASE NUMBERS.

MEMORANDUM OPINION ON DEBTOR'S "MOTION" TO REQUIRE CREDITOR
TO RETURN FUNDS RECEIVED THROUGH GARNISHMENT

Pending before the Court is the debtor's "motion" to require Jeffcoat to return funds received through garnishment. By separate order, the Court has *sua sponte* but with consent of counsel for the parties changed the motion to an adversary proceeding. **FED. R. BANKR. P. 7001(1)**. At issue is whether the debtor may avoid a transfer of garnished funds that were picked up from the Shelby County General Sessions Court clerk a few hours before the debtor filed her bankruptcy petition and deposited by the creditor subsequent to the bankruptcy filing. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A). Based on the analysis below, the transfer of the garnished funds at issue will be avoided as a postpetition transfer and returned to the debtor as an exempt asset. The following constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

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FACTUAL SUMMARY

The pertinent facts giving rise to the instant controversy are undisputed. The debtor filed her bankruptcy petition on December 23, 1996, at approximately 12:20 pm. On the morning of but before the bankruptcy filing, Jeffcoat, the garnishor, picked up a check from the General Sessions Court clerk in the amount of \$417.65. These funds represented garnished wages being held for Jeffcoat pursuant to Tennessee law. Subsequent to the bankruptcy filing and without knowledge of that filing, Jeffcoat deposited the check. The debtor has claimed these funds as exempt and there were no objections to the claimed exemption, which is deemed allowed. 11 U.S.C. §522(l).

DISCUSSION

Section 549(a) of the Bankruptcy Code discusses the effect of postpetition transactions:

- (a) Except as provided in subsection (b) or(c) of this section, the trustee may avoid a transfer of property of the estate--
 - (1) that occurs after the commencement of the case; and
 - (2)(A) that is authorized only under section 303(f) or 542(c) of this title; or
 - (B) that is not authorized under this title or by the court.

11 U.S.C. §549(a).

For purposes of our analysis, the debtor must establish three elements under §549(a). The debtor must show: (1) that there was a transfer of property of the estate; (2) that the transfer occurred after the commencement of the case; and (3) that such transfer is not authorized under Title 11 and was not authorized by this Court.

In the case at bar, the garnished funds held by the clerk of the General Sessions Court were property of the estate. In Perry v. General Motors Acceptance Corp. (In re Perry), 48 B.R. 591 (Bankr.M.D.Tenn. 1985), Judge Keith M. Lundin, Jr. held that under Tennessee law, a debtor retains

an important and substantial property interest in garnished wages even after service of the writ on the debtor's employer. Until the garnishment becomes absolutely final by transfer from the state court clerk to the creditor, the debtor's property interest is sufficient to satisfy the first element under § 549(a). Although it is the clerk's check that triggered the transfer in this case, the Court must consider when that transfer occurred for purposes of termination of the debtor's interest in the garnishment funds.

The second element of §549(a) requires that the transfer occur after the commencement of the case. In this particular case, Jeffcoat contends that the garnishment was complete upon delivery of the clerk's check to the creditor, under which argument the transfer of the debtor's interest in those funds would have occurred pre-bankruptcy. The debtor would lose under that approach because the contention that Jeffcoat received an avoidable preference would be defeated by the §547(c)(8) exception that insulates certain transfers under \$600.¹ In Barnhill v. Johnson, 503 U.S. 393, 112 S.Ct. 1386, 118 L.Ed.2d 39 (1992), the United States Supreme Court held that for purposes of 9547, a transfer by check occurs on the date the check is honored, not the date the check is delivered. In Spear v. Cema Distribution (In re Rainbow Music, Inc.), 154 B.R. 559 (Bankr.N.D.Cal. 1993), that bankruptcy court announced two persuasive reasons for applying the identical rule to §549 issues.

First, a check recipient has no right to the funds held by the bank in the drawer's account. Id. at 56 1. Should the drawer stop payment on the check or close the account, the check would

¹ Apparently, the debtor would lose under a mere turnover theory as well, due to the absence of standing for a chapter 7 debtor to initiate a turnover proceeding for the purpose of recovering exempt property. 11 U.S.C. § 522(g)-(h).

likely be dishonored. Id. “As such, there is no unconditional transfer of the debtor’s interest in property until the bank honors the check.” Id.

Second, to hold that the transfer takes place at the time the check is delivered creates an anomaly. Id. “If the date of honor rule applied to preferences and the date of delivery rule applied to post-petition transfers, a safe harbor would be created for certain transfers by check. A check...which was delivered before the commencement of the bankruptcy case and honored after its commencement, would be recoverable neither as a preference nor as a post-petition transfer.” Id. This result is illogical and must be avoided.

Finally, in Davis v. American Express Co. (In re Wilson), 56 B.R. 74 (Bankr.E.D.Tenn. 1985), that court held that for purposes of 9549, a transfer by check occurred on the date the check was honored. The Wilson court concluded that a transfer by check written and delivered prior to the filing, but not honored until after the filing, was a postpetition transfer avoidable under 9549. Id. at 776. This is consistent with the Supreme Court’s discussion about the conditional nature of a check until it is honored by the drawee bank. Barnhill, 112 S.Ct. at 1389-90.

The third and final element of §549(a) requires an absence of authority for the transfer. In the case at bar, there is no authorization under the Bankruptcy Code for such a transfer. Additionally, this Court did not authorize the transfer. Although the transfer’s completion by deposit and honor was a technical violation of the automatic stay, the violation was unintentional, due to the creditor’s lack of knowledge of the bankruptcy filing. That innocence does not insulate Jeffcoat from a postpetition avoidance.

Although §549 only authorizes the trustee to avoid a postpetition transfer, the debtor may bring this action pursuant to §522(h), which provides in relevant part:

The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if--

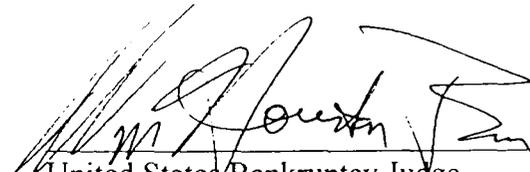
- (1) such transfer is avoidable by the trustee under section...549 of this title...; and
- (2) the trustee does not attempt to avoid such transfer.

11 U.S.C. §522(h).

In the present case, the transfer at issue is avoidable under 9549. Because the debtor has claimed these funds as exempt, and the trustee has not attempted to avoid the transfer, the debtor has standing to bring this action and avoid this postpetition transfer under §522(h).

CONCLUSION

Based on the analysis above. the postpetition transfer at issue will be avoided, and Jeffcoat will be required to return these exempt funds to the debtor pursuant to 11 U.S.C. §550(a). A separate order will be entered.



United States Bankruptcy Judge

Dated: April 24, 1997

Jeffcoat
c/o Stone, Higgs & Drexler
200 Jefferson Avenue, Suite 1000
Memphis, TN 38 103

Ellen E. Fite
Attorney for Debtor
242 Poplar Avenue
Memphis, TN 38 103

Preston Wilson
Chapter 7 Trustee
200 Jefferson Avenue, Suite 900
Memphis, TN 38 103

Edna Mae Williams
1172 Fiber Road
Memphis, TN 38 1.09

United States Trustee
200 Jefferson Avenue, Suite 400
Memphis, TN 38 103

- Motion Order Other
 Entered on the Court docket on
4-25-97 and mailed to:
 Debtor(s), Debtor(s) Attorney, **Trustee**
 Servicing by Court
 Certificate of Mailing to **Matrix**
 For servicing by **Movant**
 Interested Parties
By: M. Herrin, Deputy Clerk