

Dated: November 07, 2022
The following is ORDERED:



A handwritten signature in black ink, appearing to read "M. Ruthie Hagan".

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Roy D. Sutherland and
Helen J. Sutherland
Debtors

Case No. 17-27183
Chapter 13

OPINION AND ORDER DENYING DEBTOR HELEN J. SUTHERLAND'S
APPLICATION FOR PAYMENT OF UNCLAIMED FUNDS

This matter is before the Court on the application of Debtor Helen Sutherland for payment of unclaimed funds available in this Chapter 13 case [DE 62] and Debtor Roy Sutherland's opposition to the application. The Court held a hearing on October 26, 2022, and heard testimony

from the parties¹ and the Chapter 13 trustee, reviewed supporting documentation of both sides, and heard the statements and arguments of counsel.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Accordingly, the Court has both the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII (“Bankruptcy Appeals”) of the Federal Rules of Bankruptcy Procedure. This decision constitutes the Court's findings of fact and conclusions of law under FED. R. CIV. P. 52, made applicable to this contested matter by FED. R. BANKR. P. 7052. Regardless of whether or not specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, considered the testimony given in this matter, considered all of the evidence, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court hereby determines that the application of Debtor Helen Sutherland for the unclaimed funds available in this case is denied. The Court further finds that Debtor Roy Sutherland is entitled to disbursement of the unclaimed \$6,819.57 resulting from the overpayment of funds into this Chapter 13 case.

**DISCUSSION OF BACKGROUND FACTS AND
PROCEDURAL HISTORY OF THE CASE**

The facts of this case are undisputed. The Debtors commenced this bankruptcy case under Chapter 13 on August 16, 2017. At the time the bankruptcy case was filed, they were a married couple residing at 1256 Munford Avenue in Munford, Tennessee. During the course of the bankruptcy, however, the Debtors were divorced and a Final Decree of Divorce was entered by the Chancery Court in Tipton County, Tennessee in December 2020. [DE 67]. The divorce decree

¹ Ms. Margaret Sutherland, sister-in-law of Debtor Roy Sutherland, appeared with and on behalf of Debtor Roy Sutherland as his attorney-in-fact. *See* Durable Power of Attorney filed as Personal Supporting Documentation, DE 67.

provided as follows: “That [Roy Sutherland] shall be awarded as his separate property, the real property and appurtenances thereto located at 1256 Munford Avenue, Munford, Tipton County, Tennessee 38058” The decree went on to provide “[t]hat the parties debts are presently in a Chapter 13 bankruptcy plan, which [Roy Sutherland] agrees to assume, pay and hold [Helen Sutherland] harmless therefor in the United States Bankruptcy Court for the Western District of Tennessee, Western Division, Case No. 17-27183 In Re: Roy D. Sutherland and Helen J. Sutherland.” [DE 67 and Applicant’s Collective Exhibit 1].

The Chapter 13 trustee stated at the hearing that, pursuant to the terms of the divorce decree, Debtor Roy Sutherland continued to make the Chapter 13 plan payments for the months of January 2021, February 2021 and March 2021, following the divorce. Then on March 5, 2021, this Court entered an Order granting Mr. Sutherland’s motion for authority to sell the real property located at 1256 Munford Avenue, Munford, Tennessee for \$140,000 [DE 52]. The sale proceeds were turned over to the Chapter 13 trustee in March 2021, and the mortgage held by Central Bank of Boone County was paid in full. The trustee disbursed the proceeds to the other creditors in the Chapter 13 plan so that the bankruptcy plan was paid in full, with the remaining funds disbursed to Debtor Roy Sutherland. The parties testified that Debtor Roy Sutherland gifted \$10,000 of his portion of the sale proceeds to his ex-wife, Debtor Helen Sutherland. On June 21, 2021, the Court entered an Order on Completed Chapter 13 Case Without the Entry of a Discharge [DE 54] and the case was accordingly closed.

At some point subsequent to the Chapter 13 trustee’s disbursement of payments, Central Bank of Boone County returned \$6,819.57 to the Chapter 13 trustee as an overpayment on the outstanding mortgage for the real property. The Chapter 13 trustee deposited the excess funds with the Bankruptcy Court Clerk, and it is the right to this overpayment that is now in dispute.

The Court heard testimony from Debtor Helen Sutherland and also from Margaret Sutherland, attorney-in-fact for Debtor Roy Sutherland. Margaret Sutherland testified that Debtor Roy Sutherland inherited the Munford property from his parents prior to the Debtors' 1997 marriage, and pointed to the language in the divorce decree awarding the Munford property to Debtor Roy Sutherland and classifying it as his separate property. Counsel for Debtor Helen Sutherland questioned this Court's subject-matter jurisdiction to decide this dispute, and focused on the fact that the funds at issue are an unexpected marital asset that was not contemplated at the time of the parties' divorce. Counsel went on to contend that the mortgage overpayment is marital property and, as such, Debtor Helen Sutherland is entitled to 50%. Debtor Helen Sutherland testified that she believes she is entitled to the entire \$6,819.57 amount. It is against this factual backdrop that the Court considers the nature of the mortgage overpayment and the parties' entitlement to the unclaimed funds.

LAW AND ANALYSIS

1. The Court's Subject-Matter Jurisdiction

A bankruptcy court has jurisdiction to determine its own subject-matter jurisdiction. *Chicot Cnty. Drainage Dist. v. Baxter State Bank*, 308 U.S. 317, 376-77 (1940). An analysis of bankruptcy court jurisdiction necessarily begins with the federal statutory blueprint. A starting point is 28 U.S.C. § 1334, which assigns to the district courts "original and exclusive jurisdiction of all cases under Title 11." 28 U.S.C. § 1334(a). This exclusive jurisdiction expressly includes jurisdiction "of all the property, wherever located, of the debtor as of the commencement of such case, *and of property of the estate.*" 28 U.S.C. § 1334(e)(1) (emphasis added). Section 157 of Title 28 then authorizes the district court to refer cases under Title 11 and proceedings arising under Title 11 to the bankruptcy court sitting within the district. 28 U.S.C. § 157(a). The bankruptcy court "may

hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . ” referred by the district court. 28 U.S.C. § 157(b)(1). The statute goes on to enumerate a non-exhaustive list of matters that constitute “core” proceedings.

Looking to § 541 of the Bankruptcy Code, there is no doubt that the Munford real property was property of the bankruptcy estate, which is comprised of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). Once the property was sold, the proceeds became property of the estate. 11 U.S.C. § 541(a)(6).

Further, the fact that the Debtors are now divorced does not bring this dispute within any “domestic relations exception” to the bankruptcy court’s jurisdiction, as it is not a divorce decree, an award of alimony, or a determination of child custody. *See Brown v. Brown*, Nos. 12-110-ART, 12-120-ART, 2013 WL 2338233 (E.D. Ky. May 28, 2013)(citing *Marshall v. Marshall*, 547 U.S. 2293, 307-08 (2006)). This is a core dispute involving administration of the bankruptcy estate that would not arise but-for the bankruptcy. This Court undoubtedly retains its subject-matter jurisdiction over the excess proceeds – property of the bankruptcy estate – disbursed to the mortgagee by the Chapter 13 trustee.

2. The Nature of the Munford Real Property

Unless a federal interest is at issue, the bankruptcy court must look to state law to define rights in property. *French v. Frey (In re Bergman)*, 467 F.3d 536, 538 (6th Cir. 2006) (citing *Butner v. United States*, 440 U.S. 48, 55 (1979)). Therefore, the Court looks to Tennessee law to determine what, if any, rights Debtor Helen Sutherland may claim to the funds at issue in this case. The Tennessee statute regarding the equitable division, distribution and assignment of marital property defines “marital property” as follows, in pertinent part:

(1)(A) “Marital property” means all real and personal property, both tangible and intangible, acquired by either or both spouses during

the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce

TENN. CODE ANN. § 36-4-121(b)(1)(A). The statute goes on to define “separate property:”

(2) “Separate property” means:

(A) All real and personal property owned by a spouse before marriage . . . ;

(B) Property acquired in exchange for property acquired before the marriage;

* * *

(D) Property acquired by a spouse at any time by gift, bequest, devise or descent. . . .

TENN. CODE ANN. § 36-4-121(b)(2). Courts have recognized two methods by which separate property may be converted into marital property – commingling and transmutation – but such analysis is inapplicable to the matter before this Court, and the time to raise any such argument in the divorce court has long since expired. *See Abner v. Abner*, No. E2019-0177-COA-R3-CV, 2020 WL 5587411 (Tenn. Ct. App. Sept. 18, 2020), for a discussion of comingling and transmutation of separate property. The Munford property was determined to be the separate property of Debtor Roy Sutherland as set forth in the Debtors’ Final Decree of Divorce and pursuant to Tennessee law. It follows that the proceeds from the sale of that property were also the separate property of Debtor Roy Sutherland. There was no evidence that Debtor Helen Sutherland made any kind of claim to the property or to the proceeds from its sale until she received notice regarding the availability of unclaimed funds in this bankruptcy case as a result of Debtor Roy Sutherland’s overpayment of the mortgage payoff.

Further, pursuant to the Debtors’ Final Decree of Divorce, Debtor Roy Sutherland assumed responsibility for making the remaining plan payments for the Debtors’ Chapter 13 bankruptcy case, holding Debtor Helen Sutherland harmless for any remaining financial obligation. The

proceeds from the sale of Debtor Roy Sutherland's separate property were paid into the Chapter 13 trustee, allowing the creditors to be paid in full.

Tracing of the funds at issue here – the overpayment of the mortgage payoff – leads directly to the separate property of Debtor Roy Sutherland. It was Roy Sutherland's separate real property, inherited from his parents prior to his marriage to Helen Sutherland and awarded to Roy Sutherland in the parties' divorce, that was subsequently sold by Roy Sutherland for \$140,000. The proceeds of the sale went first to the Central Bank of Boone County in satisfaction of the mortgage on the property, and the remaining funds went to the Chapter 13 trustee for payment of the other creditors in the bankruptcy case. The unclaimed funds at issue before this Court are the direct result of Roy Sutherland's overpayment to the Central Bank of Boone County from the proceeds generated from the sale of his separate property, and Debtor Roy Sutherland is therefore entitled to the funds.

CONCLUSION

Based on the facts presented, the Court finds that Debtor Helen Sutherland's Motion for Payment of Unclaimed Funds [DE 62] is hereby denied. The Court further finds that the unclaimed funds at issue in the amount of \$6,819.57 are the separate property of Debtor Roy Sutherland and shall be disbursed to Debtor Roy Sutherland.

The Bankruptcy Court Clerk shall serve a copy of this Opinion and Order on the following interested parties:

Debtor Roy D. Sutherland
c/o Ms. Margaret Sutherland, Attorney-in-fact
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Debtor Helen J. Sutherland
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