

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	
	:	
CHANDRE SELENE BALDWIN,	:	CASE NO. 05-72883-JB
	:	
Debtor	:	Chapter 13

ORDER

This Chapter 13 case is before the Court on a *pro se* motion filed by Grant K. Gibson asking the Court to reconsider an Order entered on June 6, 2007, in which the Court denied Mr. Gibson's request that the Chapter 13 Trustee be ordered to disburse a portion of debtor's exempt funds to Mr. Gibson. The June 6, 2007 Order followed a hearing held on May 9, 2007.

The debtor Chandre Selene Baldwin filed this Chapter 13 case two years ago, and a Chapter 13 plan was confirmed on October 15, 2005. In May of 2006, the Chapter 13 Trustee received \$9,025.33 in funds inherited by the debtor. On February 14, 2007, the debtor filed an amended bankruptcy Schedule C in which she claimed \$5,422.00 of the \$9,025.33 as exempt property. On February 28, 2007, the Court entered a consent order allowing the debtor to claim \$5,422.00 of the inherited funds as exempt property and allowing the Chapter 13 Trustee to disburse the remaining \$3,603.33 of the inherited funds to creditors under the confirmed plan.

Mr. Gibson did not file a proof of claim under 11 U.S.C. § 1305, but sought a disbursement from the Chapter 13 Trustee of \$4,422.00 of the exempt property. He contends that the debtor incurred a post-petition obligation to an entity called NPPH Edgemoor Trust by a contract dated June 7, 2006. Mr. Gibson did not submit a copy of any contract between the debtor and NPPH Edgemoor Trust, and the record is unclear as to the nature of the parties' contractual relationship or the relationship between Mr. Gibson and NPPH Edgemoor Trust. At

the May 9, 2007 hearing, Mr. Gibson presented a copy of a December 4, 2006 consent judgment in the Gwinnett County Magistrate's Court between NPPH Edgemoor Trust and the debtor awarding NPPH Edgemoor Trust a judgment for \$3,838.00 against the debtor. Mr. Gibson did not present any evidence that he owns the judgment, and debtor contends she has paid this judgment. Mr. Gibson further contends that on March 4, 2007, debtor signed an "Assignment of Inheritance" to NPPH Edgemoor Trust, which NPPH Edgemoor Trust in turn assigned to Mr. Gibson on March 13, 2007. Mr. Gibson argues that this document is sufficient to require the Chapter 13 Trustee to pay him \$4,422.00 of debtor's exempt property.

The document entitled "Assignment of Inheritance" (dated February 23, 2007 and signed on March 4, 2007) recites that the assignor, Chandre Baldwin, assigns her rights under an inheritance she is scheduled to receive in the amount of \$4,422.00. It provides that:

The inheritance funds will be either made payable to or deposited to "Synetics Trust," Grant K. Gibson, Trustee, Wachovia Bank Account No. 2-0000-21079607, which shall be credited to assignor's account to offset mortgage obligations (by virtue of a contract dated June 7, 2006 by the assignor and NPPH Edgemoor Trust) and a Gwinnett County Magistrate Court Judgment against the assignor dated December 4, 2006, with NPPH Edgemoor Trust) as Judgment Creditor.

However, at the time debtor signed this document, the inheritance funds had already been distributed to the Chapter 13 Trustee. The Assignment of Inheritance contains a footnote reciting the fact that the debtor is in a Chapter 13 bankruptcy proceeding in which \$5,422.00 is exempt, and thus it appears that Mr. Gibson and NPPH Edgemoor Trust were aware of the bankruptcy case.

The Court's June 6, 2007 Order acknowledged that both the debtor and Mr. Gibson stated they were currently litigating in Gwinnett County, but neither party provided information as to the specific nature or procedural status of such litigation. The June 6, 2007 Order

acknowledged that the debtor contended that the Assignment of Inheritance was signed under duress and that she had paid the December 4, 2006 Gwinnett County consent judgment in full. In the June 6, 2007 Order, the Bankruptcy Court concluded that the disputes between the debtor and Mr. Gibson did not affect the bankruptcy estate, as they have a post-petition dispute over a claim that arose post-petition involving property that is not property of the estate. The Court denied Mr. Gibson's motion to require the Chapter 13 Trustee to disburse the exempt funds to him, without prejudice to the parties' claims and defenses in litigation pending in Gwinnett County. The Court further ordered the Chapter 13 Trustee to distribute all of the exempt funds to the debtor.

The Chapter 13 Trustee filed a pleading on June 28, 2007, indicating that she has disbursed the exempt funds to the debtor and is no longer holding any funds claimed by Mr. Gibson. Thus, to the extent the motion to reconsider requests a distribution to Mr. Gibson by the Chapter 13 Trustee of debtor's exempt funds, the motion must be denied as moot.

In the motion for reconsideration, Mr. Gibson argues that he was unable to rebut the debtor's testimony at the May 9, 2007 hearing and wishes to now present evidence to refute debtor's testimony that she signed the Assignment of Inheritance under duress. The June 6, 2007 Order made no finding with respect to whether the Assignment of Inheritance was signed under duress, but simply recited debtor's position. However, the June 6, 2007 Order can be and is hereby amended to reflect that Mr. Gibson disputes debtor's position and contends that the Assignment of Inheritance was a voluntary agreement. Mr. Gibson contends that Ms. Baldwin volunteered her inheritance to pay a post-petition debt and that Mr. Gibson and his associate, Mr. William Gwaltney, went to the debtor's residence on Sunday, March 4, 2007, at which time she signed the document voluntarily. The parties are litigating these disputes in Gwinnett County,

and this Court makes no finding with respect to Mrs. Baldwin's contention that the document was signed under duress.

The record presented by both Mr. Gibson and the debtor was and remains confusing, but as best the Court can tell, the parties are currently litigating the validity of the Assignment of Inheritance and the amount of Mr. Gibson's claim against Ms. Baldwin in the Gwinnett County courts. From statements made by the parties at the May 9, 2007 hearing, it appears that debtor's bankruptcy counsel is not representing her in the Gwinnett County litigation, but she has other counsel with whom Mr. Gibson said he had been in touch with regard to this matter. The parties referred to a "pending court date" in Gwinnett County, and at another point during the May 9, 2007 hearing, Mr. Gibson referred to a hearing in a dispossessory proceeding that took place two weeks ago.

The Court found that it would be inappropriate for the bankruptcy court to decide issues in litigation pending in Gwinnett County, when none of these issues involve property of the estate or the administration of this estate and when Mr. Gibson is not a creditor to be paid under the Chapter 13 plan. At the May 9, 2007 hearing, Mr. Gibson stated that he agreed with the Court that these were state issues to be decided totally outside the bankruptcy court. Several times Mr. Gibson stated that he did not think he should be in bankruptcy court and that he believes this is an "outside the bankruptcy court" matter. Mr. Gibson's motion to reconsider does not provide any additional information about the nature of the state court litigation or the procedural status of that litigation. Thus, to the extent the motion to reconsider seeks a determination from the bankruptcy court as to whether Ms. Baldwin owes Mr. Gibson or NPPH Edgemoor Trust any amount on the December 4, 2006 judgment obtained post-petition from Gwinnett County, the motion must be denied. To the extent the motion to reconsider seeks a

determination from the bankruptcy court as to what amount Ms. Baldwin may owe to Mr. Gibson or NPPH Edgemoor Trust on what Mr. Gibson describes as a "mortgage obligation" on a post-petition contract which has not been presented with any of Mr. Gibson's pleadings, the motion must be denied.¹ And to the extent that Mr. Gibson seeks a determination from the bankruptcy court that the debtor voluntarily signed the Assignment of Inheritance on March 4, 2007, the motion must be denied. All of these matters should be decided in the state court proceedings.

Three days after filing the motion to reconsider, Mr. Gibson filed a *pro se* memorandum of law. In the memorandum, he puts forth a series of legal propositions, some of which are incorrect and most of which have no apparent relevance to the motion to reconsider. For instance, he argues that exempt property is "part of debtor's bankruptcy estate" which cannot be accessed by pre-petition creditors. Mr. Gibson is correct that pre-petition creditors generally do not have a claim on exempt funds. However, once property is claimed as exempt, unless a party in interest objects to the exemptions within 30 days, the property claimed as exempt is removed from the estate. *Gamble v. Brown (In re Gamble)*, 168 F.3d 442 (11th Cir. 1999). In the case at bar, the Chapter 13 Trustee received funds from an inheritance due Ms. Baldwin in May of 2006, and in February of 2007, Ms. Baldwin claimed \$5,422.00 of those funds as exempt. No party in interest filed an objection to the exemption, and on March 16, 2007, the property was removed from debtor's bankruptcy estate. Contrary to suggestions made

¹ During the May 9, 2007 hearing, whatever obligations Ms. Baldwin has to NPPH Edgemoor Trust were referred to as "lease" obligations. The Assignment of Inheritance document prepared by Mr. Gibson refers to the obligations as "mortgage" obligations. Mr. Gibson's pleadings do not contain a clear statement of precisely what it is he contends Ms. Baldwin owes him.

in Mr. Gibson's brief, neither the Chapter 13 Trustee nor pre-petition creditors made any claim to debtor's exempt funds, and the Chapter 13 Trustee has now returned those funds to the debtor.

Mr. Gibson also appears to argue that the exempt funds held by the Chapter 13 Trustee were subject to a state court garnishment. However, Mr. Gibson did not file a copy of any summons of garnishment or order of garnishment or offer any proof that the funds held by the Chapter 13 Trustee were the subject of any state court garnishment proceeding. Toward the end of the May 9, 2007 hearing, Mr. Gibson stated he would "note for the record" that there is a "garnishment order" against the Chapter 13 Trustee. Counsel for the Chapter 13 Trustee, Sonya Buckley, announced that Mr. Gibson had just handed her something in the nature of a garnishment against Ms. Baldwin but that it did not appear to pertain to the exempt funds and that the paper handed to her was not a garnishment against the funds held by the Chapter 13 Trustee. Again, Mr. Gibson did not provide the Court with a copy of the "paper" he handed to Ms. Buckley, nor did he seek to introduce any "garnishment order" as an exhibit. Mr. Gibson presented no facts in his motion to reconsider that Grant K. Gibson was a garnishor or that the Chapter 13 Trustee was a garnishee in any post-judgment garnishment proceeding in the state courts.

Finally, Mr. Gibson refers to a case from a bankruptcy court in Texas, *Rodriguez v. First American Bank, S.S.B. (In re Rodriguez)*, without any citation. The only reported case the Court could find with that name is at 278 B.R. 749 (Bankr. N.D. Tex. 2002). This case does not support Mr. Gibson's request for a distribution of debtor's exempt funds. In *Rodriguez*, the debtors brought an action against the judgment creditor garnishor and the garnishee bank for a turnover of funds which the bank had in its possession. The bankruptcy court in *Rodriguez* granted the debtors' motion to avoid a judicial lien and ordered the judgment creditor and the

garnishee bank to turnover the garnished funds to the debtors. Nothing in *Rodriguez* would have authorized the Bankruptcy Court in this case to direct the Chapter 13 Trustee to disburse debtor's exempt funds to Mr. Gibson.

In accordance with the above reasoning, Mr. Gibson's motion for reconsideration of the Court's June 6, 2007 Order is granted only to reflect that Mr. Gibson disputes debtor's contentions that the Assignment of Inheritance was signed under duress. Mr. Gibson contends that the document was signed voluntarily, the parties are litigating these disputes in Gwinnett County, and the bankruptcy court makes no finding with respect to debtor's contention that the document was signed under duress. The motion for reconsideration is denied in all other respects.

IT IS SO ORDERED, this 10th day of July, 2007.


JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order mailed by United States Mail to the following:

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Date: July 11, 2007