

In the United States Bankruptcy Court

for the Northern District of Iowa

JOHN CALVIN JOHNSON and VERNA MAE
JOHNSON
Debtors.

Bankruptcy No. 87-01159W

Chapter 7

MICHAEL C. DUNBAR
Plaintiff

Adversary No. 87-0321W

vs.

JOHN CALVIN JOHNSON
VERNA MAE JOHNSON
SECURITY STATE BANK OF INDEPENDENCE,
IOWA, Trustee
Defendants.

MEMORANDUM OF OPINION AND ORDER Re: Plaintiff's Motion for Summary Judgment

The matter before the court is the Motion for Summary Judgment filed by the plaintiff, trustee Michael C. Dunbar, on November 10, 1987.

The motion was resisted by the debtors and by defendant, Security State Bank of Independence, Iowa. Hearing was held on December 9, 1987. The matter was then submitted to the undersigned for determination.

Having considered the motion, briefs, and oral arguments of counsel, the court now issues the following Ruling. This is a core proceeding under 28 U.S.C. section 157(b)(2)(E). FINDINGS OF FACT⁽¹⁾

The following facts would appear to be undisputed:

1. John Calvin Johnson and Verna Mae Johnson, husband and wife, filed their joint voluntary petition under Chapter 7 of the Bankruptcy Code on May 13, 1987. Michael C. Dunbar is the bankruptcy case trustee.
2. November 9, 1987 is 180 days from the date of the filing of the petition in bankruptcy not including the date of filing.
3. The debtors received a discharge under 11 U.S.C. section 727 which was granted to the debtors on September 2, 1987.
4. The debtors have not reaffirmed any pre-petition debts pursuant to 11 U.S.C. sections 524(c) or (d).
5. John Calvin Johnson is a beneficiary of a testamentary trust established by virtue of the last will and testament of his mother, Elsie May Johnson. Elsie May Johnson died November 12, 1982. At the time of the bankruptcy filing, the principal of the trust and perhaps some undistributed income were in the hands of the named trustee, Security State Bank of Independence, Iowa (Security Bank).
6. The last will and testament of Elsie May Johnson was executed on April 17, 1976. It is reprinted in its entirety as follows, with the exception of the statement of the attesting witnesses:

I, Elsie May Johnson, a widow of Brandon, Buchanan County, Iowa, hereby declare this to be my Last Will and Testament, hereby revoking any and all Wills which I have heretofore made and I hereby will that all the property I may own at the time of my death, shall be disposed of in the following manner.

ITEM I. I direct that the costs of last illness, burial, and administration expenses be paid.

ITEM II. On condition of my son, John Calvin Johnson, survives me, I give, devise, and bequeath all the rest, residue and remainder of my estate to the following named Trustee for the purposes hereinafter set forth.

ITEM III. I hereby nominate and appoint as the Trustee hereunder Security State Bank, Independence, Iowa to serve without bond, and direct that all of my estate passing to the Trustee under this Last Will and Testament shall be for the benefit of my son, John Calvin Johnson, subject to the following matters:

- a. The Trustee in its sole discretion is directed to use the trust estate for any and all living expenses of the beneficiary and his children, and may pay funds directly to the beneficiary for that purpose.
- b. The trustee shall not be responsible for the use and application by the beneficiary of any sums paid to him by way of income or principal under this agreement, but his receipt to the trustee for any payments so made shall absolve the trustee from any further liability in connection therewith.
- c. The beneficiary hereof is hereby enjoined and restrained from anticipating, assigning, transferring, selling, or otherwise disposing of his interest in this trust estate, and is without power to do so, and no such anticipation, assignment, transfer, sale or other disposition shall be recognized by the trustee, nor shall the same pass any right, title, or interest herein of the beneficiary hereof, and none of the interests of the beneficiary hereunder shall be subject to the claims of creditors or other persons, bankruptcy proceedings, or the liabilities or obligations of the beneficiary.
- d. My trustee is directed to deliver all the rest, residue, and remainder of said trust estate to the beneficiary when said beneficiary proves to the satisfaction of the trustee that he has no creditors.
- e. If my said beneficiary does not live to take full legal-and equitable title to his share of my estate and trust, then any remainder shall pass to his heirs.

ITEM IV. I hereby nominate as Executors of this my Last Will and Testament, Security State Bank of Independence, Iowa and Vincent McSweeney of Independence, Iowa, neither of whom shall furnish bond in such office.

ITEM V. I give and grant to my Executors and Trustee herein all the powers I would have if living and competent to sell, mortgage, lease, encumber or otherwise deal with any of my estate, without court order or appraisals therefor.

ITEM VI. I direct my Executors and Trustee to employ my attorney, Edgar L. King, as the attorney for my estate and trust.

IN WITNESS WHEREOF I do hereunto subscribe my name to this my Last Will and Testament on this 17th day of April, 1976. This Will consists of three typewritten pages.

/s/ Elsie May Johnson

Elsie May Johnson

7. At a minimum, the disputed facts are:

(a) whether John Calvin Johnson had creditors on the date of the filing of the bankruptcy case, or during the subsequent

180 days;

(b) whether any pre-petition debts incurred after November 10, 1982 were "living expenses" of John Calvin Johnson and his children;

(c) the intent of testator Elsie May Johnson, as to the discretionary, support and spendthrift provisions of the trust; and

(d) the value of the principal and undistributed income in the testamentary trust.

DISCUSSION

The trustee's complaint seeks a turnover by the testamentary trustee, Security Bank, of the principal and undistributed income of the testamentary trust established by the Last Will and Testament of Elsie May Johnson. The complaint's basis is 11 U.S.C. section 542.

The trustee asserts two theories in support of his prayer for recovery: (1) immediately upon filing of the voluntary petition by John Calvin Johnson, and due to his discharge, the bankruptcy trustee became entitled to acquire the trust estate under Item IIID. of the Will, because as of the filing date, Mr. Johnson would have had "no creditors;" and (2) that some or all of the prepetition debts incurred by John Calvin Johnson or his children following the death of Elsie May Johnson were for living expenses and that therefore under Iowa law, the trust may be invaded by support creditors and the bankruptcy trustee. Further, to the extent that there was support debt existing on the date of the filing, an equal amount of the trust is therefore property of the estate under 11 U.S.C. section 541(a)(1) notwithstanding the exception of 11 U.S.C. section 541(c)(2).

The defendants resist both of the trustee's theories and argue that under either theory there are material facts in genuine dispute and that the movant is not entitled to judgment as a matter of law.

Summary judgment is proper where no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. Sommers v. Budget Marketing, Inc., 667 F.2d 748, 749 (8th Cir. 1982); Bankr. R. 7056.

On a motion for summary judgment, the facts are assessed in the light most favorable to the non-movant and the non-movant benefits from all favorable inferences which may be derived from the underlying facts as shown by the pleadings, depositions and affidavits. Sommers at 749-750.

Where the moving party fails to satisfy its burden to show initially the absence of a genuine issue concerning any material fact, summary judgment will be denied even if there is no opposing evidentiary matter. Foster v. Johnson-Manville Sales Corp., 787 F.2d 390, 393 (8th Cir. 1986).

I.

Summary judgment must be denied to the trustee under Division I of his complaint because there is a genuinely disputed issue of material fact and because the trustee is not entitled to judgment under the pleaded theory as a matter of law.

The trustee argues that as a result of the debtors' bankruptcy petition filed on May 13, 1987, Mr. Johnson had "no creditors" within the meaning of Item IIID, which directs the trustee to deliver remainder of the trust estate to the beneficiary "when said beneficiary proves to the satisfaction of the trustee that he has no creditors."

The defendants, John Calvin Johnson and Verna Mae Johnson in support of their resistance to the motion, argue that the filing of the bankruptcy petition does not operate as a discharge of indebtedness. Their argument is well taken.

A voluntary liquidation case under Title 11 is commenced by the filing of a petition. Commencement, by such filing, constitutes an order for relief. 11 U.S.C. section 301.

The filing of the petition also operates as a stay of certain acts against the debtor and the estate. 11 U.S.C. section 362(a).

The debtor may be granted a discharge under 11 U.S.C. section 727(a) in a Chapter 7 case. The effect of this discharge is described in 11 U.S.C. section 727(b) and also 11 U.S.C. section 524(a).

Although a discharge under 11 U.S.C. section 727 may discharge pre-petition debts (11 U.S.C. section 727(b)) the discharge is not granted on the date of the filing of the petition.

Creditors and other parties in interest are given an opportunity to object to the discharge of the debtor (Bankr. R. 4004(a)) and debtors are given an opportunity to use the period of time from filing to discharge to reaffirm particular debts. 11 U.S.C. section 524(c) and (c)(1).

It is upon the expiration of the time fixed by Bankr. R. 4004(a) that the court grants a discharge. Bankr. R. 4004(c). This Rule has exceptions as stated therein. Bankr. R. 4004(c). Even then, all debts may not be discharged. 11 U.S.C. section 523.

The trustee's argument that the debtor was entitled to the trust estate on the date of filing by virtue of the bankruptcy discharge and Trust Item IIID must be denied as a matter of law.

It might be argued by the trustee that he is entitled to the trust estate at any point in time during the 180 days after the bankruptcy filing at which Johnson had no creditors.

A trustee is entitled to the turn over of property of the estate which includes:

"Any interest in property that would have been property of the estate if such interest had been in interest to 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--

A. By bequest, devise, or inheritance; U.S.C. section 541(a)(5)(A)).

The 180-day period would have run as of November 9, 1987.

Debtor, John Calvin Johnson, asserts by affidavit in support of his resistance to the motion that he has never been without debts and that he continues to have debts at least to and including the day of his affidavit on December 2, 1987.

Even were the trustee to argue that Mr. Johnson would have been entitled to the trust estate some time during the 180 days by being debt free, there is a dispute as to whether he was without creditors at any time during this period.

Even then it might be argued by the defendants that Security Bank would have discretion in refusing to pay out under Item IIID of the Will because of its satisfaction clause. Whether the bank would have abused that discretion in refusing to pay might be in dispute.

The trustee's motion must also be denied as to this theory because of genuine disputes as to material facts.

II.

The trustee's more compelling argument is that if any of the Johnson pre-petition debts arose because creditors provided living expenses to Mr. Johnson and his children after the death of his mother, then to that extent and in that amount the trust funds would be property of the estate, and Security Bank must turn that amount over to the trustee pursuant to 11 U.S.C. section 542.

Property of the estate is broadly defined in the Bankruptcy Reform Act of 1978. Generally, the estate includes "all legal or equitable interest of the debtor in property as of the commencement of the case." 11 U.S.C. section 541(a)(1).

For this case, the critical exception to the definition of estate property is 11 U.S.C. section 541(c)(2). This Code section states as follows:

(c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable non-bankruptcy law--

(A) that restricts of conditions transfer of such interest by the debtor;

(c)(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable non-bankruptcy law is enforceable in a case under this title.

The section 541(c)(2) exception to property of the estate was intended by Congress to protect traditional spendthrift trusts. H.R.Rep. No. 595, 95th Cong., 1st Sess. 369 (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 83 (1978); U.S.Code Cong. & Admin.News 1978, p.6325.

The Iowa Supreme Court has protected from attack by various creditors the validity and enforceability: of spendthrift trusts, In re Bucklin's Estate, 243 Iowa 312, 51 N.W.2d 412 (Iowa 1952); of true discretionary trusts, Kiffner v. Kiffner, 185 Iowa 1064, 171 N.W. 590 (1919); and of support trusts, Damhoff v. Shambaugh, 200 Iowa 1155, 206 N.W. 248 (1925).

In a relatively recent case, however, the Iowa Supreme Court has permitted the invasion of a spendthrift/support trust for the purpose of paying a claim arising out of the care of the trust beneficiary. Matter of Dodge, 281 N.W.2d 447 (Iowa 1979).

It is upon this case which the trustee relies as to his second theory of the motion for summary judgment.

In Dodge, the court determined that the trust in question was a spendthrift trust. It allowed the estate of the deceased sister of the trust beneficiary to recover from the trust (after the death of the trust beneficiary) money expended by the sister during her life for the care and maintenance of the incapacitated trust beneficiary.

The recovery was allowed in the trial court on the basis of the section 157(b) exception expressed in Restatement (Second) of Trusts. This section states:

Although a trust is a spendthrift trust or a trust for support, the interest of the beneficiary can be reached in satisfaction of an enforceable claim against the beneficiary. . . .

(b) for necessary services rendered to the beneficiary or necessary supplies furnished to him.

The Iowa Supreme Court upheld the trial court but modified somewhat the standards of section 157(b). It stated:

We do not adopt the section 157(b) standard without qualification and require an additional showing similar to that made in this case, i.e., that (1) the claim is for necessary goods or services, not officiously rendered, which the settlor intended to be provided the beneficiary by trust funds; and (2) the withholding of payment for the goods and services is not properly within the discretion granted the trustee by the instrument, before a creditor's claim may be enforced against the trustee of a support trust subject to a spendthrift clause.

Dodge, 281 N.W.2d at 451.

The court, in analyzing the factual circumstances in Dodge, looked at the discretion given the trustee, the nature of the care and maintenance claim, and the intent of the testator as to the payment of that claim.

The Court said:

"If the payment of the claim is consistent with the donor's discernable intent and the discretion granted the trustee is not such that payment could properly be withheld, enforcement of the claim has generally been allowed despite the existence of a support trust or spendthrift clause."

Dodge, 281 N.W.2d at 451.

In this case, a material question exists as to whether the testator, Elsie May Johnson, intended that claims of creditors for living expenses of the debtor or his children should be paid from the trust despite the spendthrift clause.,

The answer to this question requires construction of the will of Elsie May Johnson and perhaps other evidence.

In ascertaining the intent of a testator, the court must rely primarily on the language contained in the will. Russell v. Johnston, 327 N.W.2d 226, 229 (Iowa 1982).

The entire will is examined to ascertain testator's intent; it is not to be ascertained from a single part or paragraph. The will must be read and considered as an interrelated entirety. In re Hoagland's Estate, 203 N.W.2d 577, 581 (Iowa 1973).

Where the terms of a will are plain and unambiguous, resort to extrinsic circumstances is not permitted. In re Estate of Kiel, 357 N.W.2d 628, 630 (Iowa 1984).

As to extrinsic evidence, the Iowa Supreme Court has said:

To ascertain the substance and intent, we examine the entire will, and the circumstances surrounding the decedent at the time he made the will, to determine the scheme of distribution and, ultimately, the testator's intent. This examination is subject to the limitation, prevailing generally, that extrinsic facts and circumstances cannot be resorted to in order to defeat the plain and unambiguous language of the will.

Russell v. Johnston, 327 N.W.2d 226, 229 (Iowa 1982).

The intent of Elsie May Johnson is disputed. The only evidence of the testator's intent presently before the court is the will. From the court's examination of the will alone, it cannot say that Elsie May Johnson intended that the trust estate be involuntarily invaded for the payment of "living expense" creditors.

Whether additional evidence as to her intent might be offered or admitted will not be determined in this ruling. Counsel will have the opportunity at trial to argue as to the construction of the will and as to whether the will alone is a satisfactory indicator of the testator's intent.

Suffice it to say that the trustee has not met his burden of showing the lack of a genuine issue of material fact as it concerns testator's intent. As has been indicated, this intent is critical under the Dodge case to determine whether the trust can be invaded for support debt.

Nor has the trustee met his burden as to the nature of the debts he claims are support debts. There is no evidence in support of the trustee's claim that many of the pre-petition debts arising after the death of the testator are support claims of the kind that would be paid out of the trust because of the Dodge decision.

For the foregoing reasons, the trustee is not entitled to summary judgment on the basis of his second theory (Complaint, Division II).

IT IS THEREFORE ORDERED that the plaintiff's motion for summary judgment is overruled.

SO ORDERED ON THIS 9TH DAY OF FEBRUARY, 1988.

William L. Edmonds
Bankruptcy Judge

Filed Stamped 2/9/88

1. A trial court is not required in ruling on a motion for summary judgment to state findings of fact or conclusions of law. However, such findings may be helpful both to the litigants and to any reviewing court. Klinge v. Lutheran Charities Association of St. Louis, 523 F.2d 56, 62 (8th Cir. 1975).

