

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
DAVID BALS,) CASE NO. BK03-44120
)
Debtor(s).) CH. 13

MEMORANDUM

Hearing was held in Lincoln, Nebraska, on June 18, 2004, on the debtor's amended Chapter 13 plan (Fil. #22) and objection by the Chapter 13 trustee (Fil. #30), and on the debtor's motion to disclaim life insurance benefits (Fil. #25) and objection by the trustee (Fil. #29). Victor Covalt appeared for the debtor, and Marilyn Abbott appeared for the Chapter 13 trustee. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(L) & (O).

The trustee has objected to confirmation of the plan on the basis of the debtor's entitlement, arising post-petition, to \$40,000 in insurance benefits from a policy on the life of his former wife. Such proceeds would boost the assets of the estate and provide a significant dividend to unsecured creditors. The debtor believes his entitlement to the benefits is contrary to his former wife's intent and is a mistake attributable to her oversight when executing documents necessary to put the terms of the property settlement agreement into effect after the divorce. He seeks to disclaim his right to those benefits in favor of the secondary beneficiaries on the policy, the two adult children of the debtor's marriage to the insured.

The parties divorced in 1993. As part of their property settlement, the parties agreed that they "shall maintain their current life insurance policies in effect and name the minor children of the parties as the primary beneficiary of said policies until said children reach the age of majority." Property Settlement Agreement ¶ 10 (Fil. #34). This case was filed in December 2003. The former Mrs. Bals passed away in February 2004, within 180 days after the petition date. The debtor was subsequently notified by her surviving spouse that the debtor was named the primary beneficiary on a life insurance policy she had with Modern Woodmen of America. The whereabouts

of the policy are unclear. The debtor has not filed a claim for the benefits.

It is readily apparent from the evidence that at the time of the divorce and thereafter, both Mr. Bals and the former Mrs. Bals intended to name their children as primary beneficiaries of their life insurance policies. Both parties apparently did so on all but this policy. The debtor indicates in his affidavit that he does not want the money, does not believe he is entitled to the money under the terms of his divorce decree, and wants the money to go to his children as their mother intended. The problem arises because the policy's beneficiary designation - for whatever reason - was not changed to reflect the terms of the property settlement.

The nature and extent of a debtor's interest in property are determined by state law. Once that determination has been made, federal bankruptcy law dictates the extent to which that interest is property of the estate. N.S. Garrott & Sons v. Union Planters Nat'l Bank (In re N.S. Garrott & Sons), 772 F.2d 462, 466 (8th Cir. 1985).

In Nebraska, a person may renounce his or her inheritance rights, including those as a beneficiary under an insurance policy. Neb. Rev. Stat. § 30-2352 (2003). When the appropriate steps for such a renunciation are followed, the interest renounced passes as if the person renouncing had died before his or her interest was created. Neb. Rev. Stat. § 30-2352(c). The renunciation voids any right in the renounced assets which may have vested in the beneficiary at the time of the decedent's death. In essence, the renouncing beneficiary is treated as never having acquired rights to the property. Essen v. Gilmore, 259 Neb. 55, 607 N.W.2d 829 (2000) (barring creditor from reaching heir's renounced share of mother's estate under Uniform Fraudulent Transfer Act because heir acquired no rights and therefore could not transfer them through renunciation).

Under Nebraska law, properly renounced interests do not become property of a debtor and therefore cannot become property of the debtor's bankruptcy estate. As a result, 11 U.S.C. § 541 has no bearing on the issue. However, if the beneficial interest were found to be property of the debtor, it clearly would be property of the Chapter 13 estate, as 11 U.S.C. § 1306(a)(1) includes in the estate all property acquired post-petition. In re Tworek, 107 B.R. 666 (Bankr. D. Neb. 1989). The language of § 541(a)(5)(C) which sweeps into the estate life insurance

benefits to which the debtor becomes entitled within 180 days after his petition date therefore becomes irrelevant.

By separate order, the debtor's motion to disclaim life insurance benefits will be granted, and the trustee's objection to the amended plan will be overruled.

DATED: September 10, 2004

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*Victor Covalt
Marilyn Abbott
United States Trustee

Movant (*) is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.

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ORDER

Hearing was held in Lincoln, Nebraska, on June 18, 2004, on the debtor's amended Chapter 13 plan (Fil. #22) and objection by the Chapter 13 trustee (Fil. #30), and on the debtor's motion to disclaim life insurance benefits (Fil. #25) and objection by the trustee (Fil. #29). Victor Covalt appeared for the debtor, and Marilyn Abbott appeared for the Chapter 13 trustee.

IT IS ORDERED: For the reasons stated in the Memorandum of today's date, debtor's motion to disclaim life insurance benefits (Fil. #25) is granted. The Chapter 13 trustee's objection to debtor's amended plan (Fil. #30) is overruled.

DATED: September 10, 2004

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*Victor Covalt
Marilyn Abbott
United States Trustee

Movant (*) is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.