

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
W. DALE AND MARY SNOVER,	)	CASE NO. BK84-1867
	)	
DEBTORS	)	A87-140
	)	
MERLE J. NICOLA, TRUSTEE,	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
MILTON SNODGRASS, et al.,	)	
	)	
Defendant	)	

MEMORANDUM OPINION

This matter came on for hearing on May 21, 1987, upon the motion to dismiss filed by the defendant Paul W. Morris. Appearing on behalf of the trustee was Daniel W. Evans of Omaha, Nebraska. Appearing on behalf of the defendant was Robert G. Krafka of Fremont, Nebraska.

The debtors herein, W. Dale Snover and Mary A. Snover, filed a Chapter 11 petition in the United States Bankruptcy Court on September 25, 1984. On August 28, 1985, the debtors converted their Chapter 11 petition to a Chapter 7 petition. The debtors' discharge was denied on April 17, 1986.

On December 24, 1985, W. Dale Snover's father died, leaving him certain properties. This adversary action was filed to compel turnover of the inheritance property to the bankruptcy estate. The defendant alleges that, pursuant to 11 U.S.C. § 541(a)(5)(A), the inherited property is not part of the estate because it was acquired more than 180 days after the filing of the original Chapter 11 petition. The trustee claims that the controlling date in this situation is the date of the conversion to Chapter 7, and, therefore, that the inheritance is part of the estate because it was acquired within 180 days after the conversion date.

This Court believes that Koch vs. Myrvold, 784 F.2d 862 (8th Cir. 1986) is directly on point with the instant case. In Myrvold, the 8th Circuit was faced with a very similar factual situation. In both Myrvold and the instant case, the debtor's

inheritance was acquired more than 180 days after the date of the original Chapter 11 filing. The only difference is that, in Myrvold, the debtors acquired the inheritance prior to the conversion to Chapter 7, while in the instant case, the debtors acquired the inheritance approximately 120 days after the conversion date. The 8th Circuit upheld the decision of the United States Bankruptcy Court for the District of Minnesota that the inherited property did not belong to the estate:

" ... applying 11 U.S.C. §§ 348(a), 541(a)(5)(A), the Bankruptcy Court held that the inherited property did not belong to the estate. (citations omitted) ...

Section 541(a)(5)(A) of Title 11 provides that property of the estate shall include

[a]n interest in property that would have been property of the estate if such interest had been an interest of 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 ...

11 U.S.C. § 541(a)(5)(A). Section 348(a) of Title 11 provides that a conversion of a case from chapter 11 to chapter 7

constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

Id. § 348(a).

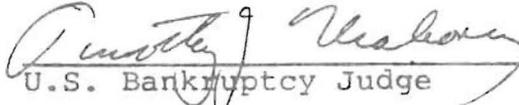
Here, the District Court found that 'the original chapter 11 petition was filed on January 6, 1983, and [Glenn Myrvold] became entitled to inheritance on February 6, 1984, more than 180 days after the original petition was filed.' Thus, the court concluded that the inherited property was not a part of the bankruptcy estate under section 541(a)(5)(A)."

Koch vs. Myrvold, 784 F.2d 862 at 863 (8th Cir. 1986).

Applying the statutory language and the ruling in Myrvold, this Court finds that the inheritance in the instant case is not property of the estate. Defendant's motion to dismiss is granted.

DATED: November 9, 1987.

BY THE COURT:

  
U.S. Bankruptcy Judge

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