DOCKETED

FILED
U.S. DISTRICT COURT
W.D.N.Y. ROCHESTER

00 MAR 27 PM 2:26

CELEBRATING 100 YEARS OF
SERVICE TO WESTERN NEW YORK
1900-2000

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In re:
CRAIG A. SMITH AND CHARLOTTE A. SMITH
Debtors.

DOUGLAS J. LUSTIG, Trustee,

Appellant,

v.

CRAIG A. SMITH and CHARLOTTE A. SMITH,

Appellees.

99-CV-6137T

DECISION and ORDER

INTRODUCTION

Appellant Douglas J. Lustig ("Lustig" or "Trustee") appeals from an Order of the Bankruptcy Court which denied his motion requesting that certain property possessed by the debtor should be included in the Bankruptcy Estate. The Bankruptcy proceedings were initiated by the debtors Craig A. Smith and Charlotte A. Smith (the "debtors"). Lustig, as Trustee of the Bankruptcy Estate, moved for an order directing debtor Charlotte Smith, ("Smith", "debtor", or "Charlotte"), to turn over to the Estate a 1994 Oldsmobile automobile which Lustig contended should properly be part of the Estate.[1] The Smiths opposed the Trustee's

---

[1] Two months after the debtor's discharge, the Oldsmobile was traded in for a newer vehicle currently owned by Charlotte

#11

motion on grounds that the automobile was not theirs, but in fact was owned by their daughter Theresa Smith, ("Theresa"). Bankruptcy Judge John C. Ninfo II heard argument on the motion on October 2, 1998 and denied Appellant's motion from the bench followed by a written order confirming the denial on October 9, 1998.

On Appeal, Lustig contends that the Bankruptcy Court erred in determining that debtor Charlotte Smith was not the true owner of the 1994 Oldsmobile and, therefore, was not a part of the Estate. Specifically, Lustig contends that the Smith failed to sustain her burden of proving that she did not own the 1994 Oldsmobile even though it was titled in her name. Lustig also contends that the Bankruptcy Court erred in determining that the automobile was a conditional gift to the debtor's daughter from her grandparents.

For the reasons set forth below, I find that the 1994 automobile should have been included as property of the Bankruptcy Estate and, accordingly, reverse the Bankruptcy Court's October 9, 1998 Order.

Smith, and thus is no longer available to the estate. Smith received $10,000.00 for the value of the trade towards the purchase price of her new automobile, which amount the Trustee requests be included in the Bankruptcy Estate.

BACKGROUND

The vehicle at issue was purchased by Charlotte Smith and was titled in her name, but was driven by Charlotte's daughter Theresa. (Tr.9).[2] The funds to purchase the vehicle were supplied by Charlotte Smith's father, Walter Harmon.[3] (Tr. 9). Smith's argument, therefore, is that the vehicle was actually a gift to Theresa from her grandparents. (Tr. 8-9). Mr. Harmon supplied $15,000.00 for the purchase of the vehicle by giving a $9,000.00 check to Charlotte Smith, and a $6,000.00 check to Smith's son Mark Smith. (Tr. 9). The money was divided between Smith and her son to avoid tax implications involving the gift of $10,000.00 or more to a single person. (Tr. 9). Although Smith testified that her daughter owned the car, none of the money for the purchase of the car was given directly to Theresa because Smith considered Theresa irresponsible to handle such a large sum of money. (Tr. 18).[4]

---

[2] "Tr." refers to the Transcript of proceedings held before the Bankruptcy Court on October 2, 1998.

[3] Walter Harmon's last name is referred to as "Harmon" in the Transcript and Appellant's initial brief, "Harvick" in the Appellee's brief, and "Harvick" in the Appellant's reply brief. He will be referred to as Mr. Harmon in this Decision.

[4] Theresa testified that her parents were afraid that if she had received the money to purchase the car herself she would have "go[ne] out and b[ought] my <u>own</u> car . . . ." (emphasis added). Theresa's statement implies that by not being given the money,

In her bankruptcy petition, Smith acknowledged that the Title to the car was in her name, but stated that the vehicle was actually owned by her daughter. (Tr. 8). During the Bankruptcy Court proceeding, she explained that the car was titled in her name so that her daughter would save on insurance costs. (Tr. 11),[5] and because she wanted to retain "control" and restrict Theresa's use of the car. (Tr. 12). Consistent with her mother's testimony, Theresa testified that the car was titled in her mother's name because "[t]hey . . . wanted to control me" and because "[t]he insurance would be cheaper." (Tr. 43). Theresa also testified that her parents "threaten[ed] to take [the car] away . . . if I didn't listen [to them]." (Tr. 44). She admitted that although they never took the car away, her parents threatened to take it away "many times." (Tr. 44). It is undisputed that the conditions under which the car was to be used were set by Charlotte Smith and her husband, and not by Mr. Harmon. (Tr. 12-13, 44, 59).

---

she was not able to buy "her own car" and instead had limited use of the car that was purchased for her.

[5] Although Smith testified that she intended to reduce Theresa's insurance costs by titling the car in her name, she was unable to recall how much her daughter would have saved by having the vehicle titled in Smith's name. (Tr. 10-11).

Although both Charlotte Smith and Theresa testified that the car was Theresa's, Smith testified that Theresa became "fed up" with the controls and limitations placed upon her use of the car, and decided to lease a car on her own. (Tr. 14). She eventually leased a new car in January 1996 and returned the Oldsmobile to her grandparents. Despite Theresa's testimony that she believed the car to be hers, she did not believe that she could have sold the car and kept the money from the sale or apply it to the leasing of the new vehicle. (Tr. 56, 58). In May of 1996, two months after Smith's bankruptcy was discharged, she traded in the 1994 Oldsmobile and received $10,000.00 towards the purchase of a newer vehicle which was also titled in her name. (Tr. 33).

DISCUSSION

Pursuant to 28 U.S.C. § 158(a), district courts are authorized to hear appeals from final orders of a bankruptcy court. Under Rule 8013 of the Federal Rules of Bankruptcy Procedure, a district court shall review the bankruptcy court's legal conclusions de novo. See also In re Duratech Industries, Inc., 241 B.R. 283, 286 (E.D.N.Y. 1999). Mixed questions of law and fact are also reviewed de novo. In re PCH Associates, 949 F.2d 585, 597 (2nd Cir. 1991); Duratech, 241 B.R. at 286.

The sole issue before this Ccourt is whether or not the 1994 Oldsmobile was property to be included in the bankruptcy estate, which is a question of law. Manufacturers Bank & Trust Co. v. Holst, 197 B.R. 856, 857 (N.D. Iowa 1996); In re Central Arkansas Broadcasting Co., 68 F.3d 213, 214 (8th Cir. 1995). Because I find that the debtor failed to establish that she was not the owner of the 1994 Oldsmobile, I find that the car was property of the bankruptcy estate.

Judge Ninfo properly recognized at the October 2, 1998 hearing that since the debtor was the titled owner of the Oldsmobile, it was her burden to demonstrate that she was not the legal and beneficial owner of the car if it was to be excluded. (Tr. 5). The law presumes that the person listed as the titled owner of a vehicle is in fact the owner of the vehicle. Dorizas v. Island Insulation Corp., 254 A.D.2d 246 (N.Y.A.D. 2 Dept. 1998) (proof of alleged owner's name on title "constitutes prima facie evidence of . . . ownership of the vehicle"). Under New York law, "a certificate of title issued by the commissioner is prima facie evidence of the facts appearing on it." N.Y. Veh. & Traf. Law § 2108(c). Moreover, each certificate of title issued by the commissioner shall contain: . . . . [t]he name and address of the owner" See also N.Y. Veh. & Traf. Law § 2108(a(2).

Smith has failed to overcome the presumption that she was the legal owner of the vehicle. The facts adduced at the hearing demonstrated that: (1) she (and not her daughter) was given the money to purchase the car; (2) she participated in selecting the vehicle; (3) she actually purchased the vehicle; (3) the vehicle was titled in her name; (4) she controlled the use of the vehicle; and (5) she received all of the proceeds from the trade-in of the vehicle, amounting to $10,000.00. Collectively, these facts are strong evidence that she owned the car. Conversely, debtor's arguments that her daughter Theresa owned the vehicle are not persuasive. Debtor claimed that Theresa enjoyed exclusive use of the vehicle, paid for the insurance on the vehicle, and was responsible for maintaining it. It is clear from the record, however, that Theresa did not have unrestricted use of the car since the debtors placed limited conditions upon her use of the car. With respect to the cost of automobile insurance, both the debtor and Theresa testified that Theresa, who lived at home, was required to pay $50.00 a month toward room and board but this payment did not increase after the car was purchased.[6] (Tr. 28, 50)

---

[6]Although Smith testified that Theresa was to pay $50.00 a week toward room and board, she did not list this money as income on her bankruptcy petition.

Nor could either specify the amount Theresa was required to pay for the insurance coverage. (Tr. 12, 25). Finally, with respect to maintenance, Theresa testified that her boyfriend did the oil changes free of charge. (Tr. 50). These facts do not rebut the cumulative evidence favoring ownership of the vehicle by her mother.

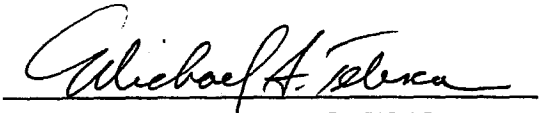
Debtor argues in the alternative that the automobile was a gift from Mr. Harmon to Theresa, and as such, the car may not properly be considered a part of debtor's estate. This argument, however, is inconsistent with the facts. The money to purchase the car was given to Theresa's mother and brother not to Theresa; Theresa was allowed limited use of the vehicle subject to her mother's restrictions; her mother retained control over the vehicle and held title to the car in her name. The evidence fails to support the claim that the car was a gift to Theresa. Theresa testified that she did not believe the car was hers to sell (and indeed because she was not the titled owner of the car it was not hers to sell) and received no benefit from the sale of the car. All proceeds from the sale of the vehicle were retained by the debtor and none to Theresa. Thus Appellees' argument that the car was a gift is not supported by the evidence in the record and I

hold that the debtor in fact, and as a matter of law, was the owner of the vehicle.

CONCLUSION

Because I find that the 1994 Oldsmobile was property of the Estate, I reverse the Bankruptcy Court's October 9, 1998 Decision and remand for further proceedings consistent with this Decision and Order.

ALL OF THE ABOVE IS SO ORDERED.



MICHAEL A. TELESCA
United States District Judge

Dated: Rochester, New York
March 24, 2000

ATTEST: A TRUE COPY
U.S. DISTRICT COURT, WDNY
RODNEY C. EARLY, CLERK

By B. Deputy Clerk

Original Filed 3-27-00

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Lustig

Plaintiff(s)

v. 6:99-cv-06137

Smith

Defendant(s)

PLEASE take notice of the entry of an ORDER filed on 3/27/00, of which the within is a copy, and entered 3/28/00 upon the official docket in this case. (Document No. 11 .)

Dated: Rochester, New York
March 28, 2000

RODNEY C. EARLY, Clerk
U.S. District Court
Western District of New York
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614

Enclosure
TO:
David H. Ealy, Esq.
Louis A. Ryen, Esq.

1AO 450 (Rev. 5/85) Judgment in a Civil Case

DOCKETED

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

In re:
CRAIG A. SMITH AND CHARLOTTE A SMITH
Debtors.

DOUGLAS J. LUSTIG, Trustee,

Appellant(s)

CRAIG A. SMITH and CHARLOTTE A. SMITH,

Appellee(s)

FILED
U.S. DISTRICT COURT
W.D.N.Y. ROCHESTER
00 MAR 28 AM 10: 55
CELEBRATING 100 YEARS OF SERVICE TO WESTERN NEW YORK 1900-2000

JUDGMENT IN A CIVIL CASE

CASE NUMBER:
99-CV-6137T

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came to ~~trial or~~ hearing before the Court. The issues have been ~~tried or~~ heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Decision and Order of the Bankruptcy Court of October 9, 1998, is reversed and the action is remanded to Bankruptcy Court for further proceedings.

March 28, 2000
Date

RODNEY C. EARLY
Clerk

(By) BRYAN J. BLOUGH, CLA
Deputy Clerk

ATTEST: A TRUE COPY
U.S. DISTRICT COURT, WDNY
RODNEY C. EARLY, CLERK

By _____
Deputy Clerk

Original Filed 3-28-00

#12

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Lustig

Plaintiff(s)

v. 6:99-cv-06137

Smith

Defendant(s)

PLEASE take notice of the entry of a JUDGMENT filed on 3/28/00, of which the within is a copy, and entered 3/28/00 upon the official docket in this case. (Document No. 12 .)

Dated: Rochester, New York
March 28, 2000

RODNEY C. EARLY, Clerk
U.S. District Court
Western District of New York
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614

Enclosure
TO:

David H. Ealy, Esq.
Louis A. Ryen, Esq.