

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

In re:

**Patrick Francis Russell
Rebecca Elaine Russell**

Case No. 15-00243-als7

Debtor(s)

**MEMORANDUM OF DECISION
(date entered on docket: June 22, 2018)**

Before the Court is the Trustee's Motion for Turnover of Property and the Debtors' objection. This is a core proceeding under 28 U.S.C. § 157(b)(2)(E).

BACKGROUND

On February 17, 2015 Patrick and Rebecca Russell jointly filed a voluntary petition under chapter 7 of the Bankruptcy Code. Schedule B reflected savings bonds owned jointly by Patrick and his mother. The case remained open while the Russells' attorney and the chapter 7 Trustee discussed how to obtain further information on Patrick's interest in the bonds.

Patrick and his mother were estranged for several years. Upon her death in August 2015 he learned that just days prior to dying she had amended her will to include him. After her death it was also discovered that the bonds listed in the bankruptcy case were owned by Patrick's father, of the same name as the Debtor, who had pre-deceased his wife. The will directed that the bonds be given to Patrick and that he and his two brothers would each receive a 1/3 share of her remaining assets. The Russells did not initially inform their attorney they received approximately \$20,000 from the mother's estate. By the time their counsel and the Trustee learned of the inheritance, that money had all been spent. Additional funds are expected from the sale of the mother's home.

The Russells' attorney argued that the inheritance could only be used to pay Patrick's debts. She and the Trustee agreed that claims would be opened to determine that amount. Following the close of the claims period and the resolution of the filed objections the Trustee offered to settle the matter with the Debtors for a sum of \$9,500.00. After receiving no response, a Motion for

Turnover was filed on behalf of the bankruptcy estate seeking payment of the settlement amount from the Russells. Debtors' counsel withdrew from the case and the Russells filed a pro se objection to the Trustee's Motion. A hearing on the contested Motion was held on April 12, 2018 in Council Bluffs, Iowa and the matter has been fully submitted.

DISCUSSION

11 U.S.C. § 541(a)(5), which states, in pertinent part, that the estate includes --

any 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; . . . or,
- (C) as a beneficiary of a life insurance policy or of a death benefit plan.

11 U.S.C. § 541(a)(5)(A) and (C). There is no dispute that the Russells became entitled to the life insurance, stocks, bonds and interest in the home within 180 days after their bankruptcy was filed. Despite the bonds having been his father's at the time of filing, they were devised to Patrick upon his mother's death and at that point became an asset of the estate.

Except for proceeds from the sale of real estate all assets of the probate estate have been distributed. The Russells have spent the funds they have received to date, and do not have the amount necessary to turnover to the Trustee. This circumstance is not relevant to whether the inheritance is property of the estate and therefore required to be turned over. The claims filed for which Patrick remains liable are substantially less than the share that he has already received under his mother's will. While the Court accepts the Russells' explanation that they never anticipated receiving an inheritance and may have forgotten they were required to report this development to their counsel, the law is clear on this issue. There is no exception available which would excuse turnover of the amount requested by the Trustee.

Nothing in this Order precludes the parties from making an arrangement of how or when the funds shall be paid to the bankruptcy estate.

It is therefore **ORDERED**

1. The Debtors' Objection is overruled;
2. The Trustee's Motion for Turnover is granted in the amount of \$9,500.00.

/s/ Anita L. Shodeen
Anita L. Shodeen
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:
Electronic Filers in this Chapter Case
Patrick and Rebecca Russell