



**SO ORDERED.**

**SIGNED this 13th day of November, 2014.**

*Dale L. Somers*

Dale L. Somers  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In Re:**

**ROSEMARY ANN KROUSE,  
  
DEBTOR.**

**CASE NO. 13-20356  
CHAPTER 7**

**ERIC C. RAJALA, Chapter 7 Trustee,  
  
PLAINTIFF,**

**v.**

**ADV. NO. 13-6093**

**WANDA O'BRIEN,  
  
DEFENDANT.**

**MEMORANDUM AND ORDER  
GRANTING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

In this adversary proceeding, the Plaintiff, Eric C. Rajala, Chapter 7 Trustee (Trustee), seeks to avoid under 11 U.S.C. § 548(a)(1)(B) and recover under 11 U.S.C. § 550(a) a transfer of \$51,750 made by Debtor to Defendant Wanda O'Brien immediately before the filing of Debtor's bankruptcy petition. The Trustee has moved for summary judgment. The relevant facts are uncontroverted. For the reasons examined below, the Court concludes that the Trustee may avoid such transfer. The Court has jurisdiction.<sup>1</sup>

### **UNCONTROVERTED FACTS.**

Debtor signed her voluntary petition under Chapter 7 on February 15, 2013, and her counsel filed the petition on February 20, 2013 at 3:03 pm. One of the assets listed on Debtor's Schedule B is "life insurance proceeds US Bank" valued at \$147,000.

On February 8, 2013, Debtor received a check from the Office of Federal Employee's Group Life Insurance for \$147,670.77, representing the proceeds of Debtor's claim for life insurance arising from the death of her husband, on December 31, 2012. On February 8, 2013, Debtor deposited the check into her US Bank savings account. On the morning of February 20, 2013, before the petition was filed, Debtor purchased two cashier's checks from US Bank for a total of \$67,350. One cashier's check, in the amount of \$51,750 was made payable to Wanda O'Brien, for payment of Debtor's

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<sup>1</sup> This Court has jurisdiction over the parties and the subject matter pursuant to 28 U.S.C. §§ 157(a) and 1334(a) and (b), and the Amended Standing Order of the United States District Court for the District of Kansas that exercised authority conferred by § 157(a) to refer to the District's bankruptcy judges all matters under the Bankruptcy Code and all proceedings arising under the Code or arising in or related to a case under the Code, effective June 24, 2013. Furthermore, this Court may hear and finally adjudicate this matter because it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(H). There is no objection to venue or jurisdiction over the parties.

husband's debt to Wanda O'Brien. Debtor delivered the check to Wanda O'Brien, and Wanda O'Brien deposited it into her US Bank checking account on February 20, 2013 at 11:45 a.m., several hours before Debtor's petition was filed. The second cashier's check, in the amount of \$15,600, was made payable to NAPS, for payment of Debtor's husband's debt to NAPS. Debtor delivered the check to NAPS, and NAPS deposited the check into its Brotherhood Bank checking account on February 20, 2013 at 2:30 p.m., approximately one-half hour before the Debtor's petition was filed. Neither the transfer to Wanda O'Brien nor the transfer to NAPS was disclosed by Debtor in her schedules or statement of financial affairs filed on February 20, 2013. As a result of the purchases of the cashiers' checks, when Debtor's petition was filed at 3:03 p.m. on February 20, 2013, she had in her possession net life insurance proceeds of \$80,320.77.

On her Schedule C Debtor claimed \$147,670.77, the entire life insurance proceeds, exempt under K.S.A. 60-2313(a)(7). The Trustee objected to the exemption of the portion of the proceeds which had been transferred prepetition. The Court sustained the objection and ruled that the exemption is limited to \$80,320.77, the amount of the life insurance proceeds in Debtor's possession when the Chapter 7 petition was filed.

Debtor's schedules showed \$153,301 owed to creditors, real property valued at \$60,690 (subject to a secured claim of \$52,514),<sup>2</sup> and personal property valued at \$152,556, comprised primarily of the \$147,000 life insurance proceeds,<sup>3</sup> only \$80,320.77

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<sup>2</sup> Case no. 13-20356, Schedule A.

<sup>3</sup> *Id.*, Schedule B.

of which was in her possession. After investigation, the Trustee has determined that as of the filing date, the Debtor's nonexempt property consisted of nonexempt funds in her bank accounts of \$1,219.26 and a 1994 Ford Van 150 Econoline having a fair value of \$750.00.<sup>4</sup> On the date Debtor filed her petition, she owed her creditors \$153,301.00 and had non-exempt property valued at \$1,969.26.

The Trustee filed two adversary proceedings to avoid the foregoing transfers by Debtor. The first was this case against O'Brien to avoid the transfer of \$51,750. The second was against NAPS to recover the transfer of \$15,600.<sup>5</sup> By Memorandum Opinion and Order Granting the Plaintiff's Motion for Summary Judgment and Denying the Defendant's Motion for Summary Judgment, entered on the docket on July 11, 2014, the Court held that the transfer to NAPS was avoidable and denied the defenses asserted by NAPS.<sup>6</sup> The Court's findings of fact and conclusions of law made in the case against NAPS are incorporated by reference into this opinion.

O'Brien *pro se* filed an answer, but it did not assert any affirmative defenses. O'Brien failed to respond to the Trustee's motion for summary judgment. She appeared *pro se* at the August 28, 2014, hearing on the Trustee's motion, but raised no affirmative defenses. At oral argument, she was orally advised that her case was indistinguishable

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<sup>4</sup> Doc. 37, 5, case no. 13-6094.

<sup>5</sup> Adversary case no. 13-6094.

<sup>6</sup> *Id.*, doc. 46.

from the Trustee's case against NAPS and that the Trustee would most likely be granted relief in this case, just as he was in his case against NAPS.

## **DISCUSSION.**

As a matter of law, the Trustee is entitled to avoid the transfer by Debtor to Wanda O'Brien. The Trustee seeks to avoid the payment to O'Brien under § 548(a)(1)(B). It provides:

(a)(1) The trustee may avoid any transfer . . . of an interest of the debtor in property . . . that was made . . . on or within 2 years before the date of filing of the petition, if the debtor voluntarily or involuntarily -

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(B)(i) received less than a reasonably equivalent value in exchange for such transfer . . .; and

(ii) (I) was insolvent on the date that such transfer was made . . . , or became insolvent as a result of such transfer.

This subsection allows the trustee to set aside constructively fraudulent transfers - transfers which are not "infected by actual fraud"<sup>7</sup> but are made by insolvent debtors.

It permits avoidance if trustee can establish (1) that the debtor had an interest in property; (2) that a transfer of that interest occurred within [two years] of the filing on the bankruptcy petition; (3) that the debtor was insolvent at the time of the transfer or became insolvent as a result thereof; and (4) that the debtor received 'less than reasonably equivalent value in exchange for such transfer.'<sup>8</sup>

The uncontroverted facts establish these elements. On February 20, 2013, Debtor delivered a cashier's check in the amount of \$51,750 to O'Brien to pay the debt of her

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<sup>7</sup> *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 535 (1994).

<sup>8</sup> *Id.*

late husband to O'Brien. The funds used to purchase the cashier's check were proceeds of life insurance paid to the Debtor which had been deposited in a segregated account. O'Brien deposited the check into her checking account on February 20, 2013 at 1:45 am, before Debtor's petition was filed. The facts therefore establish that Debtor made a transfer of an interest in her property to O'Brien, that the transfer occurred less than two years prepetition, and that Debtor received less than equivalent value, since the debt was owed by Debtor's late husband, not by the Debtor. Further, the facts establish that Debtor was insolvent on the date of transfer because the Debtor's debts exceeded the value of all of her nonexempt property. All of the elements of an avoidable constructively fraudulent transfer are present.

The Court therefore holds that the Trustee may avoid the transfer to O'Brien under § 548(a)(1)(B) and recover the same from O'Brien for the benefit of the estate under § 550(a).

The foregoing constitute Findings of Fact and Conclusions of Law under Rule 7052 of the Federal Rules of Bankruptcy Procedure which makes Rule 52(a) of the Federal Rules of Civil Procedure applicable to this proceeding. A judgment based upon this ruling will be entered on a separate document as required by Federal Rule of Bankruptcy Procedure 7058 which makes Federal Rule of Civil Procedure 58 applicable to this proceeding.

**IT IS SO ORDERED.**

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