

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

In re)	
KATHLEEN ROSE MULLENNIX,)	CASE NO. 05-bk-28199-JKO
)	
Debtor.)	CHAPTER 7
)	

OPINION

This matter came before the Court upon the Trustee’s Motion to Compel Turnover of Insurance Proceeds Related to Automobile (CP 13) filed on January 10, 2006. The Trustee asserts that the subject insurance proceeds are property of the estate under 11 U.S.C. §541 because prior to the Chapter 7 filing, the vehicle was at all times solely titled in the Debtor’s name and in the Debtor’s possession. However, the Debtor argues that the vehicle is not property of the estate because she held only bare legal title to the car, and therefore the Trustee is not entitled to the insurance proceeds. The Court has considered the following: the Debtor’s Response to Motion to

Compel filed on January 11, 2006 (CP 14); Trustee's Facts Not Disputed by Trustee and Memorandum of Law in Support of Motion to Compel Turnover of Automobile Insurance Proceeds filed on February 16, 2006 (CP 26); Debtor's Memorandum of Law in Opposition to Trustee's Motion to Compel Turnover of Automobile Insurance Proceeds filed on February 24, 2006 (CP 27); Amended Stipulated Facts As To Trustee's Motion To Compel Turnover of Insurance Proceeds Related To Automobile filed on February 28, 2006 (CP 28). After reviewing the record, the relevant statutory and precedential authority, and being otherwise fully advised in the premises, the Court makes the following determinations.

Facts

Kathleen Hill ("Hill") is the mother of Kathleen Rose Mullennix ("Debtor"). Hill is a 80 year old woman with serious medical problems. In May 2005, Hill had a motor vehicle accident which exacerbated her medical condition. At the time of the accident, Hill was driving her own car, a 2002 Subaru. The car was declared a total loss as a result of the accident. Hill refused to drive after the accident, although she still holds a Florida driver's license. After the car accident, the Debtor would drive Hill to her medical appointments in the Debtor's car. The Debtor then owned, and still owns, a 1997 Ford Taurus.

As Hill's medical condition worsened, she was unable to get into the Debtor's car. On July 7, 2005, Hill withdrew the sum of \$26,155.53 from her Wachovia Bank account to purchase a new car. The Debtor did not contribute any money to the purchase of the vehicle. The Debtor and Hill contend they agreed the new car would belong to Hill because she alone needed it, paid for it, and benefitted from it.

Hill tendered to Sawgrass Ford a certified bank check in the full amount of her withdrawal

of \$26,155.53 payable to the car dealer and dated July 7, 2005 as full payment for a 2005 Ford 500 Sedan (the "Sedan"). The Sedan was purchased solely in the name of the Debtor. The certificate of title was issued under the name of the Debtor.

A State Farm Insurance company document dated July 7, 2005 indicates that the "reason" for the "release of credits" from Hill's Subaru insurance policy to the Sedan policy was because the vehicle was for the insured's daughter to drive her mother. The Debtor was the legal titleholder and the Sedan insurance policy named her as the insured. The Sedan was used exclusively and solely to drive Hill to her medical appointments. The Debtor used her own car for her personal needs. All insurance payments, maintenance, care costs and gasoline expenses for the Sedan were paid by Hill. All insurance payments, maintenance, care costs and gasoline expenses for the Debtor's car were paid by the Debtor.

On October 12, 2005, the Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code. The Debtor scheduled the Sedan on Schedule B, but indicated that the market value of her interest therein was \$0, with the following explanation: "purchase for benefit of mother, and with funds from mother- property held for another." On the Statement of Financial Affairs, item 14, describing property held for another, the Debtor listed the following: 2005 Ford 4dr Sedan Limited (purchased with a \$26,155.53 cashier check from mother's Wachovia account in July, 2005)- value \$24,000.00.

Shortly after the bankruptcy was filed, Hurricane Wilma totally destroyed the Sedan. In December 2005, State Farm issued a check to the Debtor in the sum of \$26,456.51 to cover the loss of the Sedan. At the 341 meeting of creditors, the Debtor volunteered the preceding information about the destruction of the Sedan and subsequent payment of insurance proceeds. Because the

destruction of the Sedan and receipt of the insurance proceeds occurred post-petition, those events were not disclosed in the bankruptcy schedules.

Conclusions of law

The issue before the Court is whether the insurance proceeds from a vehicle legally titled in a debtor's name can equitably belong to a non-debtor, and therefore be exempt from the bankruptcy estate, or whether, as the trustee argues, the insurance proceeds are property of the estate under 11 U.S.C. § 541(a)(1). Section 541(a)(1) provides that the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." The Trustee contends this Court is required by Fla. Stat. § 319.22(1)¹ to recognize only the legal titleholder's interest in a vehicle, and that the Court must therefore conclude that the insurance proceeds are property of the estate.

If this Court were to accept the Trustee's reading of 11 U.S.C. § 541(a)(1) and Fla. Stat. § 319.22(1), it would be impossible for a vehicle titled in a Debtor's name to be equitably owned by someone else. The Trustee thus asks this Court to disregard any potential equitable interest in a titled vehicle when the Debtor holds legal title. In support of his argument, the Trustee directs this Court to three cases: *In re Daugherty*, 261 B.R. 735 (M.D. Fla. 2000), *In re Coburn*, 250 B.R. 401 (M.D. Fla. 1999), and *In re Garcia*, 276 B.R. 699 (S.D. Fla. 2002). None of the cases require the result which the

¹The statutory text is as follows: "Except as provided in §§ 319.21 and 319.28, a person acquiring a motor vehicle or mobile home from the owner thereof, whether or not the owner is a licensed dealer, shall not acquire marketable title to the motor vehicle or mobile home until he or she has had issued to him or her a certificate of title to the motor vehicle or mobile home; nor shall any waiver or estoppel operate in favor of such person against a person having possession of such certificate of title or an assignment of such certificate for such motor vehicle or mobile home for a valuable consideration. Except as otherwise provided herein, no court shall recognize the right, title, claim or interest of any person in or to any motor vehicle or mobile home sold, disposed of, mortgaged or encumbered, unless evidenced by a certificate of title duly issued to that person, in accordance with the provision in this chapter." Fla. Stat. § 319.22(1)

Trustee seeks.

Coburn involved a vehicle purchased for the Debtor's benefit and toward which the Debtor made payments; here, by contrast, the un rebutted evidence is that the Sedan was purchased solely for Hill's benefit, and Hill made all the payments. *Garcia* involved a vehicle legally and equitably owned by the debtor; the issue in *Garcia* involved repossession under Fla. Stat. § 319.28, a provision not germane to this case, where all parties agree that legal title rests with the Debtor but dispute equitable ownership.

The *Daugherty* court held that the record before it presented insufficient evidence to establish an intent to create a resulting trust for a vehicle owned by both a husband and a wife. In *Daugherty*, the court concluded "there is nothing in the record to indicate that the Debtor and her husband intended to create a trust and the fact that title was placed in both names . . . is by itself insufficient to establish a resulting trust." 261 B.R. at 740. The record in this case, including bank and insurance documents, provides distinct evidence that Hill and the Debtor intended to create a form of ownership in which the Debtor held bare legal title and Hill held equitable ownership. *Daugherty* provides no assistance in analyzing our situation.

The Debtor contends that the Sedan is not part of the bankruptcy estate because it was the *res* of a resulting trust, in which the Debtor acted as trustee and her mother, Hill, was the beneficiary. A resulting trust arises by operation of law under certain circumstances, such as when one purchases property, but takes title in another's name. *In re Woolum*, 279 B.R. 865, 869 (M.D. Fla. 2002). Upon paying the purchase price, a presumption arises that the purchaser intended the legal title-holder merely hold it in trust. *Id.* This presumption is supported by a series of undisputed facts. The entire purchase price came from Hill's checking account. Hill was an elderly woman who required frequent medical

attention but who refused to drive after being injured and losing her car in an accident. The Sedan is described in contemporaneous insurance documents as “vehicle for daughter to drive mom.” After Hill bought the Sedan, the Debtor continued to use her own car except when transporting her mother. The Debtor paid all insurance, maintenance, care and gasoline costs for her own car, and Hill paid all such costs for the Sedan.

As long as all the necessary elements for the creation of a trust exist, the parties do not need to recognize that they are creating a trust for one to exist.² *In re: Smith*, 73 B.R. 211, 212 (N.D. Fla. 1986). The Debtor and Hill were competent to create a trust; the evidence shows that they had the intent to create a trust; the Sedan was the trust’s *res*; the property was completely disposed of by Hill; there was an implied provision in the disposition for a trustee, and Hill was capable of holding an equitable interest in the Sedan. All elements required to establish a resulting trust are present here.

When equitable interests are involved, 11 U.S.C. §541(a) is specifically limited by 11 U.S.C. §541(d), which states that “property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” [Emphasis added.] Section 541(d) requires that property held in trust be excluded from the estate. *In re B.I. Financial Services Group*, 854 F.2d 351, 354 (9th Cir. 1988), citing *United States v. Whiting Pools*, 462 U.S. 198, 205 (1983).

Finally, the Trustee’s argument that Fla. Stat. §319.22(1) dictates that the Debtor held a one

²The requirements for a valid trust include: a person competent to create the trust; indication of intention to create the trust; property to which the trust may and does pertain; a definite and complete disposition of the property; a provision, at least by implication for the office of the trustee, although formal nomination of a trustee is not essential; and a person capable of holding the equitable interest in the property as a beneficiary. 56 Fla. Jur. 2nd Trusts § 6.

hundred percent interest in the Sedan and that Hill held no interest fails because §319.22(1) addresses marketable title, not beneficial interest. *Cooney v. Jacksonville Trans. Auth.*, 530 So.2d 422 (Fla. 1st DCA 1988). The purpose of § 319.22(1) is to provide clarity in the transfer of marketable title, not to supplant the law of trusts.

One can own a vehicle in Florida without having a certificate of title to it. *In re Kalter*, 292 F.3d 1350, 1358 (11th Cir. 2002). Indeed, although the provisions of Fla. Stat. §319.22(1) prevent marketable title from being passed except from the legal titleholder of a motor vehicle, the statute does not preclude the passage of title from the seller to the buyer in the absence of marketable title. *Greyhound Rent-A-Car v. Austin*, 298 So.2d 345, 348 (Fla. 1974). The Trustee's attempt to strictly construe 11 U.S.C. §541(a) in conjunction with Fla. Stat. §319.22(1) in such a manner as to divest Hill of her equitable ownership of the Sedan is without merit.

The presumption of a resulting trust arose when Hill purchased the Sedan with her own funds for her sole benefit. Under the undisputed facts, the imposition of a resulting trust is supported by both law and equity. The only property interest which the Debtor had in the Sedan was bare legal title, and that is the only interest which became property of the estate. The Debtor fairly valued that interest in her schedules as \$0. The insurance proceeds are excluded from the bankruptcy estate pursuant to 11 U.S.C. § 541(d). Accordingly, it is

ORDERED that the Trustee's Motion to Compel Turnover of Insurance Proceeds Related to Automobile is **DENIED**.

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Copies furnished to:

Robert A. Angueira ,Esq.

Michael Sen, Esq.

(Attorney **SEN** is directed to serve a copy of this Order on all interested parties immediately upon receipt thereof.)