

Bakst v. Miller (In re Miller)

Case No: 09-19281

Adv No: 10-03152

Debtor was the surviving Spouse of Decedent. Decedent died, leaving her children as beneficiaries of an IRA. After Decedent's death, Debtor filed a Chapter 7 petition and received a discharge. After receiving his discharge, Debtor filed an Election to Take Elective Share in Decedent's estate (the "Election"), entitling him to a 30% share of Decedent's elective estate (the "Elective Share"). Trustee filed a Complaint to Determine Validity, Priority, and Amount of Interest in Elective Share, seeking a ruling that the Elective Share is property of Debtor's bankruptcy estate pursuant to 11 U.S.C. § 541(a).

The Court held that the Elective Share is not property of the bankruptcy estate. Under Florida law, the right of election is a personal right, not a property interest of the debtor. Thus, § 541(a)(1) did not apply because the Elective Share did not exist as of the petition. Furthermore, the fact that Debtor was entitled to acquire the Elective Share on the petition date is of no consequence as this simply meant that Debtor had the personal right of election on the petition date. § 541(a)(5) did not apply because (1) Debtor filed the Election 350 days after the petition date, well beyond the 180 day period set forth in § 541(a)(5), and (2) until Debtor exercised the right of election, Debtor was not entitled to acquire the Elective Share. The Court rejects Trustee's argument that Debtor intentionally delayed filing the Election to avoid the 180 day period under § 541(a)(5). However, Trustee never filed a motion seeking to require Debtor to file an election, and even if Trustee had, the Court would have had no such power to do so.