

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
DIVISION

In re)	
)	
KATHLEEN M. GLENNY,)	Case No. 04-56332-399
)	Chapter 7
)	
Debtor.)	
)	
TRACY A. BROWN, Trustee,)	
)	
)	
Plaintiff,)	
)	
-v-)	Adv. No. 05-4195-293
)	
MARIE W. GLENNY,)	
)	
)	
Defendant.)	

ORDER

Trustee filed this adversary complaint against Debtor's mother, Marie W. Glenny ("Glenny"), seeking to avoid and recover a \$2,600.00 payment Debtor made to Glenny (the "Transfer") as a fraudulent conveyance under both 11 U.S.C. § 548(a)(1)(B) and Mo. Rev. Stat. § 428.024. Because Trustee failed to demonstrate that the Transfer was fraudulent under either statute, the Court will enter judgment in favor of Glenny.

The facts in this case are undisputed. Debtor filed for relief under Chapter 7 of the Bankruptcy Code on December 28, 2004. Debtor made the Transfer to Glenny within a year of filing her petition for relief. Glenny, however, prior to receiving the Transfer, made several payments directly to or for the benefit of Debtor in an amount approximately equal to the value of

the Transfer. Glenny maintains, therefore, that the Transfer was simply Debtor's repayment of an antecedent debt owed to Glenny.

Trustee first attempts to avoid the Transfer as a fraudulent transfer under 11 U.S.C. § 548(a)(1)(B). Section 548(a)(1)(B) states in relevant part that a trustee may avoid any transfer of an interest in the debtor made one year prior to the petition if the debtor did not receive less than a reasonably equivalent value in exchange for the transfer. The trustee has the burden of establishing that she has the right to avoid a transfer under 11 U.S.C. § 548(a)(1)(B) by a preponderance of the evidence. Halverson v. Funaro (In re Funaro), 263 B.R. 892, 899 (B.A.P. 8th Cir. 2001). The trustee, therefore, must establish by a preponderance of the evidence that the debtor received less than reasonably equivalent value in exchange for the transfer in question. Meeks v. Don Howard Charitable Remainder Trust (In re S. Healthcare of Arkansas), 309 B.R. 314, 319 (B.A.P. 8th Cir. 2004).

Here, the undisputed evidence demonstrates that Glenny made payments directly to or for the benefit of Debtor prior to receiving the Transfer. The Code explicitly defines value to include the satisfaction of an antecedent debt. 11 U.S.C. § 548(d)(2)(A). Thus, the key question here is whether Debtor had an antecedent obligation to repay Glenny.

There is no doubt that had Trustee introduced any evidence that Glenny, as Debtor's mother, viewed her payments to Debtor and for Debtor's benefit as mere gifts, then Trustee would have met her burden of establishing that Debtor did not receive reasonably equivalent value in exchange for the Transfer under 11 U.S.C. § 548(a)(1)(A). See Coan v. Fleet Card Serv., Inc. (In re Guerrero), 225 B.R. 32, 36-37 (Bankr. D. Conn. 1998). Trustee, however, failed to produce such evidence. The only evidence in the record is that Glenny wrote several checks directly to or for the benefit of

Debtor prior to receiving the Transfer and that the value of these payments was approximately equal to the value of the Transfer. Accordingly, based on this bare evidentiary record, the Court finds that Trustee has failed to establish by a preponderance of the evidence that Debtor did not receive reasonably equivalent value in exchange for the Transfer. Trustee, therefore, has not met her burden in demonstrating that she is entitled to avoid the Transfer under 11 U.S.C. § 548(a)(1)(B).

Trustee also seeks to avoid the Transfer as a fraudulent transfer under Missouri law. Trustee's "strong arm" powers under the Code allow her to avoid any transfer that a hypothetical unsecured creditor could avoid under applicable state law. 11 U.S.C. § 544(b)(1). Here, Trustee contends that she can void the Transfer under Missouri's version of Uniform Fraudulent Transfer Act. Mo. Rev. Stat. § 428.024. The Court disagrees.

Missouri's Uniform Fraudulent Conveyance Act provides in relevant part that a creditor may avoid a transfer if the debtor did not receive reasonably equivalent value in exchange for the transfer and if the debtor "intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due." Mo. Rev. Stat. § 428.024.1(2)(b). The creditor seeking to avoid the transfer must establish that the transfer constituted a fraudulent conveyance by clear and convincing evidence. Behr v. Bird Way, Inc., 923 S.W.2d 470, 473 (Mo. Ct. App. 1996). Thus, a court must not presume the existence of fraud when the transaction in question can fairly be reconciled with honesty, even if the transaction was between family members. Bueneman v. Zykan, 52 S.W.3d 49, 54 (Mo. Ct. App. 2001).

Here, as outlined above, the only evidence in the record indicates that Glenny made payments directly to or for the benefit of Debtor prior to receiving the Transfer and the amount of these payments was approximately equal to the value of the Transfer. Thus, the transaction in

question can fairly be reconciled with honesty. Accordingly, the Court finds that Trustee failed to establish by clear and convincing evidence that she can avoid the Transfer under Missouri's Uniform Fraudulent Conveyance Act.

In conclusion, Trustee has failed to meet her burden of proof under either Federal or applicable state law that the Transfer constituted a fraudulent conveyance. Accordingly, Trustee cannot avoid the Transfer under either 11 U.S.C. §§ 544(b)(1) or 548(a)(1)(B). The Court, therefore, will enter judgment in favor of Defendant. Accordingly,

IT IS HEREBY ORDERED that judgment be entered in favor of **Defendant**.

DATED: November 22, 2005

St. Louis, Missouri



David P. McDonald
United States Bankruptcy Judge

Copy mailed to:

Pamela B. Leonard
1034 S. Brentwood Blvd.
Ste 1830
St. Louis, MO 63117

Tracy A. Brown
1034 S. Brentwood Blvd., Ste 1830
St. Louis, MO 63117
Marie W. Glenny
26 Mercury Drive
Florissant, MO 63031