UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:	)	
Caren Colene Bigelow,	)	Case No. 97-50505C-7W
Debtor.	)	
Bruce Magers, Trustee in Bankruptcy for Caren Colene Bigelow,	)	
Plaintiff,	)	
v.	)	Adversary No. 99-6002
Caren Colene Bigelow and General Board of Pension and Health Benefits of the United Methodist Church,	)	
Defendants.	)	

ENTERED
MAY 31 '00
U.S. Bankruptcy Court
Winston-Salem, NC
IRD

MEMORANDUM OPINION

This adversary proceeding came before the court on April 13, 2000, for hearing upon plaintiff's motion for summary judgment. Thomas W. Waldrep, Jr., and Daniel C. Bruton appeared on behalf of the plaintiff, Gene B. Tarr appeared on behalf of defendant General Board of Pension and Health Benefits of the United Methodist Church and John R. Fonda appeared on behalf of defendant, Caren Colene Bigelow.

NATURE OF CONTROVERSY

The plaintiff ("the Trustee"), as trustee of the bankruptcy estate of defendant Caren Colene Bigelow ("the Debtor"), seeks to recover from the General Board of Pension and Health Benefits of the United Methodist Church ("the Pension Board") Debtor's interest in a church retirement plan of the United Methodist Church which is administered by the Pension Board.

FACTS

The following undisputed facts are established by the record in this case:

1. On the petition date Debtor was a participant in the Ministerial Pension Plan, a church pension plan for clergy associated with a jurisdictional conference of the United Methodist Church (the "MPP Plan").

2. The MPP Plan is a "church plan" as defined in 29 U.S.C. § 1002(33) and § 414(e) of the Internal Revenue Code and is not subject to the requirements of ERISA pursuant to 29 U.S.C. § 1003(b)(2).

3. The Pension Board is the administrator of the MPP Plan.

4. The assets of the MPP Plan are on deposit with a pension trust. The General Board of Pension and Health Benefits of the

United Methodist Church Incorporated in Missouri is the trustee of the trust.

5. On the petition date, the Debtor's participation in the MPP Plan involved two accounts, a Church Account and a Clergy Account. On the petition date, the account balance for Debtor's Church Account was $71,213.02 and for Debtor's Clergy Account was $8,503.32.

6. The Debtor's Clergy Account is composed of a "Personal Account" and a "QVEC Account." The Debtor's Clergy Account was funded solely through contributions by the Debtor. Under the terms Pension Plan, the Debtor can voluntarily elect to receive all the monies in her Personal Account and QVEC Account upon becoming a "Terminated Participant." Under the Pension Plan, a "Terminated Participant" is defined as "a person who has been a Participant, but whose employment has been terminated other than by death, Disability, or retirement."

7. The Debtor's Church Account is funded through contributions submitted by the Debtor's employer or salary-paying unit.

8. Under the terms of the Pension Plan, the Debtor is required to contribute at least three percent (3%) of her before-

tax salary to her Church Account. However, if a Pension Plan participant does not make the required 3% contribution, the participant is billed for the 3% by the Church Board, such that the participant is required to make the 3% contribution.

9. Section 6.02 of the MPP Plan provides that the fact that contributions shall be made and credited to the account of a participant shall not vest in such participant any right, title, or interest in or to any of the assets of the MPP Plan except at the time and upon the conditions expressly set forth in the MPP Plan.

10. On the petition date, the Debtor was on family leave but was not a Terminated Participant because her conference relationship had not been severed by withdrawal to unite with another denomination, she had not received honorable location and she had not surrendered her ministerial credentials.

11. Section 11.02 of the MPP Plan contains the following provision:

> No benefits payable at any time under the Plan shall be subject in any manner to alienation, sale, transfer, pledge, attachment, garnishment, or encumbrance of any kind. Any attempt to alienate, sell, transfer, assign, pledge, or otherwise encumber such benefit, whether presently or thereafter payable shall be void. Except as provided in section 11.04 hereof, no benefit nor any fund under the Plan shall in any manner be liable for, or subject

> to, the debts or liabilities of any Participant or other person entitled to any benefit.

12. The Debtor cannot access the funds in her Church Account until retirement, death, or disability. However, the funds in both the Church Account and the Clergy Account can be transferred to a third-party distributee pursuant to the terms of a qualified domestic relations order. This means that a court could order that the funds in the Church Account and the Clergy Account be distributed to the Debtor's husband, even if the Debtor does not qualify for distribution under the MPP Plan.

13. The MPP Plan does not contain any provision that directs which state's laws are to be applied in determining the validity or construction of the MPP Plan.

DISCUSSION

The Trustee's first argument is based upon § 542(a) of the Bankruptcy Code, which requires that a custodian in possession of property of a bankruptcy estate, deliver such property to the bankruptcy trustee. The Trustee asserts that under § 541(a)(1), the Debtor's interest in the MPP Plan is property of the estate and, therefore, pursuant to § 542(a), must be turned over to the Trustee. The Board denies that Debtor's interest under the MPP

Plan constitutes property of the bankruptcy estate, citing § 541(c)(2) of the Bankruptcy Code. The Board argues that there is a restriction on the transfer of Debtor's interest under the MPP Plan that is enforceable under applicable nonbankruptcy law which, under § 541(c)(2), prevents Debtor's interest under the MPP Plan from becoming property of the estate. The issue thus raised by the parties is whether the Debtor's interest in the MPP Plan is property of the estate and hence, subject to the turnover requirement of § 542(a).

Section 541(a)(1) of the Bankruptcy Code provides that a debtor's estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." Although the scope of this provision is very broad, it is not unlimited. Pursuant to § 541(c)(2) of the Bankruptcy Code, "a restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable under the Bankruptcy Code." Thus, under § 541(c)(2), if "applicable nonbankruptcy law" enforces restrictions on the transfer of a debtor's interest in a trust, those restrictions are enforceable in bankruptcy and such interest is excluded from the bankruptcy estate. See In re Putman, 110 B.R.

783, 791 (Bankr. E.D. Va. 1990).

In Patterson v. Shumate, 504 U.S. 753, 112 S.Ct. 2242, 119 L.Ed.2d 519 (1992), the Supreme Court held that an antialienation provision contained in an ERISA qualified pension plan constitutes a restriction on transfer enforceable under "applicable nonbankruptcy law." In so holding, the court ruled that the term "applicable nonbankruptcy law" includes federal law as well as state law, and that funds held in an ERISA qualified pension plan do not constitute property of a debtor's bankruptcy estate, based upon the antialienation requirement set forth in 28 U.S.C. § 1056(d).

As pointed out in Patterson v. Shumate, "pension plans established by governmental entities and churches need not comply with Subchapter I of ERISA, including the antialienation requirement of § 206(d)(1)." Patterson v. Shumate, 504 U.S. at 763, 112 S.Ct. at 2247. And, in fact, the Pension Plan in this case is not ERISA qualified. Because the Pension Plan is not ERISA qualified, the decision in Patterson v. Shumate is not controlling in the present case.

Nor are there any other federal statutes that protect Debtor's interest in the MPP Plan under Section 541(c)(2). Under 26 U.S.C.

§ 401 (a)(13) "a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated." However, it is admitted in the present case that the MPP Plan is not subject to this provision of the Internal Revenue Code. Moreover, the majority of courts have held that § 401(a) provides no enforcement for the transfer restrictions in a pension plan and that qualification under the Internal Revenue Code alone is not sufficient to exclude the plan from the bankruptcy estate. See, e.g., In re Wilcox, 225 B.R. 151, 157-58 (Bankr. E.D. Mich. 1998)("Defendants invite this Court to adopt the premise that, once a restriction on alienation qualifies a plan for § 401(a) status, the restriction automatically is enforceable under nonbankruptcy law for purposes of § 541(c)(2). The Court declines Defendant's invitation."); In re Dunn, 215 B.R. 121, 126 (Bankr. E.D. Mich. 1997)("Most courts have held that an antialienation clause which is sufficient to qualify under I.R.C. § 401(a) does not operate to exclude the plan from the bankruptcy estate unless the plan is ERISA qualified or qualifies as a spendthrift trust under state law"); In re Witwer, 148 B.R. 930, 936 (Bankr. C.D. Cal. 1992), aff'd, 163 B.R. 614 (9th Cir. BAP 1994)("The provisions of I.R.C.

§ 401(a) relate solely to criteria for tax qualification under the Internal Revenue Code. Although a transfer in violation of the required antialienation provision could result in adverse tax consequences, I.R.C. § 401(a) does not appear to create any substantive right that a beneficiary or participant of a qualified retirement trust can enforce."); accord In re Acosta, 182 B.R. 561, 566 (N.D. Cal. 1994)(concurring with the Witwer court that the I.R.C. does not provide for a private cause of action that a pension plan beneficiary can enforce). Hence, even if a plan which is subject to § 401(a) of the Internal Revenue Code contains an antialienation provision, federal law does not make the provision enforceable unless the plan is ERISA qualified.

Because there is no federal law that protects Debtor's interest in the MPP Plan from inclusion in the Debtor's bankruptcy estate, the question becomes whether there is state law under which the restriction on the transfer of Debtor's interest is enforceable. If such state law exists, then § 541(c)(2) operates to exclude the Debtor's interest in the MPP Plan from the bankruptcy estate. See In re Witwer, 148 B.R. at 937 ("Under Code § 541(c)(2), an antialienation provision in a spendthrift trust created under state law is enforceable to exclude the trust corpus from the bankruptcy estate.").

While the Debtor is a resident of North Carolina, the Church Board is an Illinois corporation and the MPP Plan is located and administered in Illinois. Thus, both the State of North Carolina and State of Illinois have involvement. A decision therefore must be made regarding which state's laws are controlling in determining the validity and enforceability of the restriction on the transfer of Debtor's interests under the MPP Plan.

The Fourth Circuit has held that a federal bankruptcy court seeking to determine the extent of a debtor's interest in property should apply the choice of law rules of the state in which the bankruptcy court sits. See In re Merritt Dredging Company, Inc., 839 F.2d 203, 206 (4th Cir. 1988), cert. denied, 487 U.S. 1236, 101 L.Ed.2d 936 (1988). Based on the Fourth Circuit's determination in Merritt, North Carolina choice of law rules are applicable in this case.

The application of North Carolina's choice of law rules involves a three-step process. First, the court identifies the substantive area of law at issue. Second, the court applies the North Carolina choice of law rule which governs that area of substantive law. Third, the court decides whether there are public policy interests which require that an exception be made to the general rule. See Boudreau v. Baughman, 322 N.C. 331, 368 S.E.2d 849 (1988).

Pursuant to the North Carolina choice of law process, the first step in the present case is to identify the area of substantive law presented. The court concludes that the area of substantive law presented in the present case is the law of trusts. The Debtor's interest is in the nature of an interest in a trust and the central issue is whether a purported spendthrift limitation on the transfer of that trust interest is enforceable. The particular area of the law thus implicated is trust law.

Unfortunately, the North Carolina courts have not decided which state's laws should be applied when determining the validity of a trust where the trust is located and administered outside the state. However, in MacMillan v. Branch Banking & Trust Co., 221 N.C. 352, 20 S.E.2d 276 (1942), the court discussed whether North Carolina was controlling on issues involving a trust having its situs in North Carolina. Although the facts in the MacMillan case are distinguishable, the case is helpful because it reflects the factors which were considered by the court in deciding what law was controlling.

In the MacMillan case, the court considered the residency of the creator and beneficiary of the trust, the state of incorporation of the trustee, and the situs of the trust estate as essential elements in determining that North Carolina law governed the trust law issues presented. In the present case, the only party with a connection to North Carolina is the Debtor, as participant/beneficiary. Two other essential elements, the Plan administrator (the Church Board), and the situs of the trust estate (the MPP Plan funds), are located in Illinois. In the MPP Plan arrangement, as in most pension plan arrangements, there is a separate trust between the administrator and a trustee, a Missouri corporation. Although the trustee under the Trust is a Missouri corporation, all trust activity takes place in Illinois where the trust estate is located and where the MPP Plan is administered by the Pension Board, an Illinois corporation. Based upon the number of essential elements located in Illinois and the weight which the court believes should be given to those elements, the court concludes that under the North Carolina choice of law rules in the area of trusts, Illinois law should be regarded as controlling in the present case. In reaching this conclusion, the court also is guided by § 270 of the Restatement (Second) of Conflict of Laws, which provides that the validity of inter vivos trusts involving movables is to be determined "under the local law of the state with which, as to the matter at issue, the trust has its most significant relationship" if the trust does not designate what law is to be controlling. In the present case, the trust has a very significant relationship with the State of Illinois, and no relationship with the State of North Carolina other than the fact the Debtor, one of the many participants under the MPP Plan, lives in North Carolina. See also Suskind & Berry, Inc. v. Rumley, 37 F.2d 304, 305 (4^{th} Cir. 1930).

Having determined that the substantive area of law governing the issues in this case and having applied the North Carolina choice of law rule applicable to that area, the third and final step in the North Carolina three-step choice of law analysis requires a determination of whether there are North Carolina public policy interests which compel that an exception to the general rule be made. As pointed out in the Boudreau case, the type of public policy interests which have given rise to such exceptions involve matters such as prohibited marriages, wagers, lotteries, racing, gaming and the sale of alcoholic beverages. The court concludes that there are no public policy interests related to North

Carolina's spendthrift trust laws which warrant making an exception in the present case. In fact, there are countervailing public policy interests which weigh just as heavily as those underlying the state's spendthrift trust laws. Recent legislative action in North Carolina in 1995 and 1999 reflect that the North Carolina legislature has followed a policy of extending and increasing protection to retirement funds. In 1995, certain individual retirement accounts, contracts, and annuities were added as property which is exempt from the claims of creditors. In 1999, "other similar accounts" were granted the same protection from the claims of creditors. Since there are no public policy interests which dictate that the court not apply Illinois law in the present case, the court concludes that Illinois law is controlling on the issues involving the validity and enforceability of the antialienation provision contained in the MPP Plan.

The status of a retirement plan as a spendthrift trust was addressed in Illinois with the enactment of Illinois Revised Statute, Chapter 110, Section 12-1006 (hereinafter "Section 12-1006"), which provides:

> Exemption for retirement plans.
>
> (a) A debtor's interest in or right, whether vested or not, to the assets held in or to

receive pensions, annuities, benefits, distributions, refunds of contributions, or other payments under a retirement plan is exempt from judgment, attachment, execution, distress for rent, and seizure for the satisfaction of debts if the plan (i) is intended in good faith to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986, as now or hereafter amended, or (ii) is a public employee pension plan created under the Illinois Pension Code, as now or hereafter amended.

(b) "Retirement plan" includes the following:

(1) a stock bonus, pension, profit sharing, annuity, or similar plan or arrangement, including a retirement plan for self-employed individuals or a simplified employee pension plan;

(2) a government or church retirement plan or contract;

(3) an individual retirement annuity or individual retirement account; and

(4) a public employee pension plan created under the Illinois Pension Code, as now or hereafter amended.

(c) A retirement plan that is (i) intended in good faith to qualify as a retirement plan under the applicable provisions of the Internal Revenue Code of 1986, as now or hereafter amended, or (ii) a public employee pension plan created under the Illinois Pension Code, as now or hereafter amended, is conclusively presumed to be a spendthrift trust under the law of Illinois.

(d) This Section applies to interests in pension plans held by debtors subject to

> bankruptcy, judicial, administrative or other proceedings pending on or filed after the effective date of this amendatory Act of 1989.

Under this provision, a "retirement plan" is conclusively presumed to be a spendthrift trust under Illinois law if the "retirement plan" is intended in good faith to qualify as a retirement plan under the applicable provisions of the Internal Revenue Code. Section 12-1006(b)(2) defines a "retirement plan" as including a "church retirement plan." The defendants contend that these provisions of Section 12-1006 are applicable in the present case, and that the MPP Plan therefore must be regarded as a spendthrift trust under Illinois law and hence excluded from the bankruptcy estate under § 541(c)(2) of the Bankruptcy Code. The Trustee contends that Section 12-1006 may not be relied upon because it is unconstitutional under the Supremacy Clause found in Article VI, clause 2 of the United States Constitution.

Turning first to the constitutional issue, the briefs filed by the parties reflect that the cases are divided on the question of whether Section 12-1006 and similar statutes are unconstitutional. Cases such as In re Templeton, 146 B.R. 757 (Bankr. N.D. Ill. 1992), In re Wimmer, 129 B.R. 563 (C.D. Ill. 1991), and In re Kazi, 125 B.R. 981 (Bankr. S.D. Ill. 1991), support the Trustee's position that Section 12-1006 is unconstitutional. Other cases support the defendants' position that the statute is valid. See In re LeFeber, 906 F.2d 330 (7th Cir. 1990); In re Block, 121 B.R. 810 (Bankr. C.D. Ill. 1990); In re Kleist, 114 B.R. 366 (Bankr. N.D.N.Y. 1990); In re Balay, 113 B.R. 429 (Bankr. N.D. Ill. 1990). This court has concluded that the better reasoned view is that Section 12-1006 does not impermissibly conflict with federal bankruptcy law, is constitutional and, therefore, should be given effect. The cases which reach a contrary conclusion seemingly are based upon the assumption that the exception created in § 541(c)(2) is limited to traditional spendthrift trusts as recognized under common law. However, this premise was expressly rejected by the Supreme Court in Patterson v. Shumate, and hence provides no basis for the invalidation of statutes such as Section 12-1006. According to some of these cases, Section 12-1006 is invalid because it substantially deviates from prior Illinois common law requirements for spendthrift trusts. See In re Templeton, 146 B.R. at 757. While this observation may be true, it does not follow that the statute is unconstitutional or otherwise invalid. There is no immutable rule that a state legislature may not change the common law of the state by statutory enactment. To the contrary, the Illinois legislature was fully empowered to change the law of Illinois in order to define spendthrift trusts as including retirement plans that are tax qualified or which in good faith were intended to be tax qualified. Moreover, such legislation does not conflict with the provisions of § 541(c)(2). In § 541(c)(2) Congress made the decision that the exception created by that provision would exist where there is a restriction on transfer that is enforceable under "nonbankruptcy law." There is nothing in § 541(c)(2) which could be read as limiting "nonbankruptcy law" as including only state common law and not including statutes adopted by state legislatures.

This leaves the question of whether § 541(c)(2) is operative in the present case in light of the provisions of Section 12-1006. The operative facts under § 541(c)(2) are that the debtor have a beneficial interest in a trust and that there be a restriction on the transfer of that interest. Both of these facts undisputably are present in this case. The MPP Plan and the MPP Plan Summary Plan Description make it clear that the Plan constitutes a trust.[1] The contributions to the MPP Plan constitute the trust res and the

[1]See page 6 of the MPP Summary Plan Description and Section 8.02(c) of the MPP Plan.

Debtor is the beneficiary of the trust under the MPP Plan. Hence, the MPP Plan qualifies as a "trust" for purposes of § 541(c)(2). See In re Moses, 167 F.3d 470, 474 (9th Cir. 1999); Morter v. Farm Credit Servs., 937 F.2d 354 (7th Cir. 1991); In re Goff, 706 F.2d 574, 588-89 (5th Cir. 1983); In re Kwaak, 42 B.R. 599, 602 (Bankr. D. Me. 1984). It is also clear from the MPP Plan that there is a restriction on the transfer of the Debtor's interest in the trust. Such restriction is found in Section 11.02 of the MPP Plan and includes a provision that no benefits payable under the Plan shall be subject in any manner to alienation, sale, transfer, pledge, attachment, garnishment, or encumbrance of any kind. The remaining issue under § 541(c)(2) is whether the restriction on transfer is enforceable under nonbankruptcy law. In the present case, Section 12-1006 is controlling on this issue. Section 12-1006(b)(2) defines a "retirement plan" as including a church retirement plan or contract. It is not disputed that the MPP Plan in the present case is a "church plan" as defined in 29 U.S.C. § 1002(33) and that the MPP Plan also is a "church plan" as that term is defined in Section 414(e) of the Internal Revenue Code. Under Section 12-1006(c), if the "retirement plan" is intended in good faith to qualify as a retirement plan under the applicable provisions of the Internal Revenue Code, it is conclusively presumed to be a spendthrift trust under the law of Illinois. In the present case, this means that the MPP Plan must be conclusively presumed to be a spendthrift trust unless the MPP Plan was not intended, in good faith, to qualify as a retirement plan under the applicable provisions of the Internal Revenue Code. There has been no showing by the Trustee that the MPP Plan was not intended, in good faith, to qualify as a retirement plan. The Trustee therefore has failed to show that he is entitled to judgment as a matter of law and his motion for summary judgment therefore must be denied.

Even if Debtor's interests in the MPP Plan were property of the estate, the Trustee would not be entitled to a summary judgment awarding the Trustee an immediate recovery of Debtor's interest in the MPP Pension Plan because the Trustee's rights under § 541 are no greater than the rights of the Debtor under the Plan and under the Plan the Debtor is not entitled to any distribution.

A majority of courts limit the interests of the bankruptcy estate to the interests of the debtor at the time the case is commenced. "[I]f the debtor does not have the right to possess or use the property at the commencement of a case, a turnover action cannot be used to acquire such rights." In re Lauria, 243 B.R.

705, 709 (Bankr. N.D. Ill. 2000). In In re Sanders, 969 F.2d 591 (7th Cir. 1992), the court recognized that the federal courts in the Seventh Circuit had been "split on the issue of whether a trustee could compel turnover of accumulated contributions in pension plans when, by resigning, an employee would have an immediate right to the funds." The court noted that at least one court had held that a trustee could compel turnover of contributions to a pension plan, citing, as does the Trustee in the present case, In re Tomer, 117 B.R. 391, 396-97 (Bankr. S.D. Ill. 1990). However, the Sanders court pointed out that most courts have concluded that a trustee may not compel turnover of funds that a debtor cannot not reach without resigning or becoming disabled, citing In re Silldorff, 96 B.R. 859, 866-67 (C.D. Ill. 1990); In re Groves, 120 B.R. 956, 965-67 (Bankr. N.D. Ill. 1990); and In re Balay, 113 B.R. 429, 443-46 (Bankr. N.D. Ill. 1990). The court explained that the split "was resolved by this Court in In re Lyons, 957 F.2d 444 (7th Cir. 1992)." Sanders, 969 F.2d at 593.

The Lyons case involved a debtor's accumulated contributions in the State Employees' Retirement System (SERS), a retirement plan not subject to ERISA. Employees of the State of Illinois are required to participate in SERS, and mandatory contributions are deducted from their wages. Employees are allowed to withdraw their contributions to SERS only upon termination of employment, retirement or disability. In Lyons the court ruled that the trustee could not compel turnover of the debtor's contributions to SERS because, until the termination of her employment or her retirement or disability, the debtor had no present right to withdraw those contributions.

In the Sanders case the court stated that the Lyons decision was founded "on the basic tenet of bankruptcy law that a bankruptcy trustee succeeds only to the title and rights in property that the debtor had at the time she filed the bankruptcy petition." 969 F.2d at 593. Citing Silldorff, 96 B.R. at 866, the court in Sanders said that filing a bankruptcy petition does not expand or change a debtor's interest in an asset; it merely changes the party who holds that interest. "A trustee takes the property subject to the same restrictions that existed at the commencement of the case. To the extent an interest is limited in the hands of a debtor, it is equally limited as property of the estate. Balay, 113 B.R. at 445 (quoting 4 COLLIER on Bankruptcy ¶541.06 (15th ed. 1989))." Thus, as in the Lyons case, the court in Sanders found that the bankruptcy trustee had no present right to the contributions and could not compel turnover of the funds. "To hold otherwise would mean that the Trustee is entitled to receive funds which Donna herself is unable to presently receive and would grant the Trustee greater rights than those of the Debtor." 696 F.2d at 593-94.

The same result was reached in In re DeWeese, 47 B.R. 251 (Bankr. W.D.N.C. 1985). In DeWeese, the debtor was a fully vested participant in his employer's stock bonus retirement plan. The plan was a duly qualified stock bonus plan under § 401 of the Internal Revenue Code, was subject to ERISA and contained the spendthrift clause required by ERISA. The plan was funded by the common stock of the employer, contributed by the employer on an annual basis and held in the name of the plan. The debtor had been continuously employed by Ingles since 1973, and remained an employee of Ingles at the time of the decision. The plan provided that distributions could not be made to any participant or his beneficiaries until the occurrence of death, disability, retirement or a break in service through termination of employment. The plan trustees thus could not make any distribution to any participant while the participant remained employed with Ingles. Judge Wooten found that although the debtor was not entitled to any distribution from the plan and the plan was subject to ERISA, the debtor's interest was property of the bankruptcy estate.[2] Nonetheless, Judge Wooten ruled that the debtor's interests were limited in scope and stated: "[T]he full extent of his interest was a right to share in a future distribution of company stock . . . and this, and this alone is the interest to which the trustee succeeds." 47 B.R. at 256. Judge Wooten concluded that although the debtor's interest "became property of the estate by operation of law . . . there is nothing further available for turnover." Id. at 256. See also In re Smith, 222 B.R. 846 (Bankr. N.D. Ind. 1998), where a Chapter 13 debtor's Profit Sharing Plan included an antialienation clause but contained provisions which gave participants the opportunity to (a) elect to take a distribution under the plan or (b) defer the distribution to a qualified employer-sponsored 401K savings plan in the event that Chrysler Corporation was profitable in a given year. For the year in which the Chapter 13 case was commenced, the female debtor opted to defer her expected profit sharing distribution. 222 B.R. at 849-50. The court said that "[j]ust as a court cannot force a debtor to withdraw or borrow pension or retirement monies to fund a Chapter 7 distribution or Chapter 13 plan, this court

[2]This decision preceded the Supreme Court's decision in Patterson v. Shumate in 1992.

holds as a matter of law that it cannot require Mrs. Smith to elect to take her benefits under the Profit Sharing Plan in the form of a cash distribution." Id. at 860.

It is undisputed that on the Petition Date, the Debtor was not receiving, nor was she entitled to receive, any benefit payments from the MPP Plan. The Debtor's employment had not been terminated, as that term is defined in the MPP Plan, and she had not retired and was not eligible for Early Retirement or Normal Retirement as those terms are defined in the MPP Plan. There also is no contention or evidence that the Debtor was disabled. Nor were any of the other conditions for the receipt of benefits satisfied on the petition date. Thus, the Debtor's account exceeded $3,500.00, and the value of her account was not less than one-fourth of the Denominational Average Compensation. It is true that the Debtor had the ability to become a "Terminated Participant." However, as recognized by a majority of courts, a bankruptcy trustee is not entitled to force a debtor to quit her job, to enable the trustee to have access to the debtor's retirement funds. Accordingly, even if the Debtor's interests in the MPP Plan were property of the estate, the Trustee would have no present right to receive proceeds from the Plan because the Debtor has no such right. To conclude otherwise would mean that the Trustee would be entitled to receive funds which Debtor is unable to presently receive and would grant the Trustee greater rights than those of the Debtor. It follows that the Trustee would not be entitled to summary judgment even if the Debtor's interest in the MPP Plan were property of the estate.

The Trustee also asserts a claim under § 544(a) of the Bankruptcy Code which vests the Trustee with the rights and powers of a judicial lien creditor of the Debtor. However, the Trustee's status as a judicial lien creditor of the Debtor is meaningful only if the antialienation provisions of the MPP Plan are not valid and enforceable under Illinois law, the controlling nonbankruptcy law in the present case. Since the MPP Plan constitutes a spendthrift trust under Illinois law, the Trustee is bound by the antialienation provisions of the MPP Plan to the same extent as any other creditor would be and, therefore, may not reach the interests of the Debtor under the MPP Plan under § 544(a). See In re Lucas, 924 F.2d 597, 603 (6th Cir. 1990); In re Moore, 907 F.2d 1476, 1480 (4th Cir. 1990); In re Cassada, 86 B.R. 541, 544 (Bankr. E.D. Tenn. 1988); In re Threewitt, 24 B.R. 927, 929 (D. Kan. 1982).

CONCLUSION

For the foregoing reasons, an order will be entered contemporaneously with the filing of this memorandum opinion denying the Trustee's motion for summary judgment.

This 30th day of May, 2000.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:	
Caren Colene Bigelow,	Case No. 97-50505C-7W
Debtor.	
Bruce Magers, Trustee in Bankruptcy for Caren Colene Bigelow,	
Plaintiff,	
v.	Adversary No. 99-6002
Caren Colene Bigelow and General Board of Pension and Health Benefits of the United Methodist Church,	
Defendants.	

ENTERED
MAY 31 '00
U.S. Bankruptcy Court
Winston-Salem, NC
TRD

ORDER

For the reasons stated in the memorandum opinion filed contemporaneously herewith, the plaintiff's motion for summary judgment is denied.

This 30th day of May, 2000.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge