IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2692

Summary Calendar

IN THE MATTER OF: ROBERT A. LACEY,

Debtor.

ROBERT A. LACEY and
LINDA F. LACEY,

Appellants,

versus

DAVID J. ASKANASE, Trustee,

Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-93-1287)

(February 18, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Debtor Robert Lacey contends that distributions he received from his late parents' testamentary spendthrift trust were not

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

property of his bankruptcy estate. We affirm the district court's conclusion that they were.

Robert Lacey filed for bankruptcy in 1989. Investigation by the trustee disclosed that Lacey had transferred $200,961.05 in cash to his wife during the year before filing for bankruptcy. Lacey also received $37,966.02 from his parents' trust during the 180 days after filing. The bankruptcy trustee filed suit seeking to bring these funds into the estate. The bankruptcy court found that the money belonged in the estate and the district court affirmed.

Lacey contends that the $37,966.02 disbursement he received after filing was not property of the estate. This question is squarely addressed by Smith v. Moody (Matter of Moody), 837 F.2d 719 (5th Cir. 1988). Smith stated that income payments from a spendthrift trust to its beneficiary within the 180 day period after filing for bankruptcy are part of the bankruptcy estate. Id. at 723. Lacey's reliance on Roy v. Edgar (In re Edgar), 728 F.2d 1371 (11th Cir. 1984), is misguided, as that case relied on a distinction between vested and contingent interests which lacks force after the enactment of the new bankruptcy code.

Lacey next contests the credibility of the trustee's accounting and tracing witness, Dale Wingard, alleging that Wingard knew the estate would not have enough money to pay his fee unless more money was brought into it. We find no clear error in the

lower courts' evaluation of Wingard's testimony. See Anderson v. Bessemer City, 470 U.S. 564, 575, 105 S. Ct. 1504, 1512 (1985).

Lacey finally argues that his wife's community property interest in the $200,961.05 in disbursements received before filing meant that all the money could not be used to satisfy his debts. This argument mischaracterizes the interaction of state property law with federal bankruptcy law. Under Texas law, income from this kind of trust is community property. E.g., Matter of the Marriage of Long, 542 S.W.2d 712, 718-19 (Tex. Civ. App.—Texarkana 1976, no writ). Community property becomes part of the bankruptcy estate unless it is sole control community property of the debtor's spouse. 11 U.S.C. § 541(a)(2). Lacey makes no serious argument that when he received these distributions they were his wife's sole control community property; indeed, it is the control he exercised over the property by endorsing his trust distribution checks to his wife that gave rise to this proceeding. See Tex. Fam. Code § 522(a) (Vernon 1993) (giving examples of sole control community property). The lower courts neither misanalyzed the substantive law of transfers nor clearly erred in their assessment of Lacey's intent in transferring the property.

AFFIRMED