

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7035

Summary Calendar

In the Matter of: Robert J. Hurst, Debtor

Robert J. Hurst, Individually and as
Trustee of the Evan Hurst Marital Deduction
Trust, and Josephine Hurst, Trustee,

Appellants,

versus

William G. West,

Appellee.

Appeal from the United States District Court
for the Southern District of Texas
CA B92 062

(October 27, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Robert Hurst filed for Chapter 7 bankruptcy in October 1989. He contends that his interest in a marital deduction trust created by his father's will should not be included in the bankruptcy

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

estate. We affirm the lower courts' decisions that this interest is part of the estate.

The will of Evan Hurst, Robert Hurst's father, was admitted to probate in December 1984. The will created a marital deduction trust in favor of Josephine Hurst for life. The trust said that she was to receive income from the trust for health, maintenance, and support. It also authorized the trustee to invade the corpus if needed. She is alive today and receiving income from the trust.

The will also provided that Robert Hurst was to be the trustee of the trust. Section 2.02 of the will provided that "Upon the death of my wife . . . [t]he corpus of this marital deduction trust shall be distributed and paid over as if it were a part of the residuary estate to be disposed of pursuant to provisions of 2.03 of this will." Section 2.03, the will's residuary clause, said that Robert Hurst was to receive the residuary estate "if he survives me."

The bankruptcy estate consists of "all legal or equitable interest of the Debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). See generally Matter of Goff, 706 F.2d 574, 578 (5th Cir. 1983). Under Texas law, Hurst's interest is a vested remainder subject to divestment. See Pickering v. Miles, 477 S.W.2d 267, 270 (Tex. 1972). A vested remainder in property held in trust is properly included in the bankruptcy estate. See In re Mcloughland, 507 F.2d 178, 184 (5th Cir. 1975) (interpreting the narrower language of § 70(a)(5) of the Bankruptcy Act).

Hurst argues that bankruptcy code provisions governing inheritances control this case, pointing specifically to 11 U.S.C. § 541(a)(5). It provides that property inherited more than 180 days after the filing of the bankruptcy petition is not included in the estate. We find this provision inapplicable because Hurst inherited his interest in the trust on his father's death, which occurred before the bankruptcy began.

Hurst next cites section 20.01 of the trust, a typical "spendthrift" trust provision, as barring creditors from reaching his interest. This provision applies to property held in trust, but Hurst's remainder interest is not being held in trust. It becomes possessory "outright" upon the death of Josephine Hurst. Because we see no intent by Evan Hurst to protect his son's interest from "spendthrift" use when he made him an "outright" gift, we find that this clause does not remove Robert Hurst's interest from the bankruptcy estate. Cf. Matter of Newman, 903 F.2d 1150 (7th Cir. 1990) (remainderman was also income beneficiary, signalling settlor's intent to protect him from creditors until interest became possessory).

AFFIRMED