

ORDERED.

Dated: May 21, 2026


Grace E. Robson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re	)	
	)	
Thelma Brown Shelling,	)	Case No. 6:26-bk-02705-GER
	)	Chapter 7
Debtor.	)	
_____	)	

ORDER GRANTING IN PART MOTION FOR TURNOVER

THIS CASE came before the Court on May 19, 2026 at 11:00 a.m. (the “Hearing”) upon the *Emergency Motion for Turnover of Exempt Property* (the “Motion”) (Doc. No. 7) and the Memorandum in Support¹ (Doc. No. 11) filed by Debtor Thelma Brown Shelling (“Debtor”).

On April 16, 2026 (the “Petition Date”), Debtor commenced this case by filing a voluntary petition under Chapter 7 of the Bankruptcy Code.² Prior to the Petition Date, judgment creditor ATIAL LLC (“Creditor”) obtained possession of Debtor’s 2020 Ford Escape, VIN # 1FMCU0H65LUC31317 (the “Vehicle”) through a judicial lien and levy. More specifically, the State Court³ entered an *Order on Plaintiff’s Ex Parte Motion for Order to Perfect Motor Vehicle*

¹ *Memorandum in Support of Debtor’s Emergency Motion to Turn Over Exempt Property Procedural History* (the “Memorandum in Support”).

² Unless otherwise stated, statutory references are to the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532.

³ The “State Court” refers to the County Court of the Eighteenth Judicial Circuit in and for Seminole County, Florida.

*Lien, Vehicle Repossession*⁴ in favor of Creditor in the State Court Case.⁵ That order provided for (1) the taking of the Vehicle by a licensed towing agency, (2) the placing of a lien on the certificate of title in the name of Creditor, and (3) the issuance of a new certificate of title to the Vehicle after conducting a sheriff's sale.

According to Debtor's bankruptcy schedules, the Vehicle is subject to a purchase money security interest lien held by Partners Federal Credit Union (the "Bank"). Debtor claimed the Vehicle as exempt on her Schedule C. Based on the Bank's lien and Debtor's claimed exemption, Debtor requests that this Court direct immediate turnover of the Vehicle, without any conditions or requirement to pay fees or costs. In support of the requested relief, Debtor cites to § 542.

The filing of a bankruptcy petition effectuates the automatic stay of § 362(a) which, among other things, prohibits any act to exercise control over property of the estate.⁶ Upon the commencement of a bankruptcy case all legal or equitable interests of the debtor in property become property of the bankruptcy estate.⁷ A debtor may exempt certain property from the bankruptcy estate under § 522, and "[u]nless a party in interest objects, the property claimed as exempt . . . is exempt."⁸ The deadline to object to the claimed exemption is 30 days after the conclusion of the section 341 meeting of creditors.⁹ Until the expiration of the objection period the property remains property of the estate.¹⁰

⁴ *ATIAL LLC v. Shelling*, No. 2007SC001732 (Seminole County Ct. Feb. 16, 2026), Doc. No. 22.

⁵ The "State Court Case" refers to *ATIAL LLC v. Shelling*, No. 2007SC001732 (Seminole County Ct. filed Apr. 24, 2007). A court may take judicial notice on its own or upon a party's request at any stage of a proceeding of a fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. *See* Fed. R. Evid. 201. Accordingly, the Court takes judicial notice of the case record and docket of the State Court Case.

⁶ *See* 11 U.S.C. § 362(a)(3).

⁷ 11 U.S.C. § 541(a).

⁸ 11 U.S.C. § 522(f).

⁹ *See* Fed. R. Bankr. P. 4003(b)(1).

¹⁰ *See, e.g., In re Price*, No. 06-62721-MGD, 2006 WL 6589883, at *1 (Bankr. N.D. Ga. Sep. 20, 2006) (string citing cases); *see also Gamble v. Brown (In re Gamble)*, 168 F.3d 442, 444 (11th Cir. 1999) ("Once the property is removed from the estate [through exemption], the debtor may use it as his own." (alteration in original) (quoting *Hall v. Fin. One of Ga. Inc. (In re Hall)*, 752 F.2d 582, 584 (11th Cir. 1985))).

This case is distinguishable from *Bell-Tel Federal Credit Union v. Kalter (In re Kalter)*,¹¹ as that case dealt with the pre-petition repossession of a vehicle by a secured creditor, whereas this case involves a writ of execution. The Court, applying Judge Funk's reasoning in *In re Zajni*,¹² finds that the pre-petition execution of the Vehicle did not transfer ownership by operation of law.¹³ As Debtor held a legal or equitable interest in the Vehicle upon the filing of the petition, the Vehicle is property of the estate.

Section 542(a) enables the bankruptcy trustee, or the debtor-in-possession in a reorganization case, to seek turnover of the debtor's assets, for the benefit of the estate. "Under the statute, a chapter 7 debtor is not mentioned and generally has no standing to bring an action for turnover."¹⁴ "In a bankruptcy case, in addition to constitutional standing concerns, the standing of a party requesting to be heard is dependent on whether the party is a party in interest."¹⁵ Similar to the case of *In re Hernandez*, the Court finds that ultimately Debtor is seeking to preserve his exemption on the Vehicle by invoking § 522(g) and/or exercising the Chapter 7 trustee's avoiding power under § 522(h).¹⁶ Furthermore, given that Creditor did not appear at the Hearing¹⁷ or file an objection, and trustee's failure to act may harm Debtor's interest in the Vehicle which has been claimed as exempt, the Court finds that relief is appropriate.¹⁸

¹¹ 292 F.3d 1350 (11th Cir. 2002).

¹² 403 B.R. 891 (Bankr. M.D. Fla. 2008).

¹³ *Id.* at 893-94.

¹⁴ *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713, 725 (B.A.P. 9th Cir. 2012) (first citing *In re Freeman*, 331 B.R. 327, 329 (Bankr. N.D. Ohio 2005); and then citing *Price v. Gaslowitz (In re Price)*, 173 B.R. 434, 440 (Bankr. N.D. Ga. 1994)).

¹⁵ *In re McGhee*, 672 B.R. 278, 294 (Bankr. D.S.C. 2025) (first quoting *In re Little*, No. 24-04146-JD, 2024 WL 5182324, at *2 (Bankr. D.S.C. Dec. 19, 2024); and then citing *O'Neal v. Quicken Loans, Inc.*, No. 1:15-cv-03712-JMC, 2016 WL 3569402, at *4 (D.S.C. June 30, 2016)).

¹⁶ See *In re Hernandez*, 483 B.R. at 725.

¹⁷ Debtor's counsel stated on the record at the Hearing that Creditor was properly served with the Motion and notice of the Hearing.

¹⁸ See *In re Price*, 173 B.R. at 440 ("Although the Bankruptcy Code does not empower a party in interest unilaterally to undertake a trustee's duties, it does not prohibit the court from authorizing a party in interest to perform a duty in the trustee's name.").

Accordingly, it is **ORDERED**:

1. The Motion (Doc. No. 7) is **GRANTED IN PART** as set forth herein.
2. Creditor is to immediately release the Vehicle to Debtor.
3. The entry of this Order is without prejudice to the rights of parties in interest to object to Debtor's claim of exemption with respect to the Vehicle.

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Attorney Walter F. Benenati is directed to serve a copy of this Order on interested parties who do not receive service by CM/ECF and to file a proof of service within three days of entry of the Order.