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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

6	In re:)	BAP No.	AZ-13-1251-DPaKu
7	ROBERT G. DALE, JR. and)	Bk. No.	3:11-bk-30579-GBN
8	KATHY ANN DALE,)		
9	Debtors.)		
10	ROBERT G. DALE, JR.; KATHY)		
11	ANN DALE,)		
12	Appellants,)		
13	v.)	O P I N I O N	
14	EDWARD J. MANEY, Chapter 13)		
15	Trustee,)		
16	Appellee.)		

Argued and Submitted on January 23, 2014
at Tempe, Arizona

Filed - February 5, 2014

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable Sarah S. Curley, Bankruptcy Judge, Presiding¹

Appearances: Pernell McGuire, Esq. argued for Appellants
Robert and Kathy Dale; Andrew M. Dudley, Esq.
argued for Appellee Edward J. Maney, Chapter
13 Trustee.

Before: DUNN, PAPPAS, and KURTZ, Bankruptcy Judges.

¹ Although the subject case was assigned originally to the
Hon. George B. Nielsen, Jr., Judge Curley presided over the
proceedings at issue in this appeal.

1 DUNN, Bankruptcy Judge:
2

3 Debtors Robert and Kathy Dale appeal the bankruptcy court's
4 determination that an inheritance Mr. Dale received from his
5 mother more than 180 days following the petition date but prior
6 to confirmation of a plan in the Dales' chapter 13² case was an
7 asset of their bankruptcy estate. We AFFIRM.

8 **FACTUAL BACKGROUND**

9 The relevant facts in this appeal are straightforward and
10 undisputed.

11 The Dales filed their chapter 13 petition on October 31,
12 2011. To date, no plan has been confirmed in their chapter 13
13 case. On August 11, 2012, more than 180 days following the
14 petition date, Mr. Dale's mother passed away, entitling him to an
15 inheritance of approximately \$30,000 ("Inheritance"). On
16 December 13, 2012, the Dales filed a declaration with the
17 bankruptcy court disclosing the Inheritance.

18 The chapter 13 trustee Edward J. Maney ("Trustee") demanded
19 that the Dales turn over the Inheritance funds to the Trustee for
20 distribution to their creditors. On January 9, 2013, the Trustee
21 filed a motion to dismiss the Dales' chapter 13 case, as payments
22 under their proposed plan were delinquent. The Dales responded
23 on January 14, 2013, with an "Amended Motion for Moratorium,"
24 proposing that they would make the remaining payments under their
25 plan using \$10,000 in unspent funds from the Inheritance. On the

26
27 ² Unless otherwise indicated, all chapter and section
28 references are to the federal Bankruptcy Code, 11 U.S.C. §§ 101-
1532.

1 same date, the Trustee filed an amended motion to dismiss
2 ("Amended Motion"), arguing that the Dales' chapter 13 case
3 should be dismissed because the Dales 1) had failed to comply
4 with the Trustee's recommendations; 2) had failed to disclose and
5 turn over the nonexempt Inheritance proceeds; and 3) were still
6 delinquent on plan payments. In their response to the Amended
7 Motion, the Dales asserted that their case should not be
8 dismissed because the postpetition Inheritance proceeds were not
9 property of their bankruptcy estate, and even if they were, the
10 Dales merely would be required to account for them in a "Chapter
11 7 reconciliation" rather than being required to turn over the
12 entire Inheritance proceeds for distribution to their creditors.

13 After hearing argument on the Amended Motion, the bankruptcy
14 court announced its findings and conclusions orally, deciding
15 that an inheritance received by a chapter 13 debtor before the
16 case is closed, dismissed or converted is property of the
17 bankruptcy estate under § 1306. On May 15, 2013, the bankruptcy
18 court entered an order consistent with its oral findings and
19 conclusions, determining that the Inheritance proceeds were
20 property of the Dales' bankruptcy estate and requiring the Dales
21 either 1) to turn over the entire amount of the Inheritance to
22 the Trustee for distribution to their creditors, or 2) to amend
23 their chapter 13 plan to provide for distributions to their
24 creditors in an amount, accounting for the Inheritance,
25 sufficient to satisfy the "best interests of creditors" test, as
26 required under § 1325(a)(4). The Dales timely appealed.

27 **JURISDICTION**

28 The bankruptcy court had jurisdiction under 28 U.S.C.

1 §§ 1334 and 157(b) (1) and (b) (2) (A), (E), (L) and (O). We have
2 jurisdiction under 28 U.S.C. § 158.

3 **ISSUE**

4 Did the bankruptcy court err as a matter of law in
5 determining that an inheritance received by a chapter 13 debtor
6 more than 180 days after the petition date, but before a plan was
7 confirmed and before the chapter 13 case was closed, dismissed or
8 converted was an asset of the bankruptcy estate?

9 **STANDARDS OF REVIEW**

10 We review a bankruptcy court's legal conclusions, including
11 its interpretation of provisions of the Bankruptcy Code, de novo.
12 Roberts v. Erhard (In re Roberts), 331 B.R. 876, 880 (9th Cir.
13 BAP 2005), aff'd, 241 F. App'x 420 (9th Cir. 2007). De novo
14 review requires that we consider a matter anew, as if no decision
15 had been rendered previously. United States v. Silverman, 861
16 F.2d 571, 576 (9th Cir. 1988); B-Real, LLC v. Chaussee (In re
17 Chaussee), 399 B.R. 225, 229 (9th Cir. BAP 2008).

18 **DISCUSSION**

19 This appeal concerns the interpretation of two subsections
20 of the Bankruptcy Code, §§ 541(a) (5) (A) and 1306(a) (1).³ As

21 _____
22 ³ The Dales argue that analysis of § 1327(b) also is
23 appropriate to provide context for our consideration of
24 § 1306(a), citing California Franchise Tax Board v. Jones (In re
25 Jones), 420 B.R. 506 (9th Cir. BAP 2009), aff'd, 657 F.3d 921
26 (9th Cir. 2011). Section 1327(b) provides that, "Except as
27 otherwise provided in the [chapter 13] plan or the order
28 confirming the plan, the confirmation of a plan vests all of the
property of the estate in the debtor." Since no plan has been
confirmed in the Dales' chapter 13 case, we, like the bankruptcy
court, do not consider § 1327(b) or the analysis in In re Jones
(continued...)

1 stated by the Supreme Court in Lamie v. U.S. Trustee,

2 The starting point in discerning congressional intent
3 is the existing statutory text, see Hughes Aircraft Co.
4 v. Jacobson, 525 U.S. 432, 438 (1999), . . . It is
5 well established that "when the statute's language is
plain, the sole function of the courts - at least where
the disposition required by the text is not absurd - is
to enforce it according to its terms."

6 Lamie v. U.S. Tr., 540 U.S. 526, 534 (2004) (citations omitted).

7 Section 541(a) (5) provides in relevant part:

8 (a) The commencement of a case under . . . this title
9 creates an estate. Such estate is comprised of all the
10 following property, wherever located and by whomever
held:

11

12 (5) Any interest in property that would have been
13 property of the estate if such interest had been an
14 interest of the debtor on the date of the filing of the
petition, and that the debtor acquires or becomes
entitled to acquire within 180 days after such date -

15 (A) by bequest, devise, or inheritance;

16 (Emphasis added.)

17 Section 1306(a) (1) provides:

18 (a) Property of the estate includes, in addition to the
property specified in section 541 of this title

19 (1) all property of the kind specified in such
20 section that the debtor acquires after the
commencement of the case but before the case is
closed, dismissed, or converted to a case under
21 chapter 7, 11, or 12 of this title, whichever
occurs first[.]

22 (Emphasis added.)

23 The Dales argue that in spite of the fact that § 1306(a) (1)
24 refers only to "property of the kind" specified in § 541, without
25 referring to any time limitation other than the date that a case

26 _____

27 ³(...continued)
28 relevant or applicable to disposition of the issue in this
appeal.

1 is "closed, dismissed, or converted," it makes no sense to
2 consider property of the "kinds" specified in § 541 without
3 considering its exclusions as well, including the 180-day
4 postpetition limit on inclusion of inheritances. The Fourth
5 Circuit recently considered the interplay between §§ 541(a)(5)(A)
6 and 1306(a)(1) in a similar context and came to the opposite
7 conclusion:

8 Congress has harmonized [§§ 541(a)(5) and 1306(a)] for
9 us. With Section 541, Congress established a general
10 definition for bankruptcy estates. With Section 1306,
11 it then expanded on that definition specifically for
12 purposes of Chapter 13 cases. Thus, "Section 1306
13 broadens the definition of property of the estate for
14 chapter 13 purposes to include all property acquired
15 and all earnings from services performed by the debtor
16 after the commencement of the case." S. Rep. No. 95-
17 989, at 140-41 (1978).

18 The statutes' plain language manifests Congress's
19 intent to expand the estate for Chapter 13 purposes by
20 capturing the types, or "kind," of property described
21 in Section 541 (such as bequests, devises, and
22 inheritances), but not the 180-day temporal
23 restriction. 11 U.S.C. § 1306(a). This is because
24 "[t]he kind of property is a distinct concept from the
25 time at which the debtor's interest in the property was
26 acquired." In re Tinney, 07-42020-JJR13, 2012 WL
27 2742457, at *2 (Bankr. N.D. Ala. July 9, 2012). And on
28 its face, Section 1306(a) incorporates only the kind of
property described in Section 541 into its expanded
temporal framework.

Carroll v. Logan, 735 F.3d 147, 150 (4th Cir. 2013).

The Fourth Circuit's decision in Carroll v. Logan is
consistent with the great weight of authority interpreting the
application of § 1306(a)(1) with respect to postpetition
inheritances in chapter 13, explicitly considering the temporal
exclusion included in § 541(a)(5). See, e.g., Vannordstrand v.
Hamilton (In re Vannordstrand), 356 B.R. 788, 2007 WL 283076
(10th Cir. BAP 2007) (unpublished); In re Tinney, No. 07-42020-

1 JJR13, 2012 WL 2742457, at *1 (Bankr. N.D. Ala. July 9, 2012)
2 (“Whether the Court should grant the Trustee’s motion simply
3 boils down to whether the temporal language in § 1306 - ‘after
4 commencement of the case but before the case is closed,
5 dismissed, or converted’ - expands the 180-day time period in
6 § 541(a)(5)(A); the Court finds that by its plain language § 1306
7 does just that.”); Geddes v. Watson (In re Watson), No. 12-80006,
8 2012 WL 2120530 (Bankr. N.D. Ala. June 11, 2012); In re Zeitchik,
9 No. 09-05821-8-JRL, 2011 WL 5909279 (Bankr. E.D.N.C. Sept. 23,
10 2011); In re Jackson, 403 B.R. 95, 98 (Bankr. D. Idaho 2009);
11 Moser v. Mullican (In re Mullican), 417 B.R. 389 (Bankr. E.D.
12 Tex. 2008); In re Nott, 269 B.R. 250 (Bankr. M.D. Fla. 2000); and
13 In re Euerle, 70 B.R. 72 (Bankr. D.N.H. 1987). See also Keith M.
14 Lundin, 1 Chapter 13 Bankruptcy ¶ 47.2 (3d ed. 2007-1) (“In a
15 Chapter 13 case, § 1306(a)(1) would appear to extend the 180-day
16 period in § 541(a)(5) to include the period between commencement
17 of the chapter 13 case and the time the case is closed, dismissed
18 or converted.”).

19 The Fourth Circuit explicitly considered and rejected in
20 Carroll v. Logan two of the statutory construction arguments made
21 by the Dales in this appeal: 1) that courts “must give effect to
22 every word of a statute,” and 2) that “specific language in a
23 statute governs general language.” 735 F.3d at 152. While
24 recognizing that “courts should give effect to every word of a
25 statute whenever possible,” id., the Fourth Circuit concluded
26 that application of that principle required that inheritances
27 received by chapter 13 debtors more than 180 days after the
28 petition date but before the chapter 13 case was closed,

1 dismissed or converted be included as estate property.

2 [I]f Section 541's 180-day rule restricts what is
3 included in a Chapter 13 estate, then Section 1306(a),
4 which expands the temporal restriction for Chapter 13
5 purposes, loses all meaning. By contrast, neither
6 statute is rendered superfluous, and both are given
effect, if Section 1306(a)'s extended timing applies to
Chapter 13 estates and supplements Section 541 with
property acquired before the Chapter 13 case is closed,
dismissed, or converted.

7 Id.

8 The Fourth Circuit further concluded that the canon of
9 construction that the specific controls the general did not help
10 the chapter 13 debtor appellants before them. Specifically, they
11 rejected the contention that § 541(a)(5) was a specific provision
12 while § 1306(a) was general.

13 Section 1306(a) is specific to Chapter 13 bankruptcies
14 and defines estates solely for purposes of that
15 reorganization chapter. Section 541, by contrast, is a
general provision that provides generic contours for
bankruptcy estates.

16 Id.

17 The Dales cite primarily three bankruptcy court decisions
18 from the Eleventh Circuit in support of their arguments that an
19 inheritance received by a chapter 13 debtor(s) more than 180 days
20 after the petition date is not bankruptcy estate property.⁴ See
21 In re Key, 465 B.R. 709 (Bankr. S.D. Ga. 2012); Le v. Walsh (In
22 re Walsh), No. 07-60774, 2011 WL 2621018 (Bankr. S.D. Ga. June
23 15, 2011); and In re Schlottman, 319 B.R. 23 (Bankr. M.D. Fla.

24 _____
25 ⁴ The Dales further cite the Fourth Circuit's decision in
26 McLean v. Cent. States, Se. & Sw. Areas Pension Fund, 762 F.2d
27 1204, 1206 (4th Cir. 1985), as general support for their
28 statutory construction arguments. Obviously, the McLean decision
is preempted in this context by the Fourth Circuit's more recent,
directly applicable decision in Carroll v. Logan.

1 2004). We are unpersuaded by the analyses of these bankruptcy
2 cases and in any event, we question their viability in light of
3 the Eleventh Circuit's decision in Waldron v. Brown (In re
4 Waldron), 536 F.3d 1239 (11th Cir. 2008). In In re Waldron, the
5 Eleventh Circuit held that a chapter 13 debtor's claims for
6 underinsured-motorist benefits that arose following confirmation
7 of the chapter 13 plan were estate property pursuant to § 1306(a)
8 as a matter of plain language interpretation, in spite of the
9 vesting of estate property in the debtor following confirmation
10 under § 1327(b). Id. at 1242. The Eleventh Circuit cited In re
11 Nott, 269 B.R. at 257-58, which held that an inheritance received
12 by a chapter 13 debtor more than 180 days after the petition date
13 and after confirmation of the chapter 13 plan was property of the
14 estate, as consistent with its conclusion. In re Waldron, 536
15 F.3d at 1243.

16 Ultimately, we agree with the analysis of the Fourth Circuit
17 in Carroll v. Logan, and we conclude that the bankruptcy court
18 did not err in determining that an inheritance received by
19 chapter 13 debtors more than 180 days following the petition date
20 but before confirmation of a chapter 13 plan and before the case
21 is closed, dismissed or converted is property of the debtors'
22 bankruptcy estate.

23 CONCLUSION

24 For the foregoing reasons, we AFFIRM.
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