

damages for which the Committee asserts Mr. Addington was responsible during his lifetime (“Proof of Claim”).

6. At the time of his death, Mr. Addington owned real estate located at 22031 Mindy Lane, Rush, Kentucky 41168 (“Real Estate”). The Administratrix desired to sell the Real Estate and had an agreement with potential purchasers for the sale. (Motion to Enforce, Ex. C, at 1).

7. On June 20, 2011, the Administratrix, the Committee, and other necessary parties entered into an Agreed Order in the Probate Proceeding (“Agreed Order”) permitting the sale of the Real Estate. The Agreed Order provided in pertinent part:

- a. The Real Estate could be sold for \$479,000; and
- b. The net proceeds (“Proceeds”) “from said sale that would otherwise be payable to the estate [of Larry Michael Addington]” after payment of outstanding mortgages, commissions, attorney fees, ad valorem taxes, closing costs and 25% of net proceeds to Colletta Joan Addington, were to be placed in an interest-bearing account to be held by the Clerk of the Probate Court pending further orders of that court. (Motion to Enforce, Ex. C, at 2).

8. On June 22, 2011, the Committee filed Adversary Proceeding No. 11-1041 in this bankruptcy case against the Addington Estate and others for certain torts, fraudulent transfers, and preferential payments.

9. The Committee asserts that no party to the Probate Proceeding objected to the Proof of Claim, until over a year after it was filed, when on August 30, 2011, Amy Addington, in her capacity as the sole heir of Mr. Addington, filed a Motion to Disallow Claim and Disburse Proceeds (“Motion to Disallow”) in the Probate Court.¹ In her Motion to Disallow, Amy Addington argues that upon the death of Mr. Addington, she inherited the Real Estate without it passing

¹ According to the Committee, the Motion to Disallow was filed on August 30, 2011. The Committee attached an unfiled copy of the Motion to Disallow to the Motion to Enforce. The Administratrix does not dispute the filing date or that the copy attached to the Motion to Enforce is an accurate copy of the Motion to Disallow

through the Addington Estate. She further states that it was improvident for her, in her capacity as the Administratrix, to have entered into the Agreed Order.

10. The Committee filed the Motion to Enforce in response to the Motion to Disallow. The Committee asserts that (i) the filing of the Motion to Disallow constitutes a violation of the automatic stay; (ii) under Kentucky law, the Proof of Claim is deemed allowed because of the failure of the Administratrix to timely disallow the Proof of Claim; and (iii) the Administratrix is bound by the language of the Agreed Order which acknowledges that the Proceeds are property of the Addington Estate.

11. The Response requests that if this Court determines that the automatic stay is in effect, that this Court lift the automatic stay to allow the Administratrix to proceed in the Probate Court.

ISSUES

There are multiple issues to be determined in this case, including the following:

1. Whether pursuant to Kentucky Revised Statute § 391.010 and Kentucky case law, the Real Estate passes through the Addington Estate or whether the Real Estate passed directly to Amy Addington at the time of Mr. Addington's death?
2. If the Real Estate did pass directly to Amy Addington and did not pass through the Addington Estate, did it pass to Amy Addington free of Mr. Addington's debts?
3. Whether the terms of the Agreed Order prevent Amy Addington from now asserting that the Real Estate is not an asset of the Addington Estate?
4. Whether the Proof of Claim has been deemed allowed pursuant to Kentucky Revised Statutes § 396.055(1); and if so, whether the Motion to Disallow provides cause for the Proof of Claim to now be disallowed?
5. Are the Proceeds from the sale of the Real Estate, personal property of the Addington Estate?

However, the overriding issue is whether this Court or the Probate Court should decide the above issues.

JURISDICTION

This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334(b) and a determination of whether the automatic stay is in effect in a particular case or whether such stay should be lifted is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G) and (O). However, whether our jurisdiction extends to allowing or disallowing a disbursement from a probate estate is a question this Court must address. In *Marshall v. Marshall*, 547 U.S. 293, 126 S. Ct. 1735 (2006), the Supreme Court, discussing the probate exception to federal jurisdiction stated:

“It is true that a federal court has no jurisdiction to probate a will or administer an estate But it has been established by a long series of decisions of this Court that federal courts of equity have jurisdiction to entertain suits ‘in favor of creditors, legatees and heirs’ and other claimants against a decedent’s estate ‘to establish their claims’ so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court.” [*Markham*], 326 U.S., at 494, 66 S. Ct. 296 (quoting *Waterman*, 215 U.S., at 43, 30 S. Ct. 10).

Next, the Court described a probate exception of distinctly limited scope:

“[W]hile a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, ... it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court’s possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.” 326 U.S., at 494, 66 S. Ct. 296.

The first of the above-quoted passages from *Markham* is not a model of clear statement. The Court observed that federal courts have jurisdiction to entertain suits to determine the rights of creditors, legatees, heirs, and other claimants against a decedent’s estate, “so long as the federal court does not *interfere with the probate proceedings.*” *Ibid.* (emphasis added). Lower federal courts have puzzled over the meaning of the words “interfere with the probate proceedings,” and some have read those words to block federal jurisdiction over a range of matters well beyond probate of a will or administration of a decedent’s estate.

We read *Markham’s* enigmatic words, in sync with the second above-quoted passage, to proscribe “disturb[ing] or affect[ing] the possession of

property in the custody of a state court.” 326 U.S., at 494, 66 S. Ct. 296. True, that reading renders the first-quoted passage in part redundant, but redundancy in this context, we do not doubt, is preferable to incoherence. In short, we comprehend the “interference” language in *Markham* as essentially a reiteration of the general principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent’s estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.

Marshall, 547 U.S. at 310-12, 126 S. Ct. at 1747-48 (emphasis in original, some citations omitted).

Given the Supreme Court’s instruction in *Marshall*, while this Court may have jurisdiction over the adversary proceeding filed by the Committee against the Addington Estate, it is our opinion, that the Probate Court is in the superior position to determine whether the Proceeds are property of the Addington Estate and the appropriate disposition of those Proceeds, including whether the Motion to Disallow establishes cause for the Proof of Claim to be disallowed and whether the Proceeds, if disbursed to Amy Addington, remain subject to the claims against the Addington Estate. Further, we find that in the Agreed Order, the Committee agreed that the Proceeds would be held by the Probate Court pending further orders of that court. The Committee is bound by that agreement.

Based on the foregoing, the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Enforce insofar as it requests that this Court enforce the automatic stay is hereby OVERRULED, and the request of the Administratrix to lift the stay to permit her to proceed with a determination of the above issues in the Probate Court is hereby GRANTED.

Copies to:

- Will J. Matthews, Esq. (For service on all interested parties)
- Matthew B. Bunch, Esq.
- Laura Day Delcotto, Esq.
- T. Kent Barber, Esq.
- Allan B. Diamond, Esq.
- Benjamin R. Garry, Esq.
- U.S. Trustee

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Joseph M. Scott, Jr.**  
**Bankruptcy Judge**  
**Dated: Wednesday, September 14, 2011**  
**(jms)**