Opinion Title: 07/10/2003 UNPUBLISHED In re David, 02-21500, Judge Thurman

Body: The Chapter 7 Trustee brought a motion to require the Debtors to turnover property of the estate to the Trustee. The property consisted of $825.74 that existed in the Debtors' bank checking account at the time the case was filed. The Debtors originally filed the case as a Chapter 7 case, but following their 341 meeting, the Debtors converted their case to one under Chapter 13. Approximately four months after the case was converted, the Debtors reconverted the case back to one under Chapter 7. Several months after the conversion back to Chapter 7, the Chapter 7 Trustee brought his motion for turnover seeking the money that existed in the checking account at the time the case was originally initiated. During the course of their case, the Debtors had spent the money in their checking account on moving expenses and on other ordinary living expenses. The Debtors were never put on notice that the Trustee would seek turnover of those funds until nearly sixteen months after the case was filed. The Court held that under 11 U.S.C. § 348(f) property of the Debtors' Chapter 7 estate after conversion from Chapter 13 consisted of property that remains in possession of the debtor or is under the control of the debtor on the date of the conversion and, therefore, did not include the checking account funds that had been subsequently consumed before the conversion back to Chapter 7. The Court also concluded that it may not rule the same in a case where a debtor converted to another chapter in bad faith.

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Judge: Judge William T. Thurman [2]

Date: Thursday, July 10, 2003

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