



**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

**The following constitutes the order of the Court.**

**Signed September 2, 2004.**

**United States Bankruptcy Judge**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:

GLORIA J. DILWORTH,

D E B T O R.

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CASE NO. 04-32655-SAF-13

**MEMORANDUM OPINION AND ORDER**

Tamara C. Gurnell and Florence Morton, co-administrators of the probate estate of Bernice Brashear Watts, move the court to lift the automatic stay of 11 U.S.C. § 362 to permit the prosecution of an eviction action against the debtor, Gloria J. Dilworth. The debtor opposes the motion. Thomas Powers, the Chapter 13 trustee, takes no position on the motion. After a preliminary hearing, the court continued the stay to a final hearing. The court conducted an evidentiary final hearing on July 26, 2004.

The determination of a motion to lift the automatic stay

raises a core matter over which this court has jurisdiction to enter a final order. 28 U.S.C. §§ 157(b)(2)(G) and 1334. This memorandum opinion and order contains the court's findings of fact and conclusions of law. Bankruptcy Rules 7052 and 9014.

Despite sixty years of two families interacting over the same property, one family now wants to evict the other. One family tells the court that it wants possession of the property to hold as an investment, yet that family will not sell the property for a profit. The other family tells the court that it wants possession of the property to occupy as a residence, yet that family does not live on the property and owns other residential property. In testimony, neither family forthrightly testified about its motives. A court of equity finds little reason to apply equity when neither side levels with the court. The court will therefore resolve the motion by applying the letter of the law.

The Bernice Brashear Watts probate estate claims title to real property located at 2546 Hooper Street in Dallas, Texas. The Watts estate requests that the automatic stay be modified to permit an eviction action to be prosecuted against Dilworth. Dilworth claims title to the property based on a quitclaim deed from her daughter, Gwendolyn Byars. Byars asserts that she obtained title to the property by virtue of a warranty deed Byars says had been executed by Watts in 1995.

Dilworth filed her petition for relief under Chapter 13 of the Bankruptcy Code on March 2, 2004. Gurnell and Morton filed their motion to lift the automatic stay on March 30, 2004. The court held a preliminary hearing on the motion on April 29, 2004. Although the parties agree that the court cannot determine title to the Hooper Street property on a § 362 motion, see Rule 7001(2) requiring an adversary proceeding to determine an interest in property, the court continued the stay to a final hearing to consider the respective families' long history with the property and the impact of public records and proceedings in other courts. Because of scheduling considerations, the parties agreed to hold the final hearing on July 26, 2004. The court may modify the automatic stay of 11 U.S.C. § 362(a) for cause. 11 U.S.C. § 362(d)(1). The court conducted the evidentiary hearing to determine if the Watts estate established cause to modify the stay. For the reasons stated below, the court finds cause to lift the automatic stay.

Dilworth bases her claim to title on a quitclaim deed. A quitclaim deed can only convey the interests, if any, that the grantor has in the property. Based on a final state court judgment, Byars had no interest in the property to transfer to Dilworth.

As relevant to this motion, the chain of title contains three recorded deeds. By warranty deed dated August 1, 1929, and

filed August 20, 1929, Paul Griffith and his wife, Doria Griffith, transferred the property to D. M. Brashear, a widow. The next deed in the chain is a warranty deed from Bernice Brashear Watts to Gwendolyn Dilworth Byars, dated April 29, 1995, but not filed until December 4, 2001. The third deed is a quitclaim deed from Gwendolyn Dilworth Byars to Gloria J. Dilworth, dated June 1, 2001, but not filed until April 15, 2003. The chain of title does not establish how title passed from Brashear to Watts. The public records do not reflect a probate decree or affidavit of heirship but they do contain an affidavit from Byars.

The court looks at the title chain in greater detail and as pertains to the use of the property. In 1929, D. M. Brashear, a widow, obtained title to the property by warranty deed dated August 1, 1929, filed August 20, 1929. In 1936, Jennie V. Smith Shannon<sup>1</sup>, Dilworth's mother, leased the property from Brashear. Smith raised her family of eight in the house, including Dilworth. Dilworth testified that she lived in the house from age 3 to age 22. She moved out of the house at age twenty-two when she married. Smith lived in the house until her death on January 21, 1995. Family members occupied the house off and on during the following years.

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<sup>1</sup> During the evidentiary hearing, the parties referred to Jennie V. Smith Shannon as Ms. Smith. The court will refer to her as "Smith" in this memorandum opinion.

With regard to the gap in the chain of title, as stated, the records do not reflect how or if title passed from D. M. Brashear to Watts. There is the deed transferring title to the property from Bernice Brashear Watts to Gwendolyn Dilworth Byars, dated April 29, 1995, but not recorded until December 4, 2001. There is also the quitclaim deed from Byars to Dilworth, dated June 1, 2001, but not filed until April 15, 2003. Byars is the daughter of Dilworth and the granddaughter of Smith. The warranty deed from Watts to Byars is dated three months after Smith's death.

Based on the testimony of the witnesses and the judge's notes from the Watts probate record, D.M. Brashear had a son, A. W. Brashear, and a daughter, Bernice E. Watts. Upon Brashear's death, A.W. Brashear controlled the property. He died during or around 1989. Watts took control of the property. She died intestate on July 21, 2001. The quitclaim deed from Byars to Dilworth is dated about one month before Watts died. Watts left no spouse and had no children. A.W. Brashear had two children, Florence B. Morton and Barbara Carter.

Watts died in Oklahoma, where she had been living. Gurnell, her grand-niece and Carter's daughter, and a Ruth L. Williams filed a petition to commence probate proceedings in Oklahoma. Morton substituted for Williams. By order entered September 10, 2001, the probate court appointed Gurnell and Morton as the co-personal representatives of the Watts estate.

About three months later, on December 4, 2001, Byars recorded the warranty deed from Watts. One month later, on January 18, 2002, Gurnell and Morton on behalf of the Watts estate filed an application in Texas for ancillary administration to address a check for mineral rights and the Hooper Street property. The application reports, under its list of creditors, a transfer of title dispute. By order dated April 20, 2002, the Texas court granted ancillary administration and issued ancillary letters of administration to Gurnell and Morton.

Armed with that authority, on August 16, 2002, Gurnell and Morton on behalf of the Watts estate filed a state court law suit against Byars, alleging that the warranty deed was fraudulently executed and seeking title and possession. They filed a motion for summary judgment contending that an agreement to sell and the deed had been fraudulently signed and fraudulently notarized. They supported the motion with affidavits, including an expert opinion of a document examiner. With the motion pending, Dilworth recorded the quitclaim deed from Byars on April 15, 2003. The state court, by order dated May 22, 2003, granted the motion, and entered a judgment relinquishing possession from Byars to the Watts estate and declaring that title to the property vested in the Watts estate. The state court denied a motion for new trial. Byars contends that Watts, although elderly, traveled to Dallas to enter the agreement to sell and

execute the warranty deed. Regardless of that testimony, the court must accord full faith and credit to the final state court judgment. Unless a state appellate court overturns that judgment, the judgment is binding and should be honored by a federal court.

Gurnell and Morton on behalf of the Watts estate then filed a forcible entry and detainer action in the Justice Court in Dallas County, Texas. Byars agreed to the entry of a judgment for forcible entry and detainer. The court entered that judgment on August 14, 2003.

Gurnell and Morton obtained a writ of possession on September 15, 2003, but, before its execution, Byars filed a petition for bankruptcy relief on September 22, 2003. By virtue of the state court judgment and the quitclaim deed, Byars had no interest in the property and scheduled none. By order entered February 20, 2004, the court modified the automatic stay in the Byars case.

Nevertheless, as Dilworth had recorded the quitclaim deed, she filed the instant case on March 2, 2004. The state court judgment vesting title to the property in the Watts estate meant that Byars had no interest to quitclaim to Dilworth. Even though Dilworth was not a party to the state court litigation, she has little likelihood of establishing an interest in the property. That unlikelihood of an interest in the property constitutes

cause to lift the stay.

In addition, the sequence of events, including the timing of the filing of the deeds, suggests a manipulation of the public records to thwart an orderly determination of rights and interests, thereby further constituting cause to lift the stay.

Dilworth contends that she and her family have rights in the property, having lived there since 1936. She argues that the family has a history in the house which they would like to preserve. Gurnell and Morton recognize that history.

Dilworth, however, has not testified forthrightly to the court. She stated on her bankruptcy petition that her address was Hooper Street, but the court questions whether she actually was living there because she testified that she had not been living in the Hooper Street house post-petition. She listed the Hooper Street property as her only real estate, but, during cross examination, she testified that she had interest in six other parcels of residential real estate. After the hearing, she filed an amended schedule listing that additional property. She testified that she lived at Hooper Street from age 3 to age 22. She moved out when she married at age 22 and thereafter lived at 1024 Pinedale in Dallas. She did not originally schedule the Pinedale property, but her amended schedules report \$50,000 of equity in the property. She holds an interest in property on Pleasant Run in DeSoto, Texas, where Byars lives. In her amended

schedules, she lists the value and debt on that house at \$60,700 but she testified that the house has a tax appraisal value greater than \$400,000. As Dilworth does not live in the Hooper Street house, lives at another location where she has considerable equity and has not been forthrightly testifying before the court, the court finds a further basis for cause to lift the stay.

To complete the fact finding, the Oklahoma probate court entered an order on November 18, 2002, allowing the final report and account and determining heirship and final decree of distribution, with property rights, after payment of expenses and claims, passing one-half of the net estate to Morton and one-half to Carter. Gurnell and Morton filed a report per the final decree on January 10, 2003. By order entered August 6, 2002, the Texas probate court approved the inventory including the Hooper Street property and the list of claims.

The house is 400 to 500 square feet in size. Smith and her heirs paid rent beginning at \$32 per month, later \$60 and ending at \$100 per month. They made repairs to the house and added improvements, including a bathroom. They had at least one new roof installed. Because of the repairs made by Smith and her heirs, an agreement resulted with Watts for approximately \$1,700 in credit applied to rent.

Gurnell testified that Watts paid the taxes on the property

until her death. The Dallas County Tax Assessor/Collector records reflect a market value of \$13,180 in 2000, with Carter paying the taxes. Carter testified that she paid the taxes after Watts' death. Byars testified that her family paid the taxes in 2002 and 2003 by giving the money to Carter, but she produced no evidence to support that testimony. The tax records reflect that the Watts estate paid the 2003 taxes. The Dallas Central Appraisal District values the property at \$13,000.

D. M. Brashear and her heirs never lived at Hooper Street. Gurnell testified that the family held the property as an investment. The Dilworth family offered to purchase the property. The Watts estate declined the offer.

The court must accord due deference to the state court judgment. The court must also recognize that Dilworth does not live at the property and basically has not lived there since age 22 except off and on from 2002 until just after she filed her petition. Dilworth has other real estate holdings. Dilworth has not honestly sworn to her schedules filed with the court. Thus, despite a long family history with the property, cause exists to lift the stay, and allow an eviction action to proceed.

Based on the foregoing,

**IT IS ORDERED** that the motion is **GRANTED**.

###END OF ORDER###