

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

KEVIN L. GRIFFIN,  
KAREN B. GRIFFIN

Case No. 03-10686-MAM-7

Debtors.

**ORDER GRANTING TRUSTEE'S MOTION FOR TURNOVER**

Glen L. Davidson, Mobile, Alabama, Attorney for Kevin L. Griffin and Karen B. Griffin  
Theodore L. Hall, Mobile Alabama, Pro Se Attorney for Trustee

This matter is before the Court on the trustee's motion for turnover of two Prepaid Affordable College Tuition ("PACT") contracts. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has authority to enter a final order. For the reasons indicated below, the Court finds that the trustee's motion for turnover is granted.

**FACTS**

The debtors, Kevin L. Griffin and Karen B. Griffin, entered into two PACT contracts with the state of Alabama to provide educational benefits for their children. They entered into the first PACT contract in 2000 and the second PACT contract in 2002. Both PACT contracts contain the same provisions. Under the PACT contracts, the Griffins must make 60 monthly payments to the state of Alabama. In return, the state of Alabama will pay their children's (who are the qualified beneficiaries of the contracts) undergraduate tuition and mandatory fees when their children attend college in this state.

The Griffins may cancel the contracts or they may transfer the contract benefits to a qualified substitute beneficiary. Section five of the contracts, titled “Cancellation, Termination, and Refund,” contains the cancellation provisions:

5.01 General. Participation in the PACT Program is strictly voluntary. The PACT Contract can be canceled at any time upon receipt of a written request from the Contract Purchaser. Except for circumstances described in Sections 5.02 and 5.03, Cancellation or Termination shall entitle the Purchaser to a refund of the Redemption Value of the Contract. Refunds may be paid in installments. The PACT Contract is not a debt instrument.

Section six of the contracts, titled “Substitution, Assignment, or Transfer,” states that the contract benefits may be transferred to an individual who “has been born and is a family member of the original Qualified Beneficiary.” The Substitute beneficiary must have “a Projected College Entrance Date that is the same or later than the Projected College Entrance Date of the original Qualified Beneficiary.”

The Griffins filed a chapter 7 bankruptcy case in this Court on February 2, 2003. The trustee filed a motion for turnover of the Griffins’ two PACT contracts on June 23, 2003. The Court held a hearing on the trustee’s motion on July 8, 2003. The Griffins argue that the two PACT contracts are trusts that are not property of the estate under §541(c)(2). The trustee argues that the PACT contracts are nonexempt property of the estate under §541(c)(2) because they do not contain enforceable transfer restrictions. Both parties argue that the *In re Darby* case supports their respective position. 212 B.R. 382 (Bankr. M.D. Ala. 1997).

## LAW

“The Bankruptcy Code excludes from the bankruptcy estate property of the debtor that is subject to a restriction on transfer enforceable under ‘applicable nonbankruptcy law.’”


*Patterson v. Shumate*, 504 U.S. 753, 758 (1992). This Court recently addressed the requirements for a trust to be excluded from property of the estate under §541(c)(2) in *In re Bunn*, Case No.

02-17303-MAM-7 (Bankr. S.D. Ala., March 31, 2003). The Court will not repeat its analysis from *In re Bunn*, with the exception of the Court's finding in that case that a trust is excluded from property of the estate under §541(c)(2) only if it contains a restriction on the debtor's interest in the trust that is enforceable under applicable federal or state law.

The two PACT contracts at issue in this case do not contain transfer restrictions that are enforceable under federal or state law. Instead, the contracts specifically state that the Griffins may cancel them at any time or assign the contract benefits in certain circumstances. Therefore, the Court finds that the two PACT contracts are property of the estate under §541. This holding accords with the result in *In re Darby*, where that court found "under 11 U.S.C. §541 the debtor's right to cancel the prepaid tuition contracts and obtain a refund is property of the bankruptcy estate which is not exemptive under [Alabama state law]." 212 B.R. at 384 (Bankr. M.D. Ala. 1997).

It is ORDERED that the trustee's motion for turnover of two Prepaid Affordable College Tuition ("PACT") contracts held by Kevin L. Griffin and Karen B. Griffin is GRANTED.

Dated: July 8, 2003

  
MARGARET A. MAHONEY  
U.S. BANKRUPTCY JUDGE