IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

IN RE: SHEILA MARIE McCUTCHEON, DEBTOR **CASE NO.: 3:19-bk-71902**
CHAPTER 7

RICHARD COX, TRUSTEE **PLAINTIFF**

AP NO.: 3:20-ap-7038

SHEILA MARIE McCUTCHEON;
ROCKIE LEE McCUTCHEON;
a/k/a ROCKY McCUTCHEON;
KEVIN McCUTCHEON; TRAVIS
McCUTCHEON; JOSHUA SMITH; and
AMBER SMITH **DEFENDANTS**

ORDER GRANTING IN PART AND DENYING IN PART
TRUSTEE'S MOTION FOR PARTIAL SUMMARY JUDGMENT

On October 2, 2020, the chapter 7 trustee filed a motion for partial summary judgment, supporting brief, and statement of undisputed material facts. On November 13, 2020, the defendants filed their joint response. On November 25, 2020, the trustee filed a reply. On January 19, 2021, the Court entered an order seeking clarification of the relief requested by the trustee. On January 21, 2021, the trustee filed an amended motion for partial summary judgment.[1] On February 1, 2021, the defendants filed their response to the amended motion.

[1] Although Bianca Rucker was originally appointed as the chapter 7 trustee in the debtor's case and remained the trustee when the original motion for partial summary judgment was filed, Richard Cox was substituted as the trustee on January 20, 2021, and he filed the amended motion for partial summary judgment. For the sake of continuity, Ms. Rucker and Mr. Cox will be referenced interchangeably in this order as "trustee."

Facts[2]

On September 15, 2015, Kenneth Middleton [Middleton] filed a lawsuit in state court against Shelia McCutcheon [McCutcheon].[3] In his 2015 complaint, Middleton alleged that McCutcheon had converted 46,200 shares of Middleton's Wal-Mart stock. On August 15, 2016, Middleton filed a second lawsuit against McCutcheon, alleging that after he filed his 2015 lawsuit against McCutcheon, she began transferring property to family members for little to no consideration. On November 28, 2018, McCutcheon filed a motion to dismiss Middleton's 2015 state court lawsuit. Nonetheless, when McCutcheon filed her chapter 7 petition on July 12, 2019, both of Middleton's state court lawsuits were still pending.

The trustee commenced this adversary proceeding on July 27, 2020, seeking to set aside five transfers of real property that McCutcheon [now the debtor] had made to various family members prior to filing her bankruptcy petition. The transferees are: the debtor's ex-husband, Rockie McCutcheon [Rockie]; the debtor's daughter and son-in-law, Amber and Joshua Smith [Amber and Joshua]; the debtor's son, Travis McCutcheon [Travis]; and the debtor's ex-brother-in-law, Kevin McCutcheon [Kevin].

The table below contains a chronology of the transfers, as well as other relevant facts and events.

Date	Description
5/28/2010	Joshua and Amber buy 56 acres (Tract V).
2/18/2015	Joshua and Amber transfer Tract V to Joshua, Amber, and the debtor, as joint tenants with right of survivorship.
2/18/2015	The debtor gives a financial statement to Bank of the Ozarks saying she is worth $1,440,000. Assets listed on the financial statement included: cash of $100,000; securities of $100,000; real property of $880,000; autos of $38,000; ATV's of $60,000; farm equipment of $60,000; and cattle of $150,000.
3/23/2015	Debtor signs a note at Bank of the Ozarks for $121,300; Joshua, Amber, and the debtor sign a mortgage on Tract V in favor of Bank of the Ozarks. The

[2] Based on the Court's review of the pleadings, motions, responses, and affidavits filed in this adversary proceeding, the Court finds that the facts contained in this section have been admitted or are otherwise undisputed.

[3] Middleton's lawsuit also named the debtor's sister as a defendant but for purposes of this order, that fact is irrelevant.

	loan proceeds were made payable to the debtor, but deposited into a joint account of Joshua, Amber, and the debtor.
9/15/2015	Middleton sues the debtor and her sister alleging conversion of 46,200 shares of Wal-Mart stock.
6/3/2016	Joshua, Amber, and the debtor transfer Tract V to Rockie via warranty deed.
6/6/2016	The debtor makes a payment of $81,000 on the Bank of the Ozarks note.
6/3/2016	The debtor and Rockie transfer 265 acres (Tract I) to Kevin via warranty deed, which was filed of record on 6/13/16.
6/17/2016	The debtor and Rockie transfer 19.25 acres with house and outbuildings (Tract II) to Joshua and Amber via warranty deed.
6/17/2016	The debtor and Rockie transfer 99.05 acres (Tract III) to Travis and Amber via warranty deed.
6/20/2016	Rockie files for divorce from the debtor. The complaint for divorce does not list assets or liabilities for either party.
7/26/2016	Divorce decree entered which states in part, "no property matters left to be adjudicated." The divorce decree does not list any personal or real property for either party.
8/10/2016	The debtor transfers 20 acres (Tract IV) to Rockie.
8/15/2016	The debtor transfers her dower interest in Tract V to Rockie via quitclaim deed.
8/15/2016	Middleton sues the debtor, Rockie, Travis, Kevin, Joshua, and Amber under Arkansas's fraudulent transfer act.
9/2/2016	Defendants file an answer to Middleton's fraudulent transfer suit.
9/20/2016	The debtor completes financial hardship statement.
9/20/2016	The debtor sends form letter to Bank of America, asking the bank to cease communications regarding payments.
11/28/2018	The debtor and her sister file a motion to dismiss Middleton's conversion claim. The motion to dismiss was stayed when the debtor filed her bankruptcy case.
7/12/2019	The debtor files her chapter 7 petition.
9/16/2019	Middleton files a proof of claim in the debtor's bankruptcy case and lists the value of his unsecured claim as $0.
2/20/2020	Claims deadline in the debtor's chapter 7 expires; timely filed unsecured claims total $22,864.43

In his amended motion for partial summary judgment, the trustee asks the Court to find the following as a matter of law:

A. Middleton held an allowed unsecured claim on the petition date;

B. Middleton's fraudulent transfer suit tolled the statute of limitations regarding the debtor's transfers of her interests in Tracts I, II, III, and V;

C. Middleton's avoidance rights regarding the transfers of the debtor's interests in Tracts I, II, III, IV, and V vested in the trustee on the petition date;

D. The statute of limitations regarding the debtor's transfer of her interest in Tract IV was tolled by the filing of the debtor's bankruptcy petition; and

E. The debtor's transfers of her interests in Tracts I, II, III, IV, and V are voidable under 11 U.S.C. § 544(b) and Ark. Code Ann § 4-59-204(a) because the Debtor did not receive reasonably equivalent value in exchange for the transfers, and after the transfers the debtor's remaining assets were unreasonably small in relation to the transfer she made.

For the reasons stated below, the Court grants summary judgment in part and denies summary judgment in part, as more specifically stated in the Court's conclusion.

Summary Judgment

Federal Rule of Bankruptcy Procedure 7056, which makes Federal Rule of Civil Procedure 56(a) applicable to adversary proceedings, provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Bank. P. 7056. Thus, the court's function in ruling on a motion for summary judgment "'is to determine whether a dispute about a material fact is genuine[.]'" *Contemporary Indus. Corp. v. Frost* (*In re Contemporary Indus. Corp.*), 296 B.R. 211, 215 (Bankr. D. Neb. 2003) (quoting *Quick v. Donaldson Co., Inc.*, 90 F.3d 1372, 1376-77 (8th Cir. 1996)). A genuine issue of material fact exists when the evidence presented is such that a reasonable jury could find for the non-moving party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 257 (1986); *see also Rademacher v. HBE Corp.*, 645 F.3d 1005, 1010 (8th Cir. 2011) (If the evidence is such that a trier of fact could find for either party, then a genuine issue of material fact exists.). In reviewing a motion for summary judgment, the Court considers the pleadings, any affidavits, and the discovery and disclosure materials. *Wood v. SatCom Mktg., LLC*, 705 F.3d 823, 828 (8th Cir. 2013). The non-movant receives the benefit of all reasonable inferences supported by the evidence. *B.M. ex rel. Miller v. S. Callaway R-II Sch. Dist.*, 732 F.3d 882, 886 (8th Cir. 2013). The Court has reviewed the trustee's motion and the defendants' response and finds that genuine issues of material fact remain.

Law and Analysis

A. Did Middleton hold an allowed unsecured claim on the petition date?

On the date the debtor filed her petition, Middleton's two state court lawsuits were still pending and "[a] pending cause of action is incontrovertibly a claim." *See In re Agway, Inc*. 313 B.R. 22, 30 (Bankr. N.D.N.Y. 2003) (citing *Olin Corp. v. Riverwood Int'l* (*In re Manville Forest Prods*.), 209 F.3d 125, 128-29 (2d Cir. 2000)). In addition, the code defines a claim as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured[.]" 11 U.S.C. § 101(5)(A).

On September 16, 2019, Middleton filed a proof of claim in the debtor's case which he valued at $0.[4] No party in interest has objected to Middleton's proof of claim.

> According to the code, a claim, "proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). If a party in interest objects to a claim, then the court shall determine the amount of such claim as of the date of the filing of the petition, unless one of nine enumerated exceptions apply. 11 U.S.C. § 502(b)(1)-(9); *In re Dove-Nation*, 318 B.R. at 150. The nine exceptions found in § 502(b) are "the sole grounds for objecting to a claim and [§ 502(b)] directs the court to allow the claim unless one of the exceptions applies." *Id*.; *see also In re Cluff*, 313 B.R. 323, 331 (Bankr. D. Utah 2004) ("Courts have no discretion to disallow claims for reasons beyond those stated in the statute."); *In re Todd Michael Taylor*, 289 B.R. 379, 384 (Bankr. N.D. Ind. 2003) ("a claim may not be denied for just any reason, but only for one of the reasons Congress has included in § 502(b).").

In re Muller, 479 B.R. 508, 512 (Bankr. W.D. Ark. 2012). Because no one has objected to Middleton's claim and there is no basis—at this point—for the Court to disallow the claim under one of the grounds enumerated in § 502(b), the Court finds as a matter of law that Middleton has an allowed unsecured claim as of the petition date.[5] Accordingly, the Court grants summary judgment as to the trustee's request in "A." However, this finding does not definitively answer

[4] The Court presumes that Middleton placed a value of zero on his claim because the state court litigation against the debtor was still pending when she filed her bankruptcy petition, anticipating that he could amend his claim once a specific value was known.

[5] If Middleton amends his proof of claim, the debtor would have the opportunity to object to the amended claim. *See* Fed. R. Bankr. P. 3007.

the question of whether Middleton has a viable claim for purposes of tolling the statute of limitations, as discussed below.

B. Has Middleton's state court fraudulent transfer suit tolled the statute of limitations regarding the debtor's transfers of her interests in Tracts I, II, III, and V?

There is no dispute that the debtor's transfers of Tracts I, II, III, and V occurred within three years of the date that Middleton commenced his fraudulent transfer suit in state court against the debtor. Therefore, Middleton's fraudulent transfer suit was timely under Arkansas law. *See* Ark. Code Ann. § 4-59-209.[6] There is also no dispute that on the date the debtor filed her chapter 7 petition, the relevant statute of limitations had expired, leaving the debtor's allegedly fraudulent transfers of Tracts I, II, III, and V beyond the trustee's reach unless the trustee employs the "strong arm" provision found in § 544(b). To invoke § 544(b), the trustee must identify an existing unsecured creditor who, on the date of the filing of the petition, could have avoided the transfer of the debtor's property for the benefit of all creditors. *See* 11 U.S.C. § 544(b); *see also Stalnaker v. DLC, Ltd.* (*In re DLC, Ltd.*), 295 B.R. 593, 605 (B.A.P. 8th Cir. 2003). Such a

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[6] Arkansas's Fraudulent Transfer Act became the Uniform Voidable Transactions Act in 2017. However, all transfers at issue in this matter appear to have occurred prior to the effective date of the Uniform Voidable Transactions Act. Therefore, the Court looks to the statutes in effect at the time of the alleged fraudulent conveyance. *See Clark v. Bank of Bentonville*, 824 S.W.2d 358, 361 (Ark. 1992); *see also Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 590 S.W.3d 126, 128 n.2 (Ark. 2019). Arkansas Code Annotated § 4-59-209, which was in effect at the time of the debtor's transfers, provided as follows:

> A cause of action with respect to a fraudulent transfer or obligation under this subchapter is extinguished unless action is brought:
>
> (a) under § 4-59-204(a)(1), within three (3) years after the transfer was made or the obligation was incurred;
>
> (b) under § 4-59-204(a)(2) or § 4-59-205(a), within three (3) years after the transfer was made or the obligation incurred; or
>
> (c) under § 4-59-205(b), within one (1) year after the transfer was made or the obligation incurred.
>
> Ark. Code Ann. § 4-59-209.

creditor is sometimes referred to as a "triggering creditor." *Whittaker v. Groves Venture, LLC* (*In re Bolon*), 538 B.R. 391, 404 (Bankr. S.D. Ohio 2015). If "a triggering creditor exists, then the bankruptcy trustee can set aside the entire fraudulent transfer, for the benefit of all unsecured creditors, even if the triggering creditor's claim is nominal." *U.S. Bank Nat'l Ass'n v. Verizon Commc'ns Inc.*, 479 B.R. 405, 410 (N.D. Tex. 2012).

The burden of proving "the existence of a qualified unsecured creditor" falls upon the trustee. *In re DLC, Ltd.*, 295 B.R. at 602. To meet this burden, the trustee is required to: "(1) identify an existing creditor; (2) with an allowable claim; (3) who under non-bankruptcy law could avoid the transfer, at least in part." *Id.* Here, the Court finds that the trustee has satisfied the first two requirements—the trustee identified Middleton as an existing creditor and, as the Court found above in Section A., Middleton has an allowable claim.

However, to establish that Middleton qualifies as a triggering creditor, the trustee must also meet the third requirement, which requires the trustee to demonstrate that Middleton could avoid the debtor's transfers of Tracts I, II, III, and V under non-bankruptcy law. If the creditor identified by the trustee could "not succeed for any reason, whether due to the statute of limitations, estoppel, res judicata, waiver, or any other defense, then the trustee is similarly barred and cannot avoid the transfer[s]." *See Ebner v. Kaiser* (*In re Kaiser*), 525 B.R. 697, 708 (Bankr. N.D. Ill. 2014). Prior to filing her bankruptcy petition, the debtor filed a motion to dismiss Middleton's first state court lawsuit [motion to dismiss]. In her motion to dismiss, the debtor alleged that Middleton was barred from asserting his conversion claim against her and cited several bases to dismiss Middleton's complaint. The state court had not yet ruled on the motion to dismiss at the time the debtor filed her bankruptcy petition and the automatic stay halted the state court proceedings. Because the trustee has not addressed, and certainly has not overcome, the potential impediments to Middleton's complaint as raised by the debtor in her motion to dismiss, the Court finds that factual questions remain to be answered at trial regarding whether Middleton's first state court lawsuit against the debtor is viable. *See Karnes v. McDowell* (*In re McDowell*), 87 B.R. 554, 558 (Bankr. S.D. Ill. 1988) ("[T]he trustee must establish the existence of a creditor with a viable cause of action against debtor that is not time-barred or otherwise invalid."). If Middleton's first state court lawsuit is not viable, then Middleton's second lawsuit

against the debtor—the fraudulent transfer lawsuit—would be groundless. For these reasons, the Court finds that the trustee has not shown as a matter of law that Middleton could avoid the debtor's transfers of Tracts I, II, III, and V—leaving the third requirement unsatisfied and the Court unable to find that Middleton is a triggering creditor. Therefore, the Court denies summary judgment on the trustee's request "B," because the Court cannot find as a matter of law that Middleton's fraudulent transfer suit tolled the statute of limitations regarding the debtor's transfer of her interests in Tracts I, II, III, and V.

C. Did Middleton's avoidance rights regarding the transfers of debtor's interests in Tracts I, II, III, IV, and V vest in the chapter 7 trustee on the petition date?

As the Court found above in Section B., the Court cannot determine at this point whether Middleton possessed the right to avoid the debtor's transfers of Tracts I, II, III, and V. Without knowing whether Middleton had pre-petition "avoidance rights," the Court cannot determine whether any rights vested in the trustee on the petition date. Therefore, the Court denies summary judgment on the trustee's request "C," with regard to Tracts I, II, III, and V. Vesting rights in the trustee regarding Tract IV are addressed below in Section D.

D. Was the statute of limitations regarding the debtor's transfer of her interest in Tract IV tolled by the filing of the debtor's bankruptcy petition?

The debtor transferred her interest in Tract IV on August 10, 2016. The debtor filed her bankruptcy case on July 12, 2019. Pursuant to § 544(b), a trustee may avoid any transfer of an interest of the debtor in property that is voidable under applicable law. At the time of the transfer, Arkansas's fraudulent transfer statute had a three-year statute of limitations. *See* Ark. Code Ann. § 4-59-209. The debtor's transfer of Tract IV occurred less than three years before she filed her bankruptcy petition. Because the statute of limitations had not expired before the date the debtor filed her petition, that statute of limitations was extended for the trustee for two years after the order of relief. *See* 11 U.S.C. § 108(a)(2). Accordingly, the Court grants summary judgment on the trustee's request "D," and finds that the statute of limitations regarding the debtor's transfer of her interest in Tract IV was tolled by the filing of the debtor's bankruptcy petition.

E. Are the debtor's transfers of Tracts I, II, III, IV, and V voidable under 11 U.S.C. § 544(b) and Ark. Code Ann. § 4-59-204(a)(2)?

The Court finds that material questions of fact remain as to whether the debtor's transfers of Tracts I, II, III, IV, and V are voidable by the trustee. In addition to the unresolved question of whether Middleton is a triggering creditor, there are other factual questions, including those described below, that remain to be answered at trial.

At the time of the debtor's transfers, Arkansas Code Annotated § 4-59-204 governed fraudulent transfers as to present and future creditors and provided that:

> (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation incurred, if the debtor made the transfer or incurred the obligation:
>
> (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
>
> (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
>
> (ii) intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

Ark. Code Ann. § 4-59-204 (Repl. 2017). To prove that a transfer was constructively fraudulent under Arkansas Code Annotated § 4-59-204(a)(2), the trustee must establish that the debtor received less than reasonably equivalent value for the property *and* that the debtor was insolvent on the date of the transfer or became insolvent as a result of the transfer.[7] *Williams v. Marlar*,

[7] Although the term "insolvent" is defined both in the bankruptcy code and under Arkansas law—see 11 U.S.C. § 101(32) and Arkansas Code Annotated § 4-59-202—it appears that the *Marlar* court used the term "insolvent" as shorthand for the element of constructive fraud found in Arkansas Code Annotated § 4-59-204(a)(2)(i), which deems a transfer constructively fraudulent if the debtor "was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to

246 B.R. 606, 609 (Bankr. W.D. Ark. 2000), aff'd *Williams v. Marlar* (*In re Marlar*), 252 B.R. 743 (B.A.P. 8th Cir. 2000) (emphasis added). Here, the debtor has admitted that she did not receive reasonably equivalent value in exchange for transferring her interests in Tracts I, II, III, IV, and V. (*See* Answer to Compl. ¶ 51.) Therefore, to prove that each of the debtor's transfers was constructively fraudulent, the trustee must establish that the debtor was insolvent on the date of each transfer or that she became insolvent as a result of each transfer.

The trustee argues that "it is axiomatic that the transfers of [the debtor's] interests in Tracts I, II, III, IV, and V left the debtor with unreasonably small capital and not financially stable." In support of this contention, the trustee asks the Court to compare the personal financial statement that the debtor submitted to Bank of the Ozarks on February 18, 2015, to the financial hardship statement that the debtor filled out on September 20, 2016, in connection with a debt relief program.[8] The Court agrees that a comparison of the two documents suggests that the debtor's financial landscape deteriorated during the eighteen months that separated the debtor's execution of the personal financial statement to Bank of the Ozarks and the financial hardship statement that she filled out as part of her participation in a debt relief program.

For example, on the personal financial statement that the debtor gave to Bank of the Ozarks on February 15, 2015, the debtor represented that she had a salary of $34,205, owned real estate valued at $880,000, and had a partial interest in real estate valued at $93,000. In addition, she represented that she had various other assets—including cash, securities, automobiles, and cattle—totaling $498,000. On the same document, she listed liabilities totaling $30,960. The financial hardship statement that the debtor filled out on September 20, 2016, asked primarily for information about the debtor's monthly income and expenses rather than assets. On the financial hardship statement, the debtor indicated that she had no income because she had been unemployed since June 2016 and she stated that her monthly expenses totaled $1578. In the

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the business or transaction" at the time the debtor transferred property for less than reasonably equivalent value. For simplicity, this Court also uses the term "insolvent" in this opinion as a substitute for the language found in Arkansas Code Annotated § 4-59-204(a)(2)(i).

[8] The Court notes that despite the financial hardship statement identifying the debtor as the "client," the statement does not bear the debtor's signature.

section of the form that asked the debtor to list her "automobiles, equipment, or recreational vehicles," she listed one vehicle that she valued at $5000. However, unlike the personal financial statement that the debtor had given to Bank of the Ozarks eighteen months earlier, the financial hardship statement sought no information about the debtor's personal property (other than automobiles, equipment, and recreational vehicles) and sought no information about the debtor's real estate ownership. Also unlike the personal financial statement that the debtor gave to Bank of the Ozarks, the financial hardship statement did not indicate the amount of the debtor's total liabilities on the date she filled out the form. As further evidence of the debtor's alleged insolvency, the trustee asked the Court to consider a form letter dated September 20, 2016—ostensibly prepared by the debt relief agency—in which the debtor requested that Bank of America cease further communications with her because she could not make payments on the debt owed to the bank and had no assets that could be used to satisfy the debt.

Stated more succinctly, the trustee argues that logic dictates a finding that the debtor's transfers of the five tracts left her insolvent because: (1) the debtor's assets outweighed her liabilities on February 15, 2015, based on the personal financial statement that she gave to Bank of the Ozarks on that date; (2) the debtor transferred Tracts I, II, III, IV, and V on various dates between June 3, 2016, and August 15, 2016; and (3) on September 20, 2016, the debtor represented in both her financial hardship statement and a letter to Bank of America that she had no income or assets to meet her financial obligations. Although the Court suspects that the trustee may ultimately be able to prove that the cumulative effect of the debtor's transfers of the five tracts was that she became insolvent, the Court is without sufficient evidence at this juncture to determine as a matter of law that the debtor made *each transfer* when she was insolvent or that she became insolvent as a result of any particular transfer. In other words, the Court does not have enough evidence to determine whether the debtor was insolvent when she made her first transfer on June 3, 2016 (or whether she became insolvent as a result of that transfer) or whether she became insolvent as a result of the last transfer on August 15, 2016—or whether she became insolvent as a result of one of the other transfers in between the first and the last transfer. Specifically, the Court has no uncontroverted evidence to establish the value of each tract of land on the date it was transferred and no evidence regarding the value of the debtor's remaining assets or liabilities on the date of each transfer. Absent such information, the Court cannot determine whether the

debtor's remaining assets were unreasonably small in relation to each transfer, as required for a finding of constructive fraud under Arkansas Code Annotated § 4-59-204.

Finally, the Court finds that a question of fact remains as to whether one of the five tracts that the debtor transferred was her homestead. If one of the tracts was the debtor's homestead under Arkansas law, then it makes no difference whether the debtor was insolvent on the date that she transferred that tract. *See Stanley v. Snyder*, 43 Ark. 429, 435 (1884) (creditors cannot set aside as fraudulent a conveyance by the debtor of her homestead); *see also Sergeant v. Blue Mt. Wagyu Trust* (*In re Vorhes*), 2018 Bankr. LEXIS 302, Adversary No. 17-9009 (Bankr. N.D. Iowa Feb. 5, 2018) (denying trustee's motion for summary judgment because there was a question about whether the transferred property was the debtor's homestead.). For all of these reasons, the Court denies summary judgment of the trustee's request "E."

Conclusion

For all of the above-stated reasons, the Court grants the trustee's motion for summary judgment as to requests "A" and "D" but denies summary judgment as to requests "B," "C," and "E" because factual issues remain for resolution at trial.

IT IS SO ORDERED.

Ben Barry
United States Bankruptcy Judge
Dated: 04/12/2021

cc: Richard Cox
Brian Ferguson
Ricky Watson
U. S. Trustee