

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ILLINOIS  
EAST SAINT LOUIS DIVISION

IN RE: )  
 )  
BOYCE CURETON, JR., ) Case No. 97-32392  
 )  
Debtor )

**FINDINGS AND CONCLUSIONS**

This matter comes before the Court on Debtor Boyce Cureton, Jr.'s Motion for Sanctions filed against his former spouse, Sonja Cureton ("Sonja"). In his Motion, the Debtor contends that Sonja violated the automatic stay, see 11 U.S.C. § 362, by attempting to enforce a division of property provided by the Judgement of Dissolution of Marriage entered in the parties' divorce. Sonja counters that she had already been granted relief from the stay and, therefore, was free to enforce the judgment in state court without further involvement from this Court.

Following a hearing on the Motion, the Court took the matter under advisement and asked the parties, at their option, to submit briefs on their respective positions by April 16, 2001. Only the Debtor filed a brief. The Court, having reviewed the arguments and materials submitted by the parties, now enters the following findings and conclusions.

### Findings of Fact

1. On June 6, 1996, Sonja filed for divorce and sought a division of the parties' marital property.

2. The Debtor filed an answer to this petition.

3. On August 21, 1997, the Debtor commenced a case under Chapter 13 of the United States Bankruptcy Code, 11 U.S.C. § 101, et al., (the "Code").

4. The Debtor listed Sonja as an unsecured creditor on Schedule F of his bankruptcy petition.

5. Under the Debtor's Amended Chapter 13 Plan, general unsecured creditors are to receive no more than a 10 percent distribution from the plan proceeds.

6. The plan was confirmed on April 21, 1998.

7. On February 12, 1998, Debtor filed a Motion for Relief from Stay in order to conclude the remaining issues pending in the dissolution proceeding.

8. The Court granted this Motion by Order dated February 12, 1998, (the "Stay Order") which stated that "[f]or good cause shown the Automatic Stay of Bankruptcy herein is lifted as to creditor Sonja Cureton so that Debtor's state court dissolution of marriage case may proceed and any obligations of Debtor to Sonja Cureton may be determined"

9. On April 7, 1999, the state court entered its Judgment of Dissolution of Marriage, by which Debtor was ordered to pay

Sonja \$9,700.00 as a property division for her share of the parties' equity in the marital residence.

10. The state court reserved, for a later determination, the amount Debtor was to pay with respect to Sonja's attorney fees.

11. Sonja did not file a claim in the bankruptcy case; however, the Debtor eventually filed a claim on her behalf in the amount of \$9,700.00 on January 25, 2000.

12. The claim was allowed by the Chapter 13 Trustee. Because the claim was untimely, however, the Trustee stated that the claim would only be paid if the remaining general unsecured creditors were paid in full.

13. On or about February 22, 2000, Sonja filed in state court a Petition for Rule to Show Cause and for Assessment of Attorney Fees (the "Petition") to collect her \$9,700 judgment against the Debtor.

14. Debtor responded by filing a Motion to Dismiss, which was denied by the state court.

15. On February 23, 2001, Debtor filed a Motion for Sanctions in this Court, arguing that Sonja's actions in filing the Petition violated the automatic stay.

16. The Court, by order dated April 2, 2001, temporarily reinstated the automatic stay with respect to Sonja pending resolution of the Debtor's Motion.

17. Petition remains pending in state court.

18. At the hearing on the Debtor's Motion, the Debtor presented evidence that he incurred \$500.00 in legal fees in defending Sonja's Petition in state court, \$400.00 in fees in moving for sanction in this Court, and another \$224.00 in lost wages.

### **Conclusions of Law**

1. The Debtor claims that Sonja violated the automatic stay by filing the Petition to enforce the terms of the parties' property division in state court without first obtaining relief from the Stay. Sonja, in turn, claims that this Court's Stay Order granted stay relief, not only for the liquidation of the Debtor's debt to her, but also for its enforcement.

2. Section 362 of the Code imposes an automatic stay upon the filing of a bankruptcy petition. The stay is very broad and generally prohibits litigation, lien enforcement, and other actions that are attempts to enforce or collect prepetition claims. It also stays a wide range of actions that would affect or interfere with property of the estate, property of the debtor or property in the custody of the estate. See 11 U.S.C. § 362(a).

3. A party may obtain relief from the stay, however, upon an appropriate motion, notice and a hearing. 11 U.S. C. § 362(d).

4. Consistent with Code Section 362(a) and (d), the parties here obtained relief from the stay before proceeding with their dissolution action in state court.

5. As previously stated, the Stay Order lifted the stay so that "any obligations of Debtor to Sonja Cureton may be determined."

6. The terms of an order lifting the automatic stay are to be strictly construed. *Convenient Food Mart v. Convenient Industries of America*, 968 F.2d 592 (6<sup>th</sup> Cir. 1992); *Nol. v. I.R.S.*, 860 F.2d 1521 (9<sup>th</sup> Cir. 1988); *Casserole v. Landmark Oil & Gas Corp.*, 819 F.2d 112 (5<sup>th</sup> Cir. 1987).

7. Here, the Stay Order merely provides that the parties are free to proceed in state court to determine the Debtor's debts, if any, to Sonja. In other words, the Stay Order permitted the parties to liquidate Debtor's obligations to Sonja, but did not expressly permit her to enforce the resulting judgment.

8. Debtor is without any significant, unencumbered assets. Presumably, then, Sonja intended to enforce the dissolution judgment the Debtor's current wages, which is included in the bankruptcy estate. See 11 U.S.C. § 1306(a)(2). Given the narrow terms of the relief order, Sonja could not proceed in this manner without first obtaining relief from the stay. See 11 U.S.C. § 362(3) and (4).

9. Based on this violation, the Court orders Sonja to pay Debtor \$900.00 in legal fees and another \$224.00 in lost wages pursuant to 11 U.S.C. § 362(h). The Court declines the Debtor's request to award punitive damages.

10. Contrary to Debtor's Motion for Sanction, however, Sonja was free to seek a determination before the state court of an appropriate award for her legal fees since such a determination is not inconsistent with the terms of the Stay Order. Therefore, the Court "relicts" the automatic stay so that Sonja may seek this award.<sup>1</sup> Sonja must, however, affirmatively seek relief from this Court to proceed any further against the Debtor in her efforts to enforce the dissolution Judgment.<sup>2</sup>

11. The Court shall enter an Order consistent with the above findings and conclusions.

Dated: May 10, 2001

/s/ James K. Coachys,

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<sup>1</sup>The Debtor asked that such relief be given, but also asked that the Court order Sonja to file a proof of claim for the resulting amount. It is Sonja's choice as to whether to file a claim in this case. Debtor may decide whether it is in his best interest to file a claim on her behalf.

<sup>2</sup>As an aside, the Court notes that the both the Debtor, in scheduling his debt to Sonja and filing a claim on her behalf, and the Chapter 13 Trustee, in allowing the claim, have treated the subject debt as discharge able in this bankruptcy case. The Court notes, however, that the Debtor's debt to Sonja arguably arose post-petition and, thus, would not be subject to the discharge. See 11 U.S.C. § 1305 (limiting the types of post-petition claims which can be filed in Chapter 13 case).

Judge  
United States Bankruptcy Court

Distribution:  
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