

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
KIMBERLY DEANN STANLEY,) Bankruptcy Case No. 02-31774
Debtor.)
-----)
KIMBERLY DEANN STANLEY,)
Plaintiff,)
vs.) Adversary Case No. 04-3250
GATEWAY REGIONAL MEDICAL)
CENTER,)
Defendant.)

OPINION

This matter having come before the Court for trial on the First Amended Complaint to Compell (sic) Turn Over of Post-Petition Receipts and Enforce the Automatic Stay; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The material facts in this matter are not in dispute and are, in pertinent part, as follows:

The Debtor filed for relief under Chapter 13 of the Bankruptcy Code, and one of her pre-petition unsecured creditors was Gateway Regional Medical Center (Gateway). Gateway filed a claim for its pre-petition unsecured debt and is treated as an unsecured creditor in the Debtor's Second Amended Chapter 13 Plan which was ultimately confirmed by the Court. Gateway does not dispute that it was on notice of the Debtor's bankruptcy proceeding and that it is barred from seeking any other relief on its pre-petition unsecured claim, other than that offered in the Debtor's confirmed Chapter 13 Plan.

Subsequent to the Debtor's Chapter 13 filing, the Debtor incurred new debt with Gateway Regional Medical Center which she failed to pay. As a result, Gateway obtained a judgment against the Debtor for this new post-petition debt in Madison County, Illinois, Case No. 03-SC-1283. Thereafter, Gateway sought to enforce its judgment by way of a levy against the Debtor's post-petition wages. The Debtor filed the instant adversary proceeding seeking to recover wages already levied upon by Gateway and to enjoin Gateway from any further proceedings against the Debtor's wages.

In seeking to enjoin further actions by Gateway, the Debtor relies on 11 U.S.C. § 362 and argues that all post-petition wages are property of her bankruptcy estate, and, as such, Creditor, Gateway, cannot levy against those wages to recover the judgment on its post-petition debt. The automatic stay provision of 11 U.S.C. § 362 is clearly not applicable to Gateway's post-petition judgment. Section 362 clearly applies only to pre-petition debt, and, as such, the Court can find that no stay exists under that section to enjoin Gateway from proceeding to collect its post-petition judgment.

In addition to her argument under 11 U.S.C. § 362, the Debtor also asserts that her post-petition wages are property of the bankruptcy estate, and, thus, unattachable by Gateway. This issue is controlled by 11 U.S.C. § 1327(b), which states that:

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

Section 1327(c) goes on to say that:

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

As the Debtor points out, her plan does state that post-petition income shall not revest in the Debtor until such time as a discharge is granted or her case is dismissed. However, the Debtor's plan also indicates that the only income which shall not revest in the Debtor is that income necessary to fund the plan. This language is in keeping with Seventh Circuit case authority which holds that any post-petition income not necessary to fund the plan always reverts in the Debtor. See: In re Heath, 115 F.3d 521 (7th Cir. 1997).

Given the clear language of 11 U.S.C. § 1327 and the clear mandate of the Seventh Circuit as stated in Heath, supra, the Court finds that, while Gateway cannot levy upon post-petition income necessary for funding of the Debtor's Chapter 13 Plan, it is free to levy upon any portion of the Debtor's income not dedicated to the funding of Debtor's Chapter 13 Plan as that levy would be limited by State law. As such, the Court can find no authority to support the relief requested by the Debtor in this adversary proceeding, leading to the conclusion that the First Amended Complaint to Compell (sic) Turn Over of Post-Petition Receipts and Enforce the Automatic Stay must be dismissed with prejudice.

ENTERED: December _15_, 2004.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

IN RE:)
KIMBERLY DEANN STANLEY,) Bankruptcy Case No. 02-31774
Debtor.)
-----)
KIMBERLY DEANN STANLEY,)
Plaintiff,)
vs.) Adversary Case No. 04-3250
GATEWAY REGIONAL MEDICAL)
CENTER,)
Defendant.)

ORDER

For the reasons set forth in an Opinion entered on the _15th_ day of December 2004;

IT IS HEREBY ORDERED that the First Amended Complaint to Compell (sic) Turn Over of Post-Petition Receipts and Enforce the Automatic Stay filed by Debtor/Plaintiff, Kimberly Deann Stanley, is dismissed with prejudice.

ENTERED: December _15_, 2004.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge