

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

IN RE:

NORMAN L. WILSON

Debtor(s).

In Proceedings
Under Chapter 13

Case No. 98-40636

OPINION

Mercantile Bank of Southern Illinois ("Bank") has filed a motion for relief from stay to complete foreclosure proceedings regarding real property that the debtor, Norman Wilson, scheduled as an asset of his bankruptcy estate.¹ The property in question was awarded to the debtor's ex-wife in a divorce proceeding prior to bankruptcy, and the debtor was ordered to make the remaining mortgage payments to the Bank.² The debtor defaulted on the payments, and the Bank filed a foreclosure proceeding against the debtor and his ex-wife, which was halted by the debtor's bankruptcy filing. The debtor opposes the Bank's motion for relief from stay, arguing that the Bank is adequately protected under his Chapter 13 plan, which proposes to pay the Bank's mortgage claim as well as 100% of unsecured claims.

¹ The facts are undisputed.

² Specifically, paragraph 8 of the parties' judgment of dissolution of marriage provided that "the petitioner [wife] is awarded the real estate at 817 South 20th Street, Mt. Vernon, Illinois," while paragraph 10 ordered "the respondent [husband] to pay . . . a debt owed to Mercantile Bank, with a balance of \$6,000, requiring a monthly payment of \$288.00" See Judg. of Diss. at 2-3, Ex. A of Debtor's Prop. Findings, filed July 10, 1998.

At hearing, the Bank asserted that the property in question is not property of the debtor's estate under 11 U.S.C. § 541 because the debtor was divested of his interest in the property at the time it was awarded to his ex-wife in the pre-bankruptcy divorce proceeding. The Bank relies on a previous ruling of this Court in In re Beattie, 150 B.R. 699 (Bankr. S.D. Ill. 1993), in which, as in the present case, the debtor and his ex-wife were divorced prior to bankruptcy, with the divorce court dividing the parties' property. The court awarded the debtor's ex-wife forty percent of the proceeds from the debtor's pending worker's compensation action. The debtor, however, failed to deliver these proceeds upon receipt and later filed for bankruptcy relief, claiming the entire amount of the worker's compensation proceeds as exempt property and listing his ex-wife as an unsecured creditor for the amount of the award.

This Court found that by reason of the divorce court's ruling, the debtor was entitled to only sixty percent of the worker's compensation proceeds when he filed for bankruptcy and did not, by filing his petition, gain greater rights in the proceeds than he then possessed. The Court ruled:

The debtor's interest in the worker's compensation proceeds was fixed by the state court judgment, and only this portion of the proceeds became property of his estate. The debtor could not, by withholding proceeds belonging to [his ex-wife], make them property of the estate under § 541(a)(1).

Beattie, 150 B.R. at 701.

In the present case, the divorce court awarded the real

property at issue to the debtor's ex-wife and, further, ordered the parties to execute "such documents, deeds, . . . or titles" as were necessary to comply with "all provisions and awards of property contained in this judgment[.]" (Judg. of Diss. at ¶ 15, Ex. A of Debtor's Prop. Findings, filed July 10, 1998.) Despite this order, the debtor failed to execute a quit claim deed to his ex-wife and, therefore, retained a legal interest in the real estate at the time of bankruptcy. Under § 541(a)(1), which defines "property of the estate" to include all "legal or equitable interests" in property of the debtor at the time of bankruptcy, the legal interest of the debtor became property of his estate.

However, although the debtor retained a legal interest in the property, the divorce judgment, by its terms, divested him of any equitable interest and directed him to convey his legal interest for the benefit of his ex-wife. Thus, like the debtor in Beattie, who was required to convey possession of a portion of the worker's compensation proceeds upon their receipt, the debtor here was under an obligation to convey his remaining interest so as to give his ex-wife clear title to the property as its sole owner. The Court finds, therefore, that the divorce judgment here, as in Beattie, fixed and determined the parties' rights to the property and effectively granted ownership of the subject property to the debtor's ex-wife.

Because, in the absence of a quit claim deed to his ex-wife, the debtor's legal interest in the property became property of

his bankruptcy estate, it was necessary for the Bank to seek relief from stay in order to proceed with foreclosure. See In re Bequette, 184 B.R. 327, 337 (Bankr. S.D. Ill. 1995). However, such relief from stay is easily justified in light of the debtor's obligation under the divorce judgment to convey this interest to his ex-wife, as the debtor can hardly assert his failure to comply with the divorce court's directive as a basis for resisting the Bank's motion for relief from stay.

For the reasons stated, the Court finds that "cause" exists for granting relief from stay under 11 U.S.C. § 362(d)(1) and will, accordingly, grant the Bank's motion for relief from stay.

SEE WRITTEN ORDER.

ENTERED: October 15, 1998

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE