American Academy of Matrimonial Lawyers, Ohio Chapter

Seminar Presentation Outline

October 12, 2020

I. Bankruptcy Primer.

A. Key Bankruptcy Terms.

1. Bankruptcy petition order for relief.

2. Bankruptcy estate and property of the estate.

3. Automatic stay.

4. Relief from stay.

5. Claims.

   a) Secured v. unsecured.

   b) Priority versus non-priority.

6. Exemptions.

7. Discharge.

   a) Procedure exists in Chapter 7 to seek denial or revocation of discharge.

   b) Chapter 13 discharge requires completion of a confirmed plan (or a hardship discharge before completion).

   c) Certain claims are not discharged ("Nondischargeable" notwithstanding discharge).

B. Bankruptcy Terms more specifically relevant to Domestic Relations.

1. Domestic Support Obligations (DSOs).

2. Joint cases v. individual cases / petitions.

C. Different Bankruptcy "Chapters".

1. Technically nine chapters in the Bankruptcy Code (see materials).

2. Three of those chapters are relevant to all bankruptcy cases.

3. The other six are different substantive chapters under which certain debtors can file bankruptcy.

4. We will mainly focus on Chapter 7 and Chapter 13.

    a) Chapter 7 liquidates debtor's estate and debtor ordinarily receives relatively prompt discharge.

    b) Chapter 13 involves a three to five-year plan distributing disposable income and possible asset sale proceeds to creditors.

        (1) Confirmation process.

        (2) Chapter 13 as debtor(s) postpetition disposable income to the estate.

        (3) Relative rights of creditors (secured, priority, unsecured) similar to Chapter 7.

        (4) Opportunity of creditors to object to propose plans.

        (5) Creditors (and debtors) bound by confirmed plans.

    c) Each chapter includes certain constraints.

        (1) Code considers it an abuse to file Chapter 7 with too much income.

        (2) "Means Test" creates presumptions regarding abuse.

        (3) Chapter 13 is voluntary.

        (4) Extent of discharge varies between chapters (although not as much as they once did).

        (5) Waiting times between discharges (measured between petition dates).

(a) 8 years from Chapter 7 (or 11) to 7 (or 11).

(b) 6 years for 13 (or 12) to 7 (unless unsecured creditors received 100 percent).

(c) 4 years for Chapter 7/11/12 to a 13.

(d) 2 years for a Chapter 13 to a Chapter 13.

II. The Automatic Stay.

A. Scope of the stay; *See* Section 362(a) regarding what is stayed automatically by a voluntary bankruptcy filing.

1. Legal actions against the debtor.

2. To collect judgments and claims against the debtor or from debtor's bankruptcy estate,

3. To obtain or exercise control over property of the estate,

4. To create, perfect, or enforce a lien against estate property or debtor's property.

5. To collect or obtain a judgment, or

6. To set off prepetition debt owed to debtor.

B. *See* Section 362(b) regarding exceptions to the stay.

1. Exceptions to the stay.

a) Criminal actions or proceedings against the debtor.

b) Exercising governments, police, or regulatory power.

c) Wide variety of acts to undertake routine perfections of liens closeout market transactions, recovered property under terminated leases, etc., long laundry list.

d) **Domestic relations exceptions.**

(1) Actions to establish **paternity**.

(2) Actions to establish or modify **domestic support obligation orders**.

(3) Actions concerning **child custody or visitation**.

(4) Actions to **dissolve a marriage** (but not proceeding to divide property as property of a bankrupt estate).

(5) Actions regarding **domestic violence**.

(6) **Collections of DSOs** from property **other than property of the estate**.

(7) **Withholding of income of the debtor to pay DSOs** under judicial or administrative orders or statutes.

C. Relief from Stay per 11 U.S.C. ¶ 362(d).

1. Parties may file a motion to seek relief from the stay.

2. Most commonly involves secured creditors who seek to take action on the collateral.

3. Grounds are typically where the debtor lacks equity in an asset and the asset is not needed for a reorganization.

4. Alternatively, a party may seek relief from stay "for cause."

5. I see motions for relief from to stay to proceed with a divorce case.

6. Commencing a divorce action is an exception to the stay.

7. Nevertheless, in order to proceed with a full divorce action to divide assets, stay relief is required.

8. When in doubt, get relief from stay.

9. Couples seeking divorce rarely dispute relief from stay to proceed; consider stipulating to stay relief.

III. Property of the Bankruptcy Estate.

A. "Property" is generally defined by applicable state (or nonbankruptcy) law. [Cite to *Butner*].

B. Property of the (bankruptcy) estate is defined by federal bankruptcy law. 11 U.S.C. § 541.

1. Commencement or filing of the bankruptcy case creates an estate.

2. Includes all legal or equitable interests of the debtor in property as of the petition date.

3. Interests in community property.

4. Inheritances received within 180 days after the petition date.

5. Avoidance recoveries by the trustee.

6. Exclusions include:

   a) powers the debtor exercise solely for the benefit of another person;

   b) the beneficial interest of another person in an asset in which debtor only holds legal title; or

   c) the interest in a lease of nonresidential real property that terminated prepetition.

7. Also Excludes assets subject to a restriction on transfer of a beneficial interest in a trust enforceable under nonbankruptcy law (e.g., spendthrift trust; ERISA qualified plan subject to anti-alienation provision).

IV. Exemption of Assets.

A. Certain Assets are Exempt from the Trustee's Administration by Statute.

B. Section 522 allows debtors to elect either a slate of federal exemptions or use exemptions provided by state law.

1. However, each state may choose to opt out of the "federal exemptions."

2. Ohio has opted out.

3. Ohio exemptions found in O.R.C. Section 2329.66(A).

C. The Ohio Exemptions.

1. See materials.

2. Includes interest in real or personal property serving as the debtor's residence on the petition date up to $145,425 (per debtor).

3. One motor vehicle up to $4,000.

4. Cash, money due, tax refunds, bank deposits, etc., up to $500.

5. Household furnishings and goods, clothes, etc., for person use; $625 per item, $13,400 in aggregate.

6. Jewelry; $1,700.

7. Professional books or tools of the trade; $2,550.

8. Tort awards for bodily injury up to $25,175.

9. "Wildcard" exemption of $1,325

10. Pensions, annuities, IRAs, inherited IRAs, etc.

    a) Complex Section! A variety conditions and exceptions and potential for litigation.

    b) Also exempts expressly rights of a person as an alternate payee under a Qualified Domestic Relations Order (QDRO) or other similar order.

11. A person's right to receive spousal support, child support, an allowance, or other maintenance to the extent reasonably necessary for the support of the debtor or debtor's dependents.

12. All other nonbankruptcy federal exemptions (provided for by both the Bankruptcy Code and O.R.C. 2329.66(A)(17).

13. A variety of other things, including wages not subject to garnishment, burial plots, a notary seal, wrongful death payments relating to the death of a person for whom the debtor is a dependent as necessary for support prescribed or medically necessary health aid, etc.

D. Other Exemptions Pursuant to Federal Law.

1. These exemptions are in addition to state exemptions, not in lieu of them.

2. A debtor's interest in property as a tenant by the entirety or joint tenant exempt under nonbankruptcy law under Section 522(b)(3)(B).

3. "Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under [Internal Revenue Code] Section 401, 403, 408, 408(A), 414, 457, or 501." Section 522(b)(3)(C).

E. Exemptions sacrosanct, but expressly limited by statute.

1. Even bad faith acts by debtors in the course of a bankruptcy case do not waive their exemption rights. ***Law v. Siegel*, 571 U.S. ___, 134 S. Ct. 1188 (2014).**

2. Exemptions defined by nature of asset. Litigation arises at times regarding the proper characterization of an asset and therefore its exemption.

3. Exemptions are specifically scheduled in the bankruptcy petition. Must match or relate to assets scheduled. Important not to leave out.

V. Priority of Claims.

A. Secured claims.

1. Validly **perfected security interest** or **mortgages** in property of the estate remain enforceable to the extent of the value of the asset or the amount of the secured claim.

B. Unsecured Claims.

1. Certain claims have priority under the bankruptcy code Section 507.

2. **Domestic support obligations** have been elevated to highest priority among its secured claims as of BAPCPA in 2005.

3. Next are **administrative expenses** of the estate (trustee fees, attorney's fees for trustee counsel, etc.).

4. Skipping several priorities relevant to corporate or business debtors, **certain defined tax claims** (*e.g.*, income tax for tax years for which returns are due within three years before petition date).

5. Priority of unsecured claims should be distinguished from whether or not they are secured (*e.g.*, by a lien or security interest in an asset of the estate) or whether such claims are nondischargeable.

VI. What Claims are Non-dischargeable?

A. Chapter 7 debtors earn a discharge pursuant to Section 727; Chapter 13 debtors earn discharges pursuant to Section 1328.

B. Denial of general discharge (or revocation) in Chapter 7.

1. Denial of the general discharge ensures that no claims against the debtor are discharged.

2. Technical exceptions to discharge

a) Nonindividual debtor.

b) Case filed too recently after previous case resulting in a discharge.

c) Failure to complete a personal financial management course.

3. Bad Faith Acts of Debtor.

   a) Transferring, destroying, mutilating, or hiding assets during the case or within one year prior.

   b) Concealing, destroying, mutilating, falsifying, or failing to keep records regarding financial condition or transactions.

   c) Knowingly and fraudulently making a false oath or withheld records from the trustee.

   d) Failing to satisfactorily explain loss of assets.

   e) Refusal to obey a court order.

   f) An existing discharge may be revoked on the grounds that it was obtained through fraud, knowingly and fraudulently failing to report acquisition of an asset to the trustee, or failure to obey a court order.

C. Specific Claims that are Not Dischargeable.

1. The primary statute is Section 523.

2. Many **taxes**.

3. Obtaining money or property or refinancing through false pretenses, false representation or **fraud**.

4. Obtaining money, property, or extension or refinancing of credit based on **materially false written statement of financial condition**.

5. **Fraud or defalcation** while acting in a **fiduciary capacity**.

6. Claim for **willful and malicious injury** by the debtor (these last 4 require an adversary proceeding filed within 60 days of the first meeting of creditors).

7. **Domestic support obligation!**

8. **Claim of a former spouse or child that is not a DSO, but that was incurred in the course of a divorce or in connection with a separation agreement, divorce decree, or other court order.**

9. Governmental fines, penalties, or forfeitures not related to taxes or based on events more than three years before the petition date.

10. **Student loans** (unless undue hardship).

11. Death, personal injury resulting from operation from motor vehicle while under the influence.

12. Bank fraud.

13. Federal, criminal restitution.

14. Debts incurred to pay nondischargeable taxes.

15. Fines and penalties imposed under federal election law.

16. Securities fraud.

D. Discharge Under a **Chapter 13 Modifies the List** of Non-dischargeable Debts. The Exclusions include (*i.e.*, claims that are dischargeable in 13 that are not dischargeable in 7):

1. **Non-DSO claims held by a spouse, ex-spouse, or child** of the debtor that are **incurred in the course of a divorce or separation** or in connection with separation agreement, divorce decree, or other order.

2. Certain **older taxes** (more than 2, but less than 3 years old).

3. Claims for willful and malicious injury (other than personal injury or wrongful death).

4. Government fines.

5. Bank fraud.

6. Debts incurred to pay nondischargeable taxes.

7. Fines and penalties imposed under federal election law.

8. Securities fraud.

E. Chapter 13 "Hardship Discharge" under Section 1328(b).

1. Applies to debtors who fail to complete the plan through no fault of their own and have paid unsecured creditors at least what they would have received in a Chapter 7 liquidation.

2. Does not discharge any claim that is nondischargeable in Chapter 7 (*i.e.*, claims of spouses and children arising in divorce are not dischargeable even if they are not a DSO).

VII. Domestic Support Obligations (DSO).

A. These are obligations ordered by a domestic relations court that are in the nature of support ("in the nature of alimony, maintenance, or support).

B. Owed to a spouse, former spouse, or child of the debtor, or child's parent or legal guardian, or governmental unit that has advanced payments of this account.

C. Established at any time under a separation agreement, divorce decree, or property settlement agreement or any other court order.

D. Defined in the Bankruptcy Code at 11 U.S.C. § 101(14)(A).

E. Effective with BAPCPA in 2005, DSOs were **granted first priority** under Section 507 of the Bankruptcy Code.

F. They are **not dischargeable** in either Chapter 7 or a Chapter 13.

G. Imposition or collection (from debtor or debtor's income, but not other property of the estate) of DSOs are not stayed. 11 U.S.C. § 362(b)(2).

H. Distinct from "property settlement claims" arising from divorce that are not DSOs. Distinction is subject to litigation especially in Chapter 13 where property settlement claims may be dischargeable, or in any chapter regarding whether a claim is entitled to priority.

VIII. Division of Marital Property and Claims Between Former Spouses.

A. General Principles.

1. State law (including DR court orders) govern property rights. ***In re Butner.***

2. Federal bankruptcy law governs what property rights become "property of the estate."

   a) Debtors legal and equitable property rights on the petition date.

   b) Not anyone else's property or their beneficial or equitable rights.

3. State law governs most statutory exemptions in Ohio.

4. Exemptions are constrained to the type of assets or property interests the debtor has because of the statutory definition of the exemptions.

5. DSOs enjoy (a) bankruptcy priority; and (b) nondischargeability.

   a) Also must be paid current on a postpetition basis before plan confirmation in Chapter 13.

6. Other spousal or divorce related claims are (a) not priority claims against estate assets; (b) are dischargeable in Chapter 13, although they are not dischargeable in Chapter 7.

   a) Possible strategies for the NFS in ex-spouse's Chapter 13.

      (1) NFS should ensure that the debtor complies with his confirmed plan, including making payments.

      (2) If not, ensure that Chapter 13 trustee moves to dismiss for nonpayment.

      (3) Also, enforce your DSOs; failure to pay may block plan confirmation or be grounds for a dismissal of case.

      (4) Feed trustee information regarding hidden assets, hidden income, or inflated expenses.

      (5) Consider opposing UST motions to dismiss ex-spouse's Chapter 7 cases for abuse; NFS is a creditor who may be better off in Chapter 7.

B. Nondischargeable Claims of Spouses regarding DR Court's Apportionment of Debts to be Paid to Third Parties.

   1. DR Court's divide marital assets, but they often (it appears to me) to direct spouses to pay certain debts.

   2. This seems odd to bankruptcy lawyers and judges. The direction for a specific spouse to pay certain claims does not release the other spouse of whatever legal obligation they have to the creditor. It is not a discharge.

   3. However, these orders directing spouses to pay certain claims often, perhaps always, create claims between the spouses.

      a) *Eck v. Eck* (*In re Eck*), Adv. No. 19-5099 (Bankr. N.D. Ohio Sept. 14, 2020) (AMK oral decision).

      b) Facts: NFS-H brought nondischargeability action against D-W for DR Court costs and credit card debt he paid on D-W's account after she had been ordered to pay them.

      c) Held: The obligations were nondischargeable pursuant to Section 523(a)(15) as debts "incurred by the debtor in the course of a divorce or separation."

d) Found that one spouse's obligation to pay certain creditors creates an implied hold harmless or indemnity obligation to the other spouse. Because this obligation arises out of a divorce matter, it becomes nondischargeable in chapter 7.

e) Followed *Gibson v. Gibson* (*In re Gibson*), 219 B.R. 195 (6th Cir. BAP 1998), implying a indemnity obligation between spouses in the divorce decree ordering the debtor to pay one of the couple's joint debts. *Gibson* relied on the broad definition of "claim" in the Bankruptcy Code.

f) Also relied on *Cheatham v. Cheatham* (*In re Cheatham*), 2009 WL 2827951 (Bankr. N.D. Ohio 2009), which relied on the fact that the divorce decree included a hold harmless or indemnity provision between the spouses regarding the assignment of obligations to third party creditors.

g) Practice tip: Make spouses' mutual hold harmless obligations to each other express.

4. Equalization payments due to spouses on account of a joint third-party obligation also nondischargeable under Section 523(a)(15) in Chapter 7.

a) *In re Wilcox v. Wilcox* (*In re Wilcox*), Case No. 15-52614 (Bankr. N.D. Ohio 2019) (AMK) (*Wilcox I*).

b) Equalization payment not discharged in Chapter 7 where the DR Court ordered the payment after D-H received his Chapter 7 discharge.

c) Moreover, even if the DR Court had imposed that obligation pre-discharge, or even prepetition, it would not be a discharge under Section 523(a)(15) in a Chapter 7 case.

d) Debtor's argument that the equalization payment is discharged because it pertained to a third-party obligation to a mortgagee that was clearly discharged was unavailing.

C. Application of Automatic Stay to State DR Court Divorce Proceedings.

1. Recall that Section 362(b) excepts from the automatic stay many DR proceedings.

2. However, actions to collect debts (other than DSOs in certain circumstances) are stayed.

3. What if DR Court ignores the stay and threatens are holds debtor in contempt for failure to pay non-DSOs opposed under a divorce decree?

a) *Wilcox v. Wilcox* (*In re Wilcox*), Case No. 19-53018, Adv. No. 19-05116 (Bankr. N.D. Ohio 2020) (AMK) (*Wilcox II*), ECF Nos. 6 & 18.

b) Mr. Wilcox is at it again (recall from previous section, equalization payment not discharged in previous chapter 7 case).

c) Mr. Wilcox now files chapter 13; DR Court has had enough and issues a bench warrant for failure to pay the equalization payment.

d) Bankruptcy Court (me) first issues a TRO, largely because this was an act to collect a debt that *is dischargeable* in chapter 13. Defendants were ex-wife and her attorney, not the court itself.

e) A few weeks later, limited relief from stay granted, while continuing automatic stay as to other actions.

(1) DR Court could evaluate factual necessity for a QDRO (was RA depleted?); necessity of power of attorney to transfer R/E (R/E already transferred?); determine ex-wife's claims against debtor for alleged dissipation of RA; allow DR Court to regulate future hearings, including imposing contempt for any failure to appear, etc.

(2) The automatic stay continues in place as to compelling payment of equalization payment obligations; payment of other debts for credit cards and attorney's fees; determination of priority for discharge of these debts in bankruptcy; and issuing or enforcing bench warrant of any state court violations prior to the date of the relief from stay order.

f) Practice tip: It is important to get clarity regarding what is or is not stayed, perhaps more important than arguing to the death regarding what is or is not excluded from the stay.

(1) State court has jurisdiction to decide whether the stay applies to an action pending before it, but bankruptcy courts will have ultimate say

(2) Bankruptcy court relief from stay orders provide clarity for both parties and state courts.

D. Retirement Account Issues.

1. What is the nature of the debtor's asset? This is almost entirely state law.

a) If the debtor was a plan participant, does the debtor have a vested interest in plan assets? A right to future income under a pension? Is the asset property of the estate? Is it exempt?

b) IF the Debtor is the spouse of the plan participant, does she/he have an interest in the plan assets? Is it exempt? Does she have a claim against the ex-spouse? Is it dischargeable? Is it a priority claim?

2. *Lawson / Warner*: When a bankruptcy **trustee tries to seize** a debtor's **interest in** her **ex-spouse's retirement account**.

a) There are cases, including one or two from Pennsylvania, in which the trustee was able to seize a debtor's interest or "claim" or the division of a retirement accounts and other marital assets in a pending, but unfinished divorce action filed before the bankruptcy case.

b) AMK Opinions: Take them for what their worth.

(1) Basic facts of both cases.

(a) A couple filed divorce actions in Ohio.

(b) NFS (H) had a retirement account funded during marriage (one ERISA-qualified 403(b); another TSP).

(c) D-W's were named beneficiaries.

(d) *Lawson* had state court (domestic relations court) order approving separation agreement dividing assets equally, including retirement account; directing judgment entry be incorporated into divorce decree within 21 days; no divorce decree completed.

(e) In *Warner,* no DR court order dividing assets.

(f) No QDRO for *Lawson*, or QRBCO for *Warner.*

(g) Debtors then file Chapter 7 bankruptcy.

(h) Trustees argue that debtor has "equitable claim," not an interest in husband's retirement account assets, and that the equitable claim is not exempt.

(2) Holding in *Lawson* and *Warner.*

(a) *Lawson* found that DRO approving separation agreement gave debtor a vested beneficial interest

(i) Judgment entry was a DRO even though further divorce decree contemplated.

(ii) Vested debtor with beneficial interest (even though no QDRO transferred assets to her) [unlike Pennsylvania case *Burgeson* where debtor had no DRO at all, let alone a QDRO].

(b) Both cases: D-Ws held vested beneficial interest in plan assets because they were named beneficiaries.

(c) Both cases: D-Ws beneficial interest in retirement plan assets were excluded from property of the estate per Section 541(c)(2)

(i) Provision for "spendthrift trust"

(ii) Also any trust containing anti-alienation provision (includes ERISA qualified plans pursuant to *Patterson v. Shumate*, 504 U.S. 753 (1992).

(d) Both cases: Upon filing a divorce action, each spouse obtains a present contingent interest in all marital property.

(i) Pursuant to Ohio law.

(ii) Independent of beneficiary status, ERISA, plan terms, or existence of a DRO or QDRO.

(iii) Trustee argued that D-Ws property rights were nonexempt for accounts receivable or chose inaction.

(iv) Trustees overruled; debtor wife's rights were present contingent interest in the marital assets themselves, not a generalized claim

(e) Present contingent interest in NFS's retirement account is exempt.

(i) O.R.C. Section 2329.66(a)(10)(c): IRA

(ii) O.R.C. Section 2329.66(a)(10)(a): Pension, retirement annuity, etc.

(iii) O.R.C. Section 2329.66(a)(10)(f): Any alternative payee pursuant to a QDRO or similar court order.

(iv) 11 U.S.C. § 522(b)(3): Retirement funds exempt from taxation pursuant to I.R.C. 401, 403, 408, 408A, 414, 457, and 501.

c) Lessons:

(1) Ohio DR law highly relevant (different results in other states).

(2) Ohio law creating present contingent interest in NFS's retirement account (assuming divorce filed before bankruptcy filing) creates (a) property rights; (b) that are exempt; and (c) may not be property of the estate because of anti-alienation.

(3) If bankruptcy filing is before divorce filing, NFS's retirement account won't be property of the debtor's estate and trustee can't reach.

(4) Entry of a DRO nails down the property interest without contingency.

(5) Entry of a QDRO transfers the property and causes the property to be titled in the debtor as an exempt asset.

(6) Don't rely on AMK!

(a) File bankruptcy first!(?)

(b) Or get a QDRO before filing bankruptcy.

(c) Unless you can't. . . but creates litigation risk and some trustees will try to "step into debtor's shoes."

d) What are divorced NFS's rights to debtor's retirement account? *Jeffers*.

(1) Reverse fact patter from *Lawson* and *Warner*.

(2) The retirement account assets are owned by the debtor and may become property of the estate, subject to exemptions (or excluded from the estate pursuant to 541(c)(2).

(3) Here the issue is not the bankruptcy trustee's rights, but rather the NFS's ex-spouse. What does the NFS have?

(4) Facts of case:

  (a) Prepetition divorce decree (2012).

  (b) NFS "shall receive" QDRO.

  (c) NFS awarded fifty percent of marital property and one retirement account, and dollar amount in a 401(k) "including postjudgment market gains and losses.

  (d) D-H files Chapter 13 bankruptcy two years later (2014).

  (e) No QDRO [god dammit!]

  (f) NFS-W filed POC regarding other things, but not retirement account.

  (g) NFS-W filed MRS for leave to go to state court and obtain QDRO and obtain her share of retirement account.

  (h) D-H opposes; bar date has passed for POC; seeks to complete Chapter 13 plan and obtain discharge of NFS's "claim."

(5) Holding:

  (a) AMK relied on *McCafferty* (6th Cir. 1996); *Erb* (Ohio Supreme Court 1996).

  (b) NFS-W had a property right in the D's retirement account, not a claim against D-H.

  (c) Divorce decree created a vested right.

  (d) NFS-W's share of the retirement account never became property of the estate in D-H's case.

(e) NFS's rights not curtailed by debtor's Chapter 13 plan (because her rights were not those of a creditor)

(f) 1994 amendments to bankruptcy code adding Section 523(a)(15), which made property settlement claims nondischargeable in Chapter 7 while Section 1328(a) made them dischargeable in Chapter 13, did not abrogate *McCafferty* (1996) [a 1993 case].

(i) NFS's share per divorce decree was her asset, not debtors.

(ii) Remember *Butner*: State law governs property rights while bankruptcy law governs dischargeability of debts.

(iii) Therefore, NFS had no claim that might be dischargeable. Instead, she had an asset.

(iv) Congressional intent to allow chapter 13 debtors to discharge property settlement *claims* did not overrule state law granting divorcing spouses *property interests* in marital assets. NFS's rights to their own property cannot be discharged.

(g) NFS did not have to file a timely POC to "claim" her right to her property interest.

(h) QDRO necessary for transfer, not to create a property right for the NFS.

(i) NFS entitled to relief from stay to proceed in state court to obtain transfer of her property from her retirement account held in trust by debtor.

IX. Bankruptcy Avoidance Actions Affect Division of Marital Assets.

A. Bankruptcy avoidance actions generally.

1. Bankruptcy trustee's "strong-arm powers."

2. Trustee can "step into the shoes" of *creditors* to raise certain state law claims (via Section 544) (e.g., state FT statute).

3. Bankruptcy code avoidance actions.

a) Section 547 preference.

b) Section 548 fraudulent transfer.

c) Other minor avoidance actions.

4. A preference action recovers amounts paid by the debtor to creditors (who were "preferred") during 90 days before the petition date (or one year to an insider).

a) Almost exclusively unsecured creditors.

b) A variety of statutory defenses.

5. Fraudulent transfer: Section 548 and state FT statute (O.R.C. Section 1336).

a) Actual intent to hinder/defraud creditors, or

b) Constructive fraud.

(1) Transfer for less than REV.

(2) While debtor was insolvent.

(3) Reachback two years (548); four years (OH statute).

B. Can you avoid transfers of marital property between spouses during divorce/dissolution?

1. Maybe! But probably not.

2. Watch for unfairness to creditors

3. ***In re Fordu*, 201 F.3d 693 (6th Cir. 1999).**

a) Debtor was the ex-H; W won lottery during marriage.

b) DR court approved dissolution decree approving separation agreement.

c) W kept lottery winnings and house; D-H took his business (which later failed) and was relieved of alimony obligations.

d) D-H's Trustee sought to recover share of marital residence and lottery proceeds as fraudulent transfer under state statute.

e) Wife/defendant, arguing lottery proceeds were her separate property and that the dissolution decree had issue and claim preclusive effects barring avoidance.

f) Held: Relying on state domestic relations law, W's lottery winnings were marital property, not separate property.

g) Held: Dissolution decree had no preclusive effect on trustee's claim for avoidance of FT; T had no privity with D-H in dissolution proceeding; Trustee represented intents of D-H's creditors, not D-H; Query whether dissolution also lacked "actual litigation" necessary for preclusion.

h) Lesson: Sixth Circuit allows trustees to proceed with FT action notwithstanding dissolution decree; remand on issues regarding insolvency and REV.

4. ***In re Neal*, 541 Fed. Appx. 609 (6th Cir. 2013) (unpublished).**

a) Listed in materials.

b) Ex-H received marital house (subject to mortgage).

c) W assigned obligation to pay credit card debt (cards in her name only).

d) W filed Chapter 7; D-W's Trustee filed FT claim against ex-H.

e) Sixth Circuit affirmed the bankruptcy court's holding that credit card debts were marital debts because they derived from purchases of household goods and payment of household expenses.

f) Court affirmed FT judgment for share of house as well as credit card debt.

g) Weird case involving FT of debt instead of transfer of assets.

h) Like ***Fordu***, T can potentially avoid dissolution transfers, especially where agreed or collusive and not contested or litigated.

5. ***In re Allen*, 521 B.R. 613 (Bankr. WD Mich. 2014).**

a) Prepetition divorce D-H gave up real estate to ex-W that had been his separate property pre-marriage.

b) However, record showed that other real property that had been ex-W's separate pre-marriage property had been mortgaged away and lost to finance D-H's failed business.

c) Trustee sought to recover a share of transferred property.

d) Held: Bankruptcy Court expresses reluctance to upset DR court's division of property, notwithstanding ***Fordu*** and, especially, ***Neal.***

e) Under Michigan divorce law, ex-W had a legal claim against D-H and divorce for the loss of her property.

f) The transfer of "his" property to ex-W in divorce was on account of that claim; therefore, there was clear REV (payment on debt).

g) Therefore, FT action failed.

h) Note that the divorce transfers were outside the reach of the preference statute (more than one year).

6. ***In re Jones*, Case No. 16-52757 (Bankr. N.D. OH) (AMK)**

a) No opinions published or otherwise.

b) D-H and ex-W colluded to stage divorce in Trumball County while living in Summit County.

c) Ex-W took substantial assets; D-H agreed to be sole party responsible for many debts.

d) D-H was defendant in pending litigation filed by cousin regarding his alleged mismanagement/looting of grandmother's trust.

e) Panel trustee brought FT action against ex-W for return of assets.

f) Cousin sought nondischargeability of the claim for theft from trust.

g) UST sued to deny discharge based on related irregularities.

h) In the end, there was a comprehensive settlement, including denial of discharge, denial of D-H's discharge.

i) Lesson: You can't hide assets from creditors simply by dressing the scheme up with divorce proceedings.

Wilcox v. Wilcox (In re Wilcox) (Wilcox I), Adv. No. 19-05018, ECF No. 18 (Bankr. N.D. Ohio. Sept. 6, 2019): Chapter 7 debtor reopened his chapter 7 case, *pro se*, and sought to enforce his discharge injunction against ex-wife with respect to a "equalization payment" imposed in a divorce decree entered after the bankruptcy case was filed and, in fact, after the debtor's chapter 7 discharge was entered. Because certain large debts were assumed by debtor's ex-wife, including the home mortgage, the domestic relations determined that an equalization payment was owed by the debtor to the ex-wife. Debtor argued that because his obligations to the various third-party creditors, including the mortgage holder, had been discharged in his chapter 7 case, his equalization payment obligation to his ex-wife was similarly discharged. The Court granted the Defendant ex-wife's motion to dismiss:

- Following prior decision from the same District, Neir v. Neir (In re Neir), 45 B.R. 740 (Bankr. N.D. Ohio 1985), obligations such as the equalization payment obligation established by a divorce decree entered postpetition could not have been discharged because postpetition obligations are not discharged in bankruptcy.

- In addition, the Court held that the equalization payment obligation would have been nondischargeable in the Debtor's chapter 7 case under 11 U.S.C. § 523(a)(15) even if it were a prepetition claim because it was a non-DSO obligation owed to a former spouse that was incurred "in a separation agreement, divorce decree, or other order of a court of record." Note that In re Neir predated the addition of Section 523(a)(15) to the Bankruptcy Code.

Wilcox v. Wilcox (In re Wilcox) (Wilcox II), Adv. No. 19-05116, ECF No. 6 (Bankr. N.D. Ohio. Jan. 3, 2020): Chapter 13 debtor brought adversary proceeding against ex-wife and her domestic relations counsel, and later naming state domestic relations court judge and county sheriff as additional defendants, seeking to enjoin enforcement of bench warrant based on debtor's failure to pay "equalization payment" established in divorce decree as payment obligation of husband to wife. Court issued TRO enjoining those parties from taking action to enforce bench warrant or payment of equalization payment:

- Property settlement judgment would be dischargeable in chapter 13 pursuant to 11 U.S.C. § 523(a)(15) if he completed plan payments. State court contempt mechanism could not be used to either render judgment nondischargeable or to attempt to collect or punish failure to pay. Arrest, in particular, would make it difficult for debtor to work and maintain the income necessary to make the chapter 13 payments.

Eck v. Eck (In re Eck), Adv. No. 19-5099 (Bankr N.D. Ohio Sept. 14, 2020) (oral decision):

- Nondebtor former husband brought complaint to determine dischargeability against debtor-wife for domestic relations court costs (special master's fees) and a credit card that had been wholly in his name but that the divorce decree required debtor-wife to pay and hold him harmless thereon. Held: The obligations were nondischargeable pursuant to 11 U.S.C. § 523(a)(15) as "incurred by the debtor in the course of a divorce or separation."

In re Jones, No. 16-52757; Jones v. Jones, Adv. No. 17-05015; Schinker-Kuharich v. Jones, Adv. No. 17-05023; McDermott v. Jones, Adv. No. 17-05036; Schinker-Kuharich v. Jones, Adv. No. 17-05039:

- Debtor-husband and nondebtor-wife allegedly colluded to stage a divorce in which the wife would take substantial assets, the husband (who was also the defendant in litigation brought by his cousin) would agree to become the sole party responsible for certain debts, and the husband would attempt to get out of the debts via the bankruptcy discharge. The United States Trustee, a unit of the Justice Department that acts as a bankruptcy system watchdog, learned of the issue and sued to deny the debtor's discharge, and the defendant-debtor ultimately stipulated to a waiver of the discharge.

This document was signed electronically on September 6, 2019, which may be different from its entry on the record.

IT IS SO ORDERED.

Dated: September 6, 2019

ALAN M. KOSCHIK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re	
GRANT THOMAS WILCOX,	Case No. 15-52614
Debtor.	Chapter 7
	Adversary Proceeding No. 19-05018
GRANT THOMAS WILCOX,	Judge Alan M. Koschik
Plaintiff,	
v.	
SARA N. WILCOX,	
Defendant.	

MEMORANDUM DECISION ON DEFENDANT'S MOTION FOR ABSTENTION AND, IN THE ALTERNATIVE, MOTION TO DISMISS ADVERSARY PROCEEDING

Defendant Sara N. Wilcox (the "Defendant") has filed a motion for abstention and, in the alternative, motion to dismiss (Docket No. 8) (the "Motion") the complaint (the "Complaint") of Debtor-plaintiff Grant Thomas Wilcox (the "Plaintiff") for failure to state a claim for which

relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Rule 7012(b) of the Federal Rules of Bankruptcy Procedure. For the reasons set forth herein, the Motion is granted as a motion to dismiss and the Complaint is dismissed for failure to state a claim.

JURISDICTION AND VENUE

This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334 and General Order No. 2012-7 entered by the United States District Court for the Northern District of Ohio on April 4, 2012. Venue is proper pursuant to 28 U.S.C. § 1409(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

FACTUAL AND PROCEDURAL HISTORY

The Court will, as it must on a motion to dismiss for failure to state a claim, accept as true all factual allegations made in the Complaint and construe those allegations in the light most favorable to the Plaintiff.

The Plaintiff and Defendant were formerly married and, during the marriage, took out a joint loan from Huntington National Bank ("Huntington") secured by a mortgage on their residence located at 9268 Mulberry Road, Mount Perry, Ohio (the "Property") (Complaint Ex. A at 23). On May 27, 2015, the Defendant filed a divorce action in the Court of Common Pleas, Licking County, Ohio, Domestic Relations Division (the "Domestic Relations Court"). On October 30, 2015, while the divorce action was pending, the Plaintiff filed a voluntary petition under Chapter 7 of the Bankruptcy Code. The Plaintiff scheduled the Defendant and Huntington as creditors. On June 14, 2016, this Court entered an order granting the Plaintiff a chapter 7 discharge (the "Discharge Order"). The bankruptcy case was closed on August 22, 2016.

On January 4, 2017, the Domestic Relations Court held a trial regarding the parties' divorce case. The Plaintiff argued that his obligation on the Huntington note was discharged in his bankruptcy case and that the Defendant should be solely responsible for that loan, which was secured by the mortgage on the Property.

The Domestic Relations Court was not persuaded by this argument. On March 23, 2017, the Domestic Relations Court granted the Defendant a decree of divorce from the Plaintiff. In the divorce decree, the Domestic Relations Court awarded sole ownership of the Property to the Defendant. That Court also held that the Defendant would be solely responsible for any debt secured by the mortgage on the Property, but would be credited with having assumed responsibility for that marital debt. (Complaint Ex. A at 25). The Domestic Relations Court then apportioned other marital property and marital debt between the two divorcing spouses. Based on the awards in the divorce decree, the Domestic Relations Court determined that the Defendant had become responsible for marital debts exceeding those assumed by the Plaintiff in a net amount of $122,092.74. To reconcile this disparity, the Domestic Relations Court held that an equalization payment in the amount of $61,046.37 ("the Equalization Payment") would be due and owing from the Plaintiff to the Defendant. (Complaint Ex. A at 42).

On October 20, 2017, the Defendant filed a motion in the Domestic Relations Court for contempt against the Plaintiff for the non-payment of the Equalization Payment. On September 28, 2018, the Domestic Relations Court issued a finding that the Plaintiff was guilty of contempt of court for non-payment and sentenced the Plaintiff to a 30-day imprisonment term if he did not pay past due amounts (Complaint Ex. B). On January 25, 2019, the Defendant filed a motion with the Domestic Relations Court to impose the 30-day imprisonment sentence.

Meanwhile, on December 27, 2018, the Plaintiff filed a motion to reopen his bankruptcy case. After a hearing on the motion and the Defendant's objection thereto, this Court granted the motion to reopen in an order entered on January 25, 2019. On February 2, 2019, the Plaintiff filed a complaint with this Court (Docket No. 1) (the "Complaint") commencing this adversary proceeding within his reopened case and asserting that the Equalization Payment owed to the Defendant had been discharged in bankruptcy, that Defendant's attempt to collect the Equalization Payment violates 11 U.S.C. § 524, and that the Plaintiff is entitled to the recovery of actual damages, punitive damages, and legal fees and expenses. In essence, the Plaintiff argues that the Equalization Payment is indistinguishable from his share of the Huntington loan, an obligation that was discharged in his bankruptcy case.

On March 18, 2019, the Defendant filed the Motion. The Defendant argues, with respect to the Plaintiff's argument for dischargeability based on 11 U.S.C. § 524, that a court of competent jurisdiction – the Domestic Relations Court – has already rejected Plaintiff's argument and that this Court must abstain from hearing the matter according to 28 U.S.C. § 1334(c)(2). Next, the Defendant argues that this Court should dismiss the adversary proceeding under the *Rooker-Feldman* doctrine. Lastly, the Defendant contends that the full faith and credit statute, 28 U.S.C. § 1738, requires this Court to provide the same preclusive effect to the divorce decree and contempt judgment as would the courts of the State of Ohio.

On April 1, 2019, the Plaintiff filed a response to the Defendant's Motion (Docket No. 9) (the "Response") relying on a single case, *In re Calhoun*, 715 F.2d 1103, 1111 (6th Cir. 1983), claiming that the mere labeling of an obligation by the parties as one for alimony, maintenance, or support, will not by itself render the obligation nondischargeable.

On April 4, 2019, the Defendant filed a reply (Docket No. 11) (the "Reply") to the Response. In her Reply, she argues that *In re Calhoun* has no bearing on the analysis of this Court's concurrent jurisdiction because in that case the bankruptcy court's jurisdiction to determine whether obligations arising out of a state domestic relations court judgment are dischargeable was not challenged.[1] Second, the Defendant argues that the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), effective October 17, 2005, amended Section 523 of the Bankruptcy Code effectively rendering *In re Calhoun* inapplicable in chapter 7 cases. This is because BAPCPA added Section 523(a)(15) to the Bankruptcy Code, which causes debts to a spouse, a former spouse, or a child of the debtor under a divorce decree or separation agreement to be non-dischargeable, even if the debt is not a domestic support obligation. The question in *In re Calhoun* was whether or not an obligation to assume debts in a separation agreement was considered a support payment or a property division. Under current law, neither support obligations nor obligations related to property division are dischargeable in chapter 7 cases, making that question irrelevant here.

LEGAL ANALYSIS

I. Deference to the Domestic Relations Court Is Inappropriate Under Doctrines of Abstention, *Rooker-Feldman*, or Full Faith and Credit When the Question At Issue Is the Scope of the Debtor's Discharge.

The Motion's reliance on principles of abstention, the *Rooker-Feldman* doctrine, and the federal full faith and credit statute are misplaced, each ultimately for the same reason: The scope of the Discharge Order has been put at issue. The Defendant cites the mandatory abstention provision in the bankruptcy jurisdictional statute, which provides as follows:

[1] In *Calhoun*, the divorce decree was entered before the debtor filed his bankruptcy petition. *In re Calhoun*, 715 F.2d at 1105 (6th Cir. 1983). Therefore, the state court had never considered the extent of the debtor's discharge for the obvious reason that the debtor had not yet filed his bankruptcy petition. The bankruptcy court was the only court that considered the extent of the discharge.

> Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

28 U.S.C. § 1334(c)(2). However, the scope of the discharge is not based on a state law claim or cause of action; it is based on the Bankruptcy Code. The Defendant argues that "the [Domestic Relations] Court is in the process of interpreting and enforcing its own orders" (Motion ¶ 7), namely, the divorce decree in which it found the Plaintiff's arguments about the scope of the discharge unavailing. However, as discussed further below, while the Domestic Relations Court has the jurisdiction to consider the effects of the Discharge Order, the interpretation and enforcement of that Order remains the purview of this Court.

For the same reason, the Court is not deprived of subject-matter jurisdiction over the Motion by the *Rooker-Feldman* doctrine. The Supreme Court in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 125 S. Ct. 1517, 161 L.Ed. 454 (2005), held that the *Rooker-Feldman* doctrine only applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.* at 284; *accord Todd v. Weltman, Weinberg & Reis Co., LPA*, 434 F.3d 432, 436 (6th Cir. 2006). In such cases, the federal courts lack subject-matter jurisdiction. *Exxon Mobil* at 284. That is not the case here. As with the Defendant's abstention argument, while the Defendant frames the issue as one of interpreting the divorce decree, it is the scope of the Discharge Order that is at issue. A state court cannot divest this Court of subject matter jurisdiction to interpret and enforce its own preexisting orders.

Likewise, the Defendant cannot rely on the federal full faith and credit statute, 28 U.S.C. § 1738, to deprive this Court of the authority to interpret and enforce the Discharge Order. That statute provides that "The records and judicial proceedings of any court of any … State, Territory, or Possession … shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory, or Possession from which they are taken." *Id.* This means that federal courts "give state-court judgments the same preclusive effect that the state's courts would." *West Congress Street Partners, LLC v. Rivertown Development, LLC*, 739 Fed. Appx. 778, 782 (6th Cir. 2018). However, if the divorce decree misconstrued the Discharge Order, it is the Domestic Relations Court that failed to give appropriate preclusive effect to *this* Court's order, not the other way around.

"The bankruptcy court is not the sole forum that can hear complaints to determine the dischargeability of claims" and "it is undisputed that the state courts have concurrent jurisdiction to hear such claims." *In re Milburn*, 218 B.R. 862, 864 (Bankr. W.D. Ky. 1998); *see* 28 U.S.C. § 1334(b). However, a bankruptcy discharge "voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived." 11 U.S.C. § 524(a)(1). Further, a bankruptcy discharge acts as an injunction against the commencement or continuation of an action to collect a discharged debt as a personal liability of the debtor. 11 U.S.C. § 524(a)(2). Therefore, "all judgments purporting to establish personal liability of a debtor on a discharged debt, including judgments obtained after bankruptcy, are void to that extent. They are not voidable, they are void *ab initio*

as a matter of federal statute." *Pavelich v. McCormick, Barstow, Sheppard, Wayte & Carruth LLP (In re Pavelich)*, 229 B.R. 777, 782 (B.A.P. 9th Cir. 1999). The *Pavelich* court also held:

> If the state court construes the discharge correctly, its judgment will be enforced and not be vulnerable to being upset by means outside the normal appellate channels. If, however, the state court construes the discharge incorrectly, then its judgment may be void to the extent it offends the discharge and subject to collateral attack in federal court.

Id. at 783.

This Court "must be able to ascertain the extent to which the [Domestic Relations Court] judgment is void under § 524(a)(1) as an essential element of determining whether the § 524(a)(2) discharge injunction has been violated." *Id.* at 782.

Therefore, this Court has jurisdiction in this case and is not obligated to abstain from exercising it, because the scope of the Debtor's discharge and the question of whether the Discharge Order was violated are at issue. The Court will, nevertheless, evaluate whether the Defendant's Motion should be granted under Civil Rule 12(b)(6) on the grounds that the Plaintiff has failed to state a claim.

II. Standard for Motions to Dismiss Under Civil Rule 12(b)(6).

Federal Rule of Civil Procedure 12(b)(6), incorporated into bankruptcy practice by Federal Rule of Bankruptcy Procedure 7012(b), allows a party to move to dismiss a pleading for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.E.2d. 868 (2009) (quoting *Bell Atl. Corp v. Twombly*, 550 U.S.C. 544, 570, 127 S.Ct. 1955 167 L.Ed.2d 929 (2007)). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 557). "If the plaintiffs do not nudge their claims across the

line from conceivable to plausible, their complaint must be dismissed." *In re City of Detroit, Michigan*, 841 F.3d 684, 699 (6th Cir. 2016) (quoting *Lutz v. Chesapeake Appalachia, L.L.C.*, 717 F.3d 459, 464 (6th Cir. 2013). "On the other hand, when considering a Rule 12(b)(6) motion to dismiss, the trial court must 'construe the complaint in the light most favorable to the plaintiff and accept all factual allegations as true.'" *Adkisson v. Jacobs Engineering Grp., Inc.*, 790 F.3d 641, 647 (6th Cir. 2015) (quoting *Laborers' Local 265 Pension Fund v. iShares Trust*, 769 F.3d 399, 403 (6th Cir. 2014)).

III. The Equalization Payment Was Not Discharged in Bankruptcy and Its Collection Is Not Enjoined.

A. The Equalization Payment in the Divorce Decree is a Postpetition Debt, and Therefore Not Dischargeable Under 11 U.S.C. § 727(b).

At issue here is whether by discharging the Plaintiff's mortgage obligation to Huntington Bank, the Discharge Order precluded the Domestic Relations Court from ordering the Plaintiff to pay the Equalization Payment to the Defendant. The Court concludes that the Discharge Order did not discharge the Plaintiff's obligation to make an Equalization Payment to the Defendant. The Domestic Relations court assigned the Property, along with the joint mortgage owed to Huntington and any other debt obligations secured by the Property, to the Defendant. Other assets and obligations were also apportioned among the two divorcing spouses. In order to equalize the distribution, the Plaintiff was ordered to pay the Equalization Payment to the Defendant, separate and distinct from the Debtor's now-discharged obligation to pay the mortgage debt owed to Huntington and secured by a mortgage on the Property. The Domestic Relations Court did not violate the Discharge Order in creating the Equalization Payment obligation and the Defendant does not violate the Discharge Order in attempting to collect on it because the Equalization Payment is a newly created post-petition debt.

The Plaintiff here is "protected from prepetition creditors after discharge by

Section 524(a)(2) which 'operates as an injunction against the commencement or continuation of an action, the employment of process, or any act, to collect, recover or offset any such debt as a personal liability of the debtor.'" *Neier v. Neier (In re Neier)*, 45 B.R. 740, 743 (Bankr. N.D. Ohio 1985); *see* 11 U.S.C. § 524(a)(2). However, "the law is clear that a discharge only applies to those debts 'that arose before the date of the order for relief' as provided by § 727(b)." *Id.* at 741; *see* 11 U.S.C. § 727(b).

In *Neier*, as in this case, the debtor-plaintiff relied on *In re Calhoun*. He argued that his obligation to indemnify the defendant, his former spouse, for any deficiency resulting from the sale of their residence was discharged in his bankruptcy. In response, the defendant filed a motion for an order to show cause in the divorce case directing the debtor-plaintiff to pay his obligation. The debtor-plaintiff opposed the motion on the ground of his prior bankruptcy discharge. The domestic relations court held as follows:

> The court rejects the plaintiff's claim that he is immune from any responsibility to his former wife because of his bankruptcy release. The obligation to his wife was not incurred until after the divorce and was not released by the bankruptcy decree.

In re Neier, 45 B.R. at 742.

The debtor-plaintiff then filed a complaint in the bankruptcy court seeking to have the defendant enjoined from collecting the debt pursuant to 11 U.S.C. § 524(a)(2). In dismissing the debtor's complaint, *Neier* agreed with the state court. *Neier* distinguished *In re Calhoun* and other cases cited by the debtor-plaintiff, noting that in those cases the bankruptcy petition was filed after the final decree of divorce. In *Neier*, the debtor-plaintiff received a bankruptcy discharge ten months before the final divorce decree was granted by the Wood County Domestic Relations Court. *Neier* found that "the plaintiff was unable to cite any cases which discharged a postpetition debt under circumstances similar to the ones in this matter." *Id.* at 742. Therefore,

the court concluded and held that "[a]t the time of his discharge the plaintiff was released from whatever obligations he owed to the bank and his wife as a co-signer," but that there was "no evidence that the debt in question was actually a prepetition debt that had been discharged but instead it is a new postpetition debt that the plaintiff owes to his former wife." *Id.* at 743.

In the instant case, the alleged facts follow closely with those in *Neier* in that the bankruptcy petition was filed on October 30, 2015, prior to the Domestic Relations Court's March 23, 2017 final decree of divorce, which created the Equalization Payment obligation. Despite relying solely on *In re Calhoun*, the Plaintiff does not allege in his complaint that the Equalization Payment in the divorce decree was a prepetition debt that had been discharged. Instead, he concedes that the Equalization Payment obligation was imposed by a state court order entered nine months after he obtained his chapter 7 discharge from this Court. Therefore, notwithstanding *Calhoun*, and consistent with *Neier*, the Court concludes that while the Discharge Order released the Plaintiff from his mortgage obligations, the Equalization Payment the Plaintiff owes to the Defendant is a new postpetition debt that was not discharged in bankruptcy.

B. The Debtor's Equalization Payment Obligation Incurred Pursuant to the Divorce Decree Would Be Nondischargeable Under 11 U.S.C. § 523(a)(15) and Its Enforcement Could Not Stayed by the Discharge Injunction Even If It Were a Prepetition Debt.

Even if the Equalization Payment were deemed to be a prepetition debt, it would be nondischargeable pursuant to 11 U.S.C. § 523(a)(15). "The enactment of BAPCPA in 2005 made 'any debt falling with[in] the scope of [11 U.S.C.] §523(a)(15) absolutely nondischargeable.'" *Stocker v. Stocker*, 9th Dist. Wayne No. 12CA0021, 2012-Ohio-5821, ¶ 13 (quoting *In re Williams*, 398 B.R. 464, 468 (N.D.Ohio 2008)). *Stocker* summarizes the elements

that need to be established for a debt to qualify as marital debt excepted from discharge under Section 523(a)(15):

> (1) the debt in question is to a spouse, former spouse or child of the debtor; (2) the debt is not a support obligation of the type described in §523(a)(5); and (3) the obligation was incurred in a separation agreement, divorce decree or other order of a court of record.

Id. (citation omitted).

The Equalization Payment obligation is owed to a former spouse of the Plaintiff, the Defendant; the Equalization Payment is not a support obligation of the type described in Section 523(a)(5); and the Equalization Payment was incurred in a divorce decree that was granted to the Defendant by the Domestic Relations Court. Therefore, the Debtor's Equalization Payment obligation could not have been discharged in the Debtor's bankruptcy case even if it were deemed to be a prepetition debt. Because the debt could not be discharged, the discharge injunction in force pursuant to 11 U.S.C. § 524(a)(2) could not bar the Defendant's efforts to collect the Equalization Payment from the Plaintiff, including seeking sanctions from the Domestic Relations Court.

Indeed, the addition of Section 523(a)(15) to the Bankruptcy Code, which causes all property settlement obligations to former spouses arising from divorce decrees and separation agreements to be nondischargeable, simplifies the analysis necessary to dispose of the Motion and the Complaint. The Court need not struggle with a proper characterization of the Debtor's obligation to his former spouse (*i.e.,* support obligation v. property settlement), as was the case in *Calhoun*, because now both types of obligations are nondischargeable. 11 U.S.C. § 523(a)(5) and (15). Therefore, collection of neither type of debt is stayed by the discharge injunction. *See* 11 U.S.C. § 524(a)(2). In addition, the extent of the discharge and the scope of their injunction no longer depends on whether the obligation under the divorce decree is deemed to be a pre- or

postpetition obligation, as was necessary in *Neier*, a pre-BAPCPA case. Provided the obligations under the divorce decree are owed to a spouse, former spouse, or a child of the debtor, these obligations will survive bankruptcy, will not be discharged, and will not be stayed by the discharge injunction.

CONCLUSION

The Equalization Payment is a postpetition obligation and was therefore unaffected by the Plaintiff's discharge. Regardless of whether it was a pre- or postpetition debt, it was a debt to a former spouse incurred via a divorce decree, and thus nondischargeable pursuant to 11 U.S.C. § 523(a)(15). The Defendant does not violate the Discharge Order when she attempts to collect the Equalization Payment. Therefore, based on the facts alleged in his own Complaint, the Plaintiff debtor's actions for damages and injunctive relief relating to the Defendant's collection efforts must be dismissed for failure to state a claim for which relief can be granted.

For the reasons set forth above, the Defendant's motion for abstention and in the alternative, motion to dismiss (Docket No. 8) will be granted as a motion to dismiss and the Plaintiff's Complaint will be dismissed with prejudice. The Court will enter a separate form of judgment dismissing the Plaintiff's Complaint and causes of action. The Court's judgment granting Defendant's Motion to Dismiss will not be deemed entered until the separate form of judgment consistent with this Memorandum Decision has been docketed by the Clerk.

This document was signed electronically on January 3, 2020, which may be different from its entry on the record.

IT IS SO ORDERED.

Dated: January 3, 2020

ALAN M. KOSCHIK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re GRANT THOMAS WILCOX, Debtor.	Case No. 19-53018 Chapter 13 Adversary Proceeding No. 19-05116
GRANT T. WILCOX, Plaintiff, v. SARA N. WILCOX, *et al.*, Defendants.	Judge Alan M. Koschik

ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER

On December 23, 2019, debtor Grant Thomas Wilcox (the "Debtor") filed his underlying chapter 13 bankruptcy case, Case No. 19-53018 (the "Chapter 13 Case"). One week later, on

December 30, 2019, the Debtor filed the above-captioned adversary proceeding (the "Stay Violation Adversary Proceeding") naming his ex-wife, Sara N. Wilcox (the "Ex-Spouse") and her attorney, Herbert Baker (collectively, the "Defendants"), seeking (a) a finding that the Defendants willfully violated the automatic stay by prosecuting certain debt collection actions related to the Debtor's and Ex-Spouse's divorce proceedings in the Licking County Court of Common Pleas, Domestic Relations Division (the "DR Court"), (b) compensatory and punitive damages arising from that alleged stay violation, and (c) an injunction. The Complaint included an emergency motion for temporary restraining order (the "TRO Motion"). On December 31, 2019, the Court set a hearing on the TRO Motion contained in the Complaint. The hearing was held on January 2, 2020, at 10:00 a.m.

The Debtor, who is the Plaintiff in this adversary proceeding (the "Plaintiff") and is appearing *pro se* in both this proceeding and his Chapter 13 Case, attended the hearing on the TRO Motion. No other parties attended the hearing. The Debtor presented the Court with copies of recent orders entered in the DR Court pertaining to the state court proceedings alleged in the Complaint, including a magistrate's decision entered on October 29, 2019, by Magistrate Deborah G. Lang (the "Magistrate's Decision"), and a judgment entry entered on December 30, 2019, following a hearing apparently held on that date, and signed by Judge Duke Frost (the "Judgment Entry"). The DR Court orders and decision, which were not attached to the Complaint nor entered anywhere on the docket in this adversary proceeding, appear to the Court to be genuine and, subject to any further objection that may be raised by a party-in-interest, the Court will accept these documents as true and correct copies of the state court orders entered in the public docket with respect to the divorce case between the Debtor and his Ex-Spouse.

BACKGROUND

This is not the Debtor's first appearance before this Court. He previously appeared as a chapter 7 debtor in a case filed on October 30, 2015, Case No. 15-52614 (the "Chapter 7 Case"). In that case, the Debtor earned a chapter 7 discharge pursuant to an order entered June 14, 2016, at Docket No. 33. That case was originally closed with a final decree issued on August 22, 2016.

According to allegations made by the Debtor in a previous adversary proceeding complaint filed in the Chapter 7 Case, the Ex-Spouse commenced a divorce action in the DR Court on May 27, 2015, approximately five months before the Debtor filed his Chapter 7 Case. After the Chapter 7 Case was closed and the Debtor's chapter 7 discharge was entered, the DR Court conducted a trial regarding the divorce case between the Debtor and the Ex-Spouse. The divorce decree entered by the DR Court on March 23, 2017 (the "Divorce Decree") made a variety of factual findings and granted various forms of relief between the former spouses. Among the relief imposed by the DR Court in the Divorce Decree, the DR Court directed the Debtor to make a "debt equalization payment" to the Ex-Spouse.

On December 27, 2018, the Debtor moved to reopen his Chapter 7 Case in order to seek a determination that his obligation to make the debt equalization payment to the Ex-Spouse was discharged. The Court entered an order reopening the Chapter 7 Case on January 29, 2019, at Docket No. 43, and on February 19, 2019, the Debtor filed an adversary complaint commencing Adversary Proceeding No. 19-05018 (the "Discharge Violation Adversary Proceeding"), which named the Ex-Spouse as a defendant. In the Discharge Violation Adversary Proceeding, the Debtor sought a determination that the debt equalization obligation imposed by the DR Court had been discharged by the chapter 7 discharge order entered on June 14, 2016, in the Chapter 7 Case and that the Ex-Spouse had violated the discharge injunction.

In response to the Debtor's complaint in the Discharge Violation Adversary Proceeding, the Ex-Spouse, through counsel, filed a motion to abstain and to dismiss the adversary complaint. The Debtor filed a motion for summary judgment. After briefing, the Court took the motions under advisement. On September 6, 2019, the Court entered a Memorandum Decision denying the Ex-Spouse's motion to abstain, but granting her motion to dismiss on the dual grounds that (a) the debt equalization obligation, having been entered by a judgment dated after the Chapter 7 Case was commenced, was a postpetition obligation that was not discharged in the Chapter 7 Case, and (b) concluding that the debt equalization obligation could not have been discharged under any circumstances in any chapter 7 case pursuant to 11 U.S.C. § 523(a)(15). The Memorandum Decision was entered at Docket No. 18 and an Order consistent with that Memorandum Decision dismissing the case was entered the same day at Docket No. 19. Also consistent with the Court's Memorandum Decision, the Court entered an Order denying Debtor's motion for summary judgment against the Ex-Spouse at Docket No. 20 on the same day. Those Orders resolved the Discharge Violation Adversary Proceeding. The Chapter 7 Case was reclosed on October 4, 2019.

In his Complaint in this adversary proceeding, the Debtor alleges that, subsequent to the events described above, the DR Court issued a Magistrate's Decision on October 29, 2019, on a motion filed by the Ex-Spouse. The DR Court Magistrate made a variety of findings, including determining that the Debtor was in default of an earlier contempt order directing him to make the equalization payment and additional payments on a credit card obligation owed jointly by the Debtor and the Ex-Spouse. The Magistrate's Decision also directed the Debtor to prepare a Qualified Domestic Relations Order ("QDRO") concerning the division of his retirement accounts pursuant to the Divorce Decree, to prepare a power of attorney related to matters

concerning the Debtor's and Ex-Spouse's former marital residence, and to pay a portion of the attorney's fees incurred by a Guardian ad Litem appointed by the DR Court. The DR Court Magistrate found that the Debtor had failed to comply with the conditions of the DR Court's previous contempt order and recommended that a previously suspended sentence of 30 days be imposed by the DR Court's Judge presiding over the case. The Magistrate's Decision also recommended the DR Court issue an order pertaining to modified visitation rights of the Debtor's parents concerning a minor child, the payment of fees to a Guardian ad Litem, and set a final hearing before the DR Court's Judge presiding over the case to consider the Magistrate's recommendations.

On December 30, 2019, one week after the Chapter 13 Case was commenced, Judge Duke Frost conducted a hearing pertaining to the Magistrate's Decision and matters pending before the DR Court on the Ex-Spouse's motion. The DR Court was advised of the Chapter 13 Case. The DR Court noted the existence of the Chapter 13 Case in the Judgment Entry, mentioning that a notice of the bankruptcy case had been filed in the DR Court docket on December 24, 2019. The DR Court noted that "as a general rule, the filing of a bankruptcy petition operates to stay, among other things, the continuation of a judicial proceeding against the Debtor that was commenced before the petition." The DR Court also noted that there were exceptions to the automatic stay, including "nonfinancial orders" and orders related to domestic support obligations ("DSO"). The DR Court went on to provide that the Defendant had been found in contempt for failure to (1) make an equalization payment; (2) make a payment on account of a certain credit card debt; (3) failed to submit a qualified domestic relations order ("QDRO") pertaining to the Debtor's retirement account; (4) failed to sign a power of attorney

regarding "certain real estate"; and (5) failed to pay attorney's fees, presumably those pertaining to the Guardian ad Litem.

The DR Court observed that although some of those items "arguably would be impacted by the filing of a bankruptcy," "other portions of the contempt are exempt and enforceable." In particular, the DR Court concluded that the failure to submit the QDRO and the failure to sign a power of attorney regarding the real estate were matters that were not financial in nature and could be enforced notwithstanding the existence of the Debtor's Chapter 13 Case and the automatic stay in force pursuant to 11 U.S.C. § 362(a). The DR Court set a further hearing on the attorney's fee question, and also directed that the entry of a capias, which the Court understands to be the equivalent of a bench warrant directing the arrest of the Debtor based on the DR Court's conclusion that the Debtor "knew of the [December 30, 2019] hearing and declined to appear."

That same day, the Debtor commenced this adversary proceeding as noted above.

PRELIMINARY FINDINGS

For the reasons described by this Court in its Memorandum Decision entered on September 6, 2019, in the Discharge Violation Adversary Proceeding related to the Debtor's reopened Chapter 7 Case, the debt equalization obligation owed by the Debtor to the Ex-Spouse pursuant to the DR Court Divorce Decree was not discharged in the Chapter 7 Case. This ruling was based on the fact that such obligations are not dischargeable in chapter 7 pursuant to 11 U.S.C. § 523(a)(15). In addition, the Court held that the debt equalization obligation arose when the Divorce Decree was entered on March 23, 2017, and therefore arose after the Chapter 7 Case was filed.

Notwithstanding the fact that the debt equalization obligation was not discharged in the Chapter 7 Case, and therefore the efforts by the Defendants to collect that claim were not violations of the discharge injunction entered in that prior case, the collection of such an obligation was nevertheless stayed automatically by the Debtor's December 23, 2019 filing of the Chapter 13 Case. The debt equalization obligation arose prior to the Chapter 13 Case. Moreover, the debt equalization obligation may potentially be discharged in the Chapter 13 Case, provided the Debtor is able to obtain confirmation of a chapter 13 plan and completes the plan. This is so because 11 U.S.C. § 1328 permits the discharge of debts arising out of divorce decrees other than domestic support obligations in chapter 13 cases, unlike chapter 7 cases, because the exception to discharge found in 11 U.S.C. § 523(a)(15) does not apply in chapter 13 cases. In addition, the Chapter 13 Case was filed well after the debt equalization obligation arose in the parties' divorce case. In addition, the Court observes that the Chapter 13 Case was filed more than four years after the Debtor's Chapter 7 Case in which he earned his chapter 7 discharge. Therefore, the Debtor is eligible for a chapter 13 discharge provided he meets the obligations of chapter 13 during the course of this Chapter 13 Case. 11 U.S.C. § 1328(f)(1).

Any attempt to collect the debt equalization obligation, including seeking a contempt citation or an arrest warrant against the Debtor designed to compel payment of the debt equalization obligation ***is stayed*** pursuant to 11 U.S.C. § 362(a) and no exception to that automatic stay appears to be applicable pursuant to 11 U.S.C. § 362(b). Upon the filing of the Chapter 13 Case on December 23, 2019, the Defendants were stayed from taking any actions, including seeking a hearing or an order from the DR Court to effectuate or compel the collection of debts owed by the Debtor, including the debt equalization obligation. As a result, it is likely that no additional restraining order is required to enjoin those collection actions. The Debtor

would likely prevail on his claim that these collection actions have been automatically stayed since the Debtor's Chapter 13 Case was filed on December 23, 2019.

By contrast, the automatic stay does not apply to issues pertaining to visitation rights, the determination of any domestic support obligations owed by the Debtor to either the Ex-Spouse or minor children, or even the collection of such domestic support obligation to the extent such collection activities are limited to wage garnishment or collection from property that is not property of the estate. 11 U.S.C. § 362(b)(2). Although Judgment Entry entered by the DR Court on December 30, 2019, discusses domestic support obligations as an exception to the automatic stay, neither the Magistrate's Decision nor the Judgment Entry appear to substantively concern any domestic support obligations.

Actions to demand presentation of a proposed QDRO, or a power of attorney concerning rights to real estate, are potentially more complex. These issues raise questions concerning whether the property division of the retirement account or the real estate was in the nature of a domestic support obligation or instead a division of property. The retirement accounts and a QDRO issue also raises the question whether the Ex-Spouse's rights to the retirement accounts were vested as property rights before the Debtor's Chapter 13 Case was filed.

At the January 2, 2020 TRO Hearing, the Debtor alleged that his retirement account had been reduced to a *de minimis* figure prior to the entry of the Divorce Decree and that the substantive division of the retirement account was settled by mutual agreement by issuance of a check payable to, and cashed by, the Ex-Spouse. In addition, the Debtor alleged that any necessary power of attorney had already been provided to the Ex-Spouse and/or that the transfer of title of the real estate and the refinancing of any secured debt pertaining to that property had

already been accomplished. The Court makes no findings of fact on those allegations, and in fact, accepted no testimony under oath at the January 2, 2020 TRO Hearing.

Setting the Debtor's factual allegations aside, the Court observes that the Debtor prevailing on the QDRO issue is not necessarily likely, as it is quite possible that the Ex-Spouse acquired substantive vested property rights to a portion of the retirement account before the Chapter 13 Case was filed. However, the issues are complex and it is possible the Debtor will be able to prevail on the QDRO issue. Such success is more likely if the Debtor is able to prove the allegations he made at the TRO Hearing.

When considering entry of a temporary restraining order or injunction, the Court must consider not only likelihood of success on the merits, but also the risk of irreparable harm. The Debtor is faced with possible imprisonment if the DR Court's orders were allowed to be enforced. The damage caused by the deprivation of liberty for a period of weeks cannot be undone after the fact or remedied with legal damages. Moreover, the Debtor's detention at this time would impair this Court's ability to consider more thoroughly the QDRO and power of attorney issues, as well as issues concerning the effect of the automatic stay on future proceedings on the attorney's fees. More fundamentally, it would impair the Debtor's ability to secure employment, earn a wage, fund and confirm a chapter 13 plan, complete the plan, and earn a chapter 13 discharge under the jurisdiction of this Court.

As a result, the Court finds that the equities tip in the Debtor's favor, compelling this Court to issue a temporary restraining order enjoining the Defendants from prosecuting any bench warrant or capias that may have already been entered by the DR Court and directing the Defendants to notify the DR Court and any other relevant law enforcement officials of the fact and substance of this Temporary Restraining Order. As stated below, the Court will consider a

further extension of the restraining order, or a preliminary injunction, at a hearing scheduled next week, **January 9, 2020 at 3:30 p.m.**

The Debtor's failure to attend the DR Court's December 30, 2019 hearing is more problematic, as this Court respects the authority of any other court of competent jurisdiction to conduct hearings, control its docket, and enforce any act of contempt by any party within its jurisdiction. However, this Court notes that the December 30, 2019 hearing occurred after the Debtor's Chapter 13 Case was filed and the automatic stay became effective. Moreover, the DR Court acknowledged that the Chapter 13 Case had been filed in its Judgment Entry of December 30, 2019, and sought to determine whether the automatic stay was applicable or not and the extent to which it was. In addition, it appears likely, based on the record currently before this Court, that the detention ordered by the DR Court was civil in nature, seeking to compel the Debtor to pay a debt in order to purge his contempt, not a criminal punishment.

While nonbankruptcy courts have jurisdiction to determine whether the automatic stay applies to their proceedings, such determinations are subject to the final determination of a bankruptcy court. When a party disputes that the automatic stay applies to a proceeding in a nonbankruptcy forum, because of the possible application of an exception to the stay such as those enumerated under 11 U.S.C. § 362(b), the Sixth Circuit has held, following the Second Circuit, that

> The court in which the litigation claimed to be stayed is pending has jurisdiction to determine not only its own jurisdiction but also the more precise question whether the proceeding pending before it is subject to the automatic stay.

N.L.R.B. v. Edward Cooper Painting, Inc., 804 F.2d 934, 939 (6th Cir. 1986) (quoting *In re Baldwin-United Corp. Litig.*, 765 F.2d 343, 347 (2d Cir. 1985)). However, in the same opinion, the Sixth Circuit noted that while nonbankruptcy courts may independently determine whether the automatic stay applies and proceed when they determine it does not, that comes with a major

practical caveat: Succinctly put, they "proceed[] at their own risk." *Id.* at 940. "If it was later determined that the proceeding was *not* excepted from the automatic stay, the entire [nonbankruptcy] proceeding would be void *ab initio* as an act taken in violation of the stay." *Id.* (emphasis in original).

The Court is not prepared, at this extremely early juncture, to conclude that the December 30, 2019 hearing itself *did* violate the automatic stay. The hearing *could* have violated the automatic stay, but pursuant to *Edward Cooper Painting*, *supra*, the state court was allowed to proceed at its own risk.

However, bankruptcy courts have also recognized a distinction between a *sentencing hearing* and a *sentence* when it comes to contempt proceedings in domestic relations cases. *See In re Golan*, Case No. 19-75598, at 11 (Bankr. E.D.N.Y. Dec. 19, 2019) (citing *Goodman v. Albany Realty Co. (In re Goodman)*, 277 B.R. 839, 841 (Bankr. M.D. Ga. 2001)). It is quite possible that the hearing itself was a violation of the automatic stay, but even if it were not, the part of the Judgment Entry ordering the arrest of the Debtor due to his failure to attend that hearing in person (the Court notes again that the Debtor did appear through counsel) appears likely to have been a stay violation. The capias intended to direct the detention of the Debtor appears to flow from the DR Court's intention to hold the Debtor in civil contempt for failing to pay the debt equalization obligation and credit card obligation to the Ex-Spouse and failing to produce a qualified domestic relations order and power of attorney. The Court concludes that the Debtor has shown a sufficient likelihood of success on the merits on that point, and has even more strongly shown irreparable harm from arrest on capias, to warrant a temporary restraint on that order, at least to the extent that the Defendants are able to effectuate such restraint.

Based on the foregoing,

IT IS HEREBY ORDERED THAT:

1. The Debtor's Motion for a Temporary Restraining Order (Docket No. 1) is **GRANTED**.

2. Effective January 2, 2020, at 11:35 a.m., the Defendants are **TEMPORARILY RESTRAINED** from enforcing any orders of the DR Court to compel the Debtor to turnover or produce a proposed Qualified Domestic Relations Order ("QDRO") or a power of attorney related to any real estate owned or previously owned by the Debtor and/or the Ex-Spouse, or to prosecute any motions they have filed in the DR Court relevant to this Order.

3. The Defendants are also **TEMPORARILY RESTRAINED** from enforcing any orders of the DR Court to compel payment of the Debtor's debt equalization obligation and credit card repayment obligation imposed by the Divorce Decree between the Debtor the Ex-Spouse or to enforce or obtain a contempt citation against the Debtor for failure to pay such obligations, including without limitation, enforcing any arrest warrant or capias outstanding with respect to the Debtor. The Defendants are further directed to take all reasonable steps to notify the DR Court and relevant law enforcement officers of this Order.

4. This Temporary Restraining Order expires at 11:59 p.m., January 10, 2020, unless further extended by order of this Court.

5. A further hearing to consider extension of this Temporary Restraining Order and/or entry of a preliminary injunction with respect to these matters shall be heard by this Court on **Thursday, January 9, 2020, at 3:30 p.m.** in Courtroom 260 of the John F. Seiberling Federal Building & U.S. Courthouse, 2 South Main Street Akron, Ohio. The Defendants are

strongly encouraged to attend, either in person or by telephone. Telephonic attendance must be arranged with Courtroom Deputy Mary Knotts at least 24 hours before the scheduled hearing.

# # #

cc:

Grant T. Wilcox, *Pro se* Plaintiff-Debtor, grant.wilcox@gmail.com, 9858 Green Drive, Windham, OH 44288,

Sara N. Wilcox, *Pro se* Defendant, 9268 Mulberry Road SE, Mount Perry, OH 43760

Herbert Baker, *Pro se* Defendant, 301 Main Street, Zanesville, OH 43701

This document was signed electronically on January 10, 2020, which may be different from its entry on the record.

IT IS SO ORDERED.

Dated: January 10, 2020

ALAN M. KOSCHIK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re	
GRANT THOMAS WILCOX,	Case No. 19-53018
Debtor.	Chapter 13
	Adversary Proceeding No. 19-05116
GRANT T. WILCOX,	Judge Alan M. Koschik
Plaintiff,	
v.	
SARA N. WILCOX, *et al.*,	
Defendants.	

ORDER DETERMINING EXTENT OF AUTOMATIC STAY
AND GRANTING LIMITED RELIEF FROM THE AUTOMATIC STAY

On December 23, 2019, debtor Grant Thomas Wilcox (the "Debtor") filed his underlying chapter 13 bankruptcy case, Case No. 19-53018 (the "Chapter 13 Case"). One week later, on December 30, 2019, the Debtor filed the above-captioned adversary proceeding naming his ex-wife, Sara N. Wilcox (the "Ex-Spouse") and her attorney, Herbert Baker (collectively, the "Defendants"), seeking (a) a finding that the Defendants willfully violated the automatic stay by prosecuting certain debt collection actions related to the Debtor's and Ex-Spouse's divorce proceedings in the Licking County Court of Common Pleas, Domestic Relations Division (the "DR Court"), (b) compensatory and punitive damages arising from that alleged stay violation, and (c) an injunction. The Complaint included an emergency motion for temporary restraining order (the "TRO Motion"). A hearing on the TRO Motion was held on January 2, 2020, at 10:00 a.m. (the "TRO Hearing").

The Court granted the TRO Motion at the conclusion of the TRO Hearing. The Court's Temporary Restraining Order (the "TRO") was entered on January 3, 2020 at Docket No. 6. The background facts and the preliminary findings of fact and conclusions of law described in the TRO are incorporated into this Order by reference. The capitalized terms defined in the TRO are also incorporated into this Order unless expressly modified herein.

On January 9, 2020, at 3:30 p.m., the Court conducted a further hearing on the TRO Motion. The Debtor attended in person, as did the Ex-Spouse and her attorney, Anthony J. DeGirolamo. Mr. DeGirolamo also appeared on behalf of Defendant Herbert Baker.

Based on the facts and documents that were undisputed at the January 9 hearing, as well as the arguments of Attorney DeGirolamo and the Debtor, the Court determined that the relief provided by this Order would be appropriate to establish necessary ground rules going forward with respect to what matters currently pending in the DR Court may proceed, and which matters

should remain stayed to preserve the jurisdiction of this Court with respect to the Debtor's Chapter 13 Case.

Based on the foregoing,

IT IS HEREBY ORDERED THAT:

1. Limited relief from the automatic stay is hereby **GRANTED**. The **AUTOMATIC STAY IS MODIFIED** to the extent necessary to allow the Ex-Spouse to prosecute, and the DR Court to adjudicate, the following:

   a. Determine the extent to which a QDRO remains necessary to effectuate the Divorce Decree, and, if so, to enforce the Debtor's obligation pursuant to prior orders of the DR Court to produce or assist in the production of such a QDRO;

   b. Determine the extent to which a power of attorney related to real estate previously or currently owned by the Ex-Spouse and/or the Debtor remains necessary to effectuate the Divorce Decree, and, if so, to enforce the Debtor's obligation to execute such a power of attorney;

   c. Determine the existence of any claims that may be held by the Ex-Spouse against the Debtor for conversion or dissipation of the assets in the Debtor's retirement account that the QDRO was to divide pursuant to the Divorce Decree, and liquidate such claims if they do exist (but not enforce collection of any such claims or determine the priority or dischargeability of those claims in this bankruptcy case);

   d. The DR Court is granted relief from the automatic stay to allow and regulate discovery relevant to any of the matters described in this paragraph, schedule

and conduct hearings regarding such matters, issue any process necessary for those matters, and exercise its inherent authority to enforce discipline in those proceedings, including determining questions of contempt and enforcing contempt citations with respect to all proceedings and acts occurring on or after January 10, 2020.

2. The **AUTOMATIC STAY REMAINS IN EFFECT** with respect to the matters listed in this paragraph. The Defendants and the DR Court may not, *inter alia*:

a. Compel or seek to compel the Debtor to pay the equalization payment obligation established in the Divorce Decree;

b. Compel or seek to compel the Debtor to make payments towards the credit card debt or other debts required by the Divorce Decree;

c. Compel or seek to compel the Debtor to pay attorney fees;

d. Determine or seek to determine the priority or dischargeability of any claim against the Debtor under the United States Bankruptcy Code; or

e. Seek, issue, or execute any arrest warrant or capias against the Debtor for (1) acts or omissions prior to January 10, 2020, including failure to attend the December 30, 2019 hearing, which the Debtor had a good faith reason to believe was automatically stayed by the filing of the Chapter 13 Case, or (2) failure to pay any prepetition financial obligation that is automatically stayed by the filing of the Chapter 13 Case, including, without limitation, the obligations described in paragraphs 2a-2c of this Order.

3. This Order does not reach the claims asserted in this adversary proceeding regarding whether any acts taken by any party on or after the December 23, 2019 petition date constitute a willful violation of the automatic stay or whether any such willful violation warrants monetary sanctions of any kind. This Order also does not prejudice any argument of any party with respect to those claims.

4. All parties in interest are free to seek further modifications of this Order by filing an appropriate motion in this adversary proceeding, or a motion for relief from stay in the Debtor's Chapter 13 Case.

5. This Order is effective immediately upon entry. It shall replace the TRO entered on January 3, 2020, and the effect of the TRO is therefore terminated upon entry of this Order.

# # #

cc:

Grant T. Wilcox, *Pro se* Plaintiff-Debtor, grant.wilcox@gmail.com, 9858 Green Drive, Windham, OH 44288

Anthony J. DeGirolamo, counsel for Defendants Sara N. Wilcox and Herbert Baker